VISION IMPAIRMENT AMONG OLDER AMERICANS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

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CONTENTS

	Page
Opening statement by Senator Frank Church, chairman	1
Statement submitted by Senator Pete V. Domenici	3
Statement submitted by Senator Harrison A. Williams, Jr	3
Statement by Senator Jennings Randolph	15

CHRONOLOGICAL LIST OF WITNESSES

Colenbrander, August, M.D., professor of ophthalmology, and medical director of the Pacific Medical Center's Low Vision Service, San Francisco, Calif	5
Friedman, Gerald R., O.D., director, Retina Associates, Boston, Mass	12
Inkster, Douglas E., Ed. D., director, New York Infirmary Center for Independent Living, New York, N.Y	21
Wedewer, Donald H., Tallahassee, Fla., director, State of Florida Division of Blind Services	29

APPENDIXES

Appendix 1. Letters and statements from individuals and organizations:	
Item 1. Letter from James Gashel, chief, Washington office, National Federation of the Blind, Washington, D.C., to Senator Frank Church, dated August 1, 1978	45
Item 2. Letter from Dorothy Demby, national specialist on aging, American Foundation for the Blind, Inc., New York, N.Y., to Senator Church, dated August 7, 1978	46
Item 3. Statement of Irvin P. Schloss, director, governmental relations office, American Foundation for the Blind, Inc., Washington, D.C	47
Item 4. Statement of the American Optometric Association, Washington, D.C	52
Appendix 2. Articles from "Sundial," published by Eye Research Institute of Retina Foundation, Boston, Mass., submitted by Dr. Gerald R. Friedman	58

VISION IMPAIRMENT AMONG OLDER AMERICANS

THURSDAY, AUGUST 3, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 6226, Dirksen Senate Office Building, Hon. Frank Church, chairman, presiding.

Present: Senators Church and Randolph.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Alan M. Dinsmore and Kathleen M. Deignan, professional staff members; Jeffrey Lewis, minority professional staff member; and Pamela Klepec, assistant clerk.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. Today, the Senate Committee on Aging will take testimony on many issues related to vision problems and care for older Americans.

Our immediate goal is to examine issues related in one way or another to legislation intended to help visually impaired persons to cope better with everyday life or to receive desperately needed care or devices.

But our additional goal is to draw from today's hearing and from other sources the information needed to put this one need of older persons into proper perspective, now and in the future.

We will, in the next few months, issue a health care status report on the subjects before us today.

We believe that this document will have direct relevance to all forthcoming discussions of a national health care plan for all age groups.

We also believe that it will be valuable in preparations for the 1981 White House Conference on Aging authorized in the 1978 Older Americans Act amendments which the House and Senate have passed.

One of the issues which will certainly receive our careful attention is the limited role that medicare has in helping older persons with vision problems.

Medicare is often called a leaky umbrella, providing important protection in many respects, but leaving big holes where other protection may be equally needed.

I have gone further. I have called medicare a program better designed to meet the needs of the young than the old, since it does a good job in providing protection against costly institutional charges and medical bills for short-term illness.

But when it comes to the widespread and sustained need of older persons for dentures or eyeglasses or hearing aids or in-home services, medicare falls short.

And so, we will ask questions about medicare and vision loss. But our purpose is much broader.

We will hear, during this morning's session, predictions about the startling increases which will soon occur in blindness and vision loss among older persons in this Nation, particularly among the very old.

A soon-to-be-released study of the Division of Social and Demographic Research of the American Foundation for the Blind states that there will be about 1.5 million older Americans with severe vision impairment by the year 2000—80 percent of whom will be 75 years of age and older.

This means that in just about 20 years the population of severely visually impaired older persons will be larger than the National Center for Health Statistic's current count of severely vision impaired persons of all age categories.

Within recent months, we have seen much written about the "graying" of our population. We talk about its impact on retirement income systems, work force projections, and even our educational system.

This hearing may help us make the additional point, rather emphatically, that we must also gear up to meet—far better than we are now doing—the special needs of those whose sight becomes less dependable with passing years, even to the extent of total blindness.

And it will also help us make or explore other points:

Points For Exploration

(1) Whether the many special programs to help the visually impaired fall into categorical traps, often producing despair or frustration, rather than assistance.

(2) If the goal is to prevent dependency, what use is being made of models already provided, including the stimulating and heartening work to be described by one of our witnesses today, the director of the New York Infirmary's Center for Independent Living?

(3) Why has there been, as reported to this committee, a 5-year gap between the onset of disability and the linking with any rehabilitation services?

(4) What linkages should there be between existing therapy and rehabilitation opportunities and area agencies on aging under the Older Americans Act?

(5) Whether, as in so many other "age-ist" attitudes toward older persons, there may be a tendency to write off the older victim of vision problems as beyond help or concern.

(6) Whether institutionalized patients are receiving adequate vision care. There is good reason to believe that many are not, and we want to know why.

I will close this brief statement by thanking the American Foundation for the Blind, the National Federation of the Blind, and the American Optometric Association for agreeing to provide this committee, not only with additional background material, but with specific recommendations for legislative action.

Senator Pete V. Domenici, the ranking minority member of this committee, is unable to be with us today because of a prior commit-

ment. He has, however, submitted a statement for the record, and it will be put into the record at this point.

[The statement of Senator Domenici follows:]

STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, I am pleased today that we are holding hearings on "Vision Impairment Among Older Americans," a topic which has been of great concern to me and one which I believe has been ignored for too long.

In these days of attempting to control health costs and minimize premature institutionalization, the need to develop adequate low-vision services to maximize the potential for Americans to remain independent becomes exceedingly critical. This problem becomes even more important when we realize that it is estimated that there will be approximately 1.5 million older Americans with severe vision impairment by the year 2000, 80 percent of whom will be 75 years of age and older. Thus, with an increasing visually impaired population over age 75, we need to examine how we can strengthen existing legislation to help visually impaired Americans to remain functionally independent.

Furthermore, in a soon to be released study by the American Foundation for the Blind, it is estimated that there are only 200 low-vision clinics in the country. Their survey indicates that one-third of the clinics are open for only half a day a week or less; 20 percent are open up to 1 day per week; and 8 percent are open 1½ to 2 days a week. Thus, the scarcity of clinics plus the short time they are open makes it difficult to obtain services.

I look forward to reading the transcript of today's hearings concerning the needs of visually impaired older Americans.

Senator CHURCH. I would like to thank Senator Harrison Williams, chairman of the Senate Committee on Human Resources, for expressing his personal interest in these proceedings and for taking such effective action. Senator Williams has introduced a bill to provide medicare coverage for low vision services. He has submitted a statement which will be entered into the record at this point.

[The statement of Senator Williams follows:]

STATEMENT OF SENATOR HARRISON A. WILLIAMS, JR.

Mr. Chairman, and members of the committee, I am delighted to be here this morning to discuss vision impairment among older Americans. Before I do, I would like to take this opportunity to commend the distinguished chairman of the committee for his outstanding record of leadership and achievement on behalf of our Nation's senior citizens. As the former chairman of this committee, I have observed the work of my successor with interest and pleasure. Under his leadership, the Senate Committee on Aging has demonstrated that it truly understands the problems of the elderly. Older Americans can take great comfort in knowing that in Senator Church they have an advocate and a friend.

Other participants here today can no doubt describe better than I the technical medical aspects of severe vision impairment among the elderly. I believe that one overriding fact will emerge from this discussion—that the great majority of legally blind senior citizens can be helped by low-vision services. These services include a detailed ophthalmological examination, an optometric examination to prescribe a low-vision aid, and training in the use of the prescribed aid. Low-vision aids encompass a variety of special lenses and devices which enable persons with severe vision impairment to regain useful sight. Unfortunately, most legally blind senior citizens are unable to afford these services.

I recently received a letter which I think well illustrates the plight of these persons. On July 2, Thomas Bethea of Metuchen, N.J., wrote: "Dear sir: I am 76 years of age, my wife is 75. I have macular degeneration in both eyes, leaving me legally blind. Please note the enclosed clipping showing custom-made glasses . . . that would enable me to read. I am not able to buy them. The question is, do you know of any Government agency that would give help on this?"

Sadly, the answer in most cases is "no." Because of gaps between various Federal programs, most legally blind senior citizens cannot obtain low-vision services. Federal legislation recognizes the sight problems of a number of groups,

but not older Americans. For example, the Vocational Rehabilitation Act of 1973 authorized Federal funds for States to provide low-vision services to people preparing for employment. Most older Americans fail to qualify for these services, since they are not looking for jobs. Similarly, the Education for the Handicapped Act covers visually impaired children, while legally blind senior citizens are omitted. In effect, our society tells these individuals that they are no longer useful or needed.

Congress has twice tried to fund rehabilitation services for older blind persons. The 92d Congress included in the Rehabilitation Act of 1972 a pilot program for blind persons over age 55. The act also included a special comprehensive rehabilitation program, dropping the vocational requirement. Then President Nixon pocket-vetoed this measure. Similar legislation was vetoed by the President in early 1973, and Congress failed to overturn that action.

Failure to address the needs of legally blind senior citizens has had great consequences. The lack of low-vision services robs nearly all legally blind seniors of their dignity and independence. Without the assistance they need, many are forced into nursing homes. The human, as well as the dollar costs of this situation are intolerable. An estimated 400,000 to 500,000 recipients of social security are legally blind, and their numbers can be expected to swell since the elderly are now the fastest growing segment of our population.

For only a fraction of the cost of nursing home care, we can help legally blind older Americans to obtain low-vision aids and thus enjoy more independent and active lives. For thousands of these individuals, such devices can literally mean the difference between day and night, between a world of expanded activities and one of severe limits. Moreover, the cost of low-vision aids is relatively low. According to an American Foundation for the Blind study, the average cost of low-vision service, including professional services and the aids themselves, is about $200. The choice in deciding to make this small, one-time investment is clear. We can assist visually impaired older Americans to fulfill their human potential, or we can continue to force many individuals into nursing homes where they do not belong.

I have introduced legislation to enable us to make the former choice. My bill, S. 3038, would extend medicare coverage, under the supplementary insurance program, to include low-vision services provided to legally blind persons. This measure covers professional services, low-vision aids, and training in the use of these aids. Approximately 400,000 would benefit from this bill, both retirees and disabled younger persons.

I believe that my proposal is a modest one. While the Social Security Administration estimates that the bill will cost about $20 million in each of the first 2 years, the American Foundation for the Blind, proceeding on different assumptions, projects an initial cost of $4 million, rising to $7 million in subsequent years as facilities expand to handle the increased pool of legally blind senior citizens who would be able to afford low-vision services. Even with the higher estimates, providing for the coverage of low-vision services is far less expensive than the alternative.

The bill has benefited from the contributions of a number of organizations with long experience in the field of vision problems. The American Association of Workers for the Blind, the American Council of the Blind, the American Foundation for the Blind, and the Blinded Veterans Association all support medicare coverage of low-vision services for the legally blind. However, I realize that the legislation could be improved. Some might call for the coverage of all severe visual impairments, even when a person is not legally blind. While I favor the widest possible coverage, I also believe that the bill's approach is a most prudent one. By providing for only the legally blind, the bill would better demonstrate the efficacy of medicare coverage of low-vision services. The legally blind serve as a readily definable group of beneficiaries, and the present scarcity of low-vision clinics means that even this smaller group could lead to sizeable backlogs. Eventual coverage for all older Americans with severe visual impairment depends on our success in constructing a solid foundation now.

I am hopeful that today's proceedings will serve to heighten congressional awareness of the problems of visually afflicted older Americans. Given this awareness, I am sure that my colleagues will be able to agree on the need for remedial action. By addressing the special concerns of legally blind older Americans, we will be taking yet another step toward our national goal of assisting all senior citizens to live with dignity and respect.

Senator CHURCH. Senator Jennings Randolph, chairman of the Subcommittee on the Handicapped, has introduced similar legislation and, like Senator Williams, is a former member of the Senate Committee on Aging. The Senate is scheduled to act soon on Senator Randolph's amendments to the Rehabilitation Act, which would provide rehabilitation services for older persons.

Our witnesses today are: Dr. August Colenbrander, professor of ophthalmology, and medical director of the Pacific Medical Center's Low Vision Service; Dr. Gerald Friedman, optometrist and director of Retina Associates Low Vision Clinic in Boston; Dr. Douglas Inkster, director of the New York Infirmary's Center for Independent Living; and Donald Wedewer, director of the State of Florida's Division of Blind Services.

Before we begin, I want to take note of the special arrangements of the room. As you can see, this is not the usual formal hearing setting. I have asked for this arrangement because the problems of vision impairment are so linked that I want to encourage as much informal exchange among our witnesses as possible.

We are going to begin with Dr. Colenbrander who will help us set the scene by describing the leading causes of vision impairment. Then I would like to ask Dr. Friedman to let us use his low-vision simulators so that we can more fully understand what these vision impairments mean on a very personal level.

So, Dr. Colenbrander, would you like to lead off this morning? Welcome to the committee.

STATEMENT OF AUGUST COLENBRANDER, M.D., PROFESSOR OF OPHTHALMOLOGY, AND MEDICAL DIRECTOR OF THE PACIFIC MEDICAL CENTER'S LOW VISION SERVICE, SAN FRANCISCO, CALIF.

Dr. COLENBRANDER. Mr. Chairman and members of the committee, it is an honor and privilege to have been invited today to speak to you about visual loss in an aging population. That may seem like a simple topic that could be dealt with in some simple statistics. It is not. In your deliberations you may already have pondered the question, "How old is old?" The parallel question, "How blind is blind," is no easier to answer.

"How Blind Is Blind?"

One problem is the definition of blindness itself. The dictionary tells us that blindness is total lack of sight, but in a social and socioeconomic context the definition of blindness is considerably wider. Some years ago the World Health Organization found that 65 different countries used 65 different definitions of blindness. It is the confusion about the many definitions of blindness that made Jehoda once state: "More people are blinded by definition than by any other cause."

First of all, we must recognize that there is a large gray area between normal vision and blindness. The term "low vision" is most descriptive for this condition. The word "vision" distinguishes it from blindness; the word "low" distinguishes it from normal vision.

The existence of these three levels—normal vision, low vision, and blindness—has now been recognized by the World Health Organiza-

34-836 O - 79 - 2

tion and will replace the old distinction between those who are legally sighted and those who are legally blind.

For more precise reporting, these levels can be further subdivided into normal vision, near-normal vision, moderate low vision, severe low vision, profound low vision, near-total blindness, and total blindness, indicating that the transition from normal vision to blindness is, indeed, a gradual one.

Low vision and blindness represent various degrees of visual loss. How about some of the other terms we often hear such as visual handicap, visual impairment, visual disorder, and visual disability? These terms do not indicate different degrees of visual loss, but represent different ways of looking at visual loss and its impact on the individual. We will consider each of these terms in succession.

Visual Disorders

The visual system can operate perfectly only if all of its components are in perfect order. Under the term "visual disorder" we describe changes in any of the parts of the visual system. The eye often has been compared to a camera. The essential elements of the camera are the film and the lens. Without the lens on our camera we cannot take a picture, but even with the most expensive lens we cannot take a picture unless we have a good film. Analogous to the camera lens is the optical system of the eye composed of lens and cornea. Analogous to the film is the retina, the layer of ultrasensitive cells that can detect so many shades of light, dark, and color.

In a system so complex as the human eye many things can go wrong. Let us take a look at the three most common disorders whose incidence increases with age: senile macular degeneration, glaucoma, and cataract. Together, these conditions account for 50 to 60 percent of all visual loss in the population over 45.

You probably are familiar with the concept of cataract. A cataract is a clouding of the lens which prevents that lens from forming an adequate image of the outside world. Although there is no way in which we can prevent the formation of most cataracts, we do have a good cure for cataracts. That is, we can surgically remove the lens and thus restore normal vision, provided that no other defects are present.

Glaucoma is a condition in which increased pressure inside the eye slowly damages the visual cells. Once these cells have been damaged, there is nothing that can restore them. Glaucoma is an insidious disease. When the patient detects the damage, it is too late. Glaucoma control must come from early detection and control of the increased pressure before the damage has been done.

Senile, or involutionary, macular degeneration occurs in retinal tissues that are "worn out" after 70 or 80 years of continuous service. As patients live longer, their chances of developing senile macular degeneration become higher.

As in glaucoma, the process cannot be reversed once it has occurred. Unfortunately, unlike glaucoma, we do not know of any good ways of preventing this degeneration. Only in some cases can we do something to arrest or slow down its progression.

Senator Church. May I ask about this macular degeneration which

is depicted here where peripheral vision is retained and central vision is lost, does that condition deteriorate into total blindness?

Dr. COLENBRANDER. It is strictly limited to the central or macular area, and so these patients lose central vision, that is, reading vision, and the ability to recognize details, but they will maintain gross peripheral vision, and the ability to move around.

VISUAL IMPAIRMENT

We have mentioned three disorders that may affect components of the visual system, but this does not tell us the full story. We also want to know the impact these disorders have on the organ as a whole. This we call visual impairment. Speaking about visual impairment, we do not discuss the disease process, but the functional loss that results. We measure such things as visual acuity, visual field, and color vision.

Let us take a look at the impairments that may result from the three disorders discussed earlier.

A cataract will cast a general haze over the image. Its effect is like that of a dirty windshield on your car. Fine details cannot be seen adequately and visual acuity is reduced. As with a dirty windshield, the degree of impairment will often vary with the illumination. With the sun behind you, the effect will be far less disturbing than when looking against the light. In bright sunlight people with cataracts often try to shield the sun from their eyes.

The visual loss resulting from glaucoma is not so diffuse. Glaucoma primarily attacks side vision. In advanced glaucoma all side vision may have gone and only an island of relatively unimpaired central vision may remain. This condition is called tunnel vision.

In senile macular regeneration the reverse occurs. The macula is the central area of the retina, which is most highly developed, it provides us with finest detail vision. Because of its higher level of sophistication, it is also more prone to deterioration. In macular degeneration central vision will suffer and eventually disappear, but peripheral vision is unaffected.

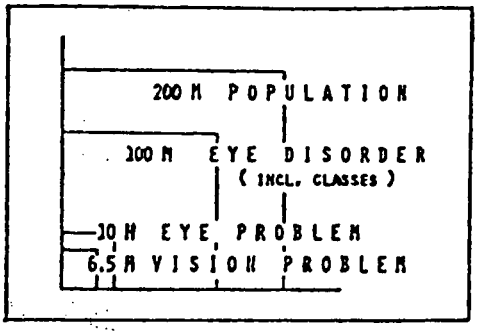
SUMMARY

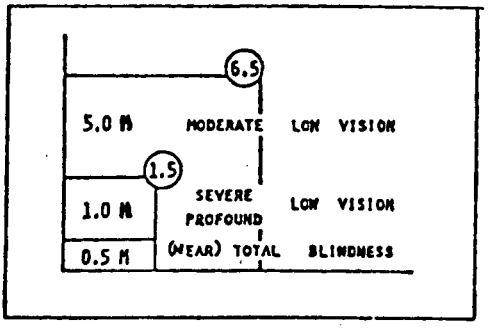
In summary, when we describe how well the eye functions, we are talking about visual impairment. Visual disorders are specific disturbances that cause the eye to function that way. We have also seen that the most common age-related visual disorders cause visual loss that should be classified as low vision rather than as total blindness.

Visual acuity is easily measured and therefore is the criterion most often used to define various levels of visual performance. Unfortunately, most statistics utilize only the simplistic dichotomy between legally sighted and legally blind. The more detailed levels of impairment now recommended by the World Health Organization and the International Council of Ophthalmology will allow more detailed statistics. The additional detail will allow us to identify the needs of various population groups more precisely. You may recognize that the severe visual impairment level in this table corresponds to what is generally known as legal blindness in this country.

With currently available data, I can only give you a gross approximation of the prevalence of various impairment levels.

The following data are compiled from a variety of sources. They are meant only to give you an impression of the magnitude of the problem and have been purposely rounded for easy presentation.





If the population of the United States is rounded at 200 million, it is estimated that about half, or about 100 million individuals, have some eye disorder. This includes those who maintain normal vision with the help of glasses. It is estimated that there are about 10 million individuals with a more serious problem in one or both eyes. The number of people with a vision problem—that is, a problem in both eyes—is estimated at 6.5 million.

How do these 6.5 million break down? We estimate that there are about 5 million with moderate low vision and 1.5 million with severe

low vision or worse. Only one-half million of these are totally or near-totally blind. The 1 million in the severe and profound categories still have significant residual vision which can be useful to them.

Senator CHURCH. Excuse me, the number wearing glasses is roughly half of the population today. What proportion of the population over 40 would require glasses? Have you any figures on that?

Dr. COLENBRANDER. Over 40, almost the entire population requires glasses for reading. Statistics indicate that 90 percent of the population over 45 wears glasses or contact lenses.

Senator CHURCH. When was the discovery made that by grinding and shaping glasses you could deal with eye disorders? Or when were glasses first invented?

Dr. COLENBRANDER. That discovery is quite old. The German word "brille" for glasses reportedly goes back to the word "berylium," and some lenses reportedly were produced from these crystals even in antiquity. At the end of the Middle Ages, and in the Renaissance we see pictures of people using simple lenses for reading and near vision. The prescription of glasses was placed on a scientific basis, and the difference between nearsightedness and farsightedness was explained, in the middle of the 19th century by Donders in Holland.

Next, we must look at the age distribution. We are struck immediately by the fact that about half of the visual impairment occurs in the population over 65, although this presently is only 10 percent of the total population. This means that the frequency of visual impairment increases enormously with age, from 0.5 percent in the under 20 age group to 15 percent over 65. For the over-75 or over-80 age groups, the frequency figures are even higher.

How will that change in years to come? A population estimate by the Bureau of Census shows that by the year 2000 the population over 65 may have grown by 50 percent. Applying these increases to the impairment estimates shows that we may expect 3 million more individuals with reduced vision. Half of them will be over 65. That is a sobering thought.

How will that increase in the number of visually impaired individuals affect our society? To answer that question we must again widen our perspective. We have taken a look at visual disorders and at visual impairment—that is, at how the eye functions. We must now consider how the individual functions with these eyes.

VISUAL DISABILITY

When we discuss the performance of the individual rather than of the eyes, we are talking about visual disability. Visual ability or disability is not measured in terms of organ functions such as visual acuity or visual field, but in terms of personal skills such as reading skills, daily living skills, orientation and mobility skills.

When we consider the disabling effect of various visual impairments, we have to make a distinction between tasks requiring detailed central vision and tasks requiring gross, peripheral vision.

An example of the first is reading; an example of the second would be orientation and mobility. Consider, for instance, the task of a person faced with crossing an intersection. A person with advanced glaucoma and tunnel vision may be able to see the walk sign, but when he starts walking, he cannot see the cars around him. That may make him

feel quite unsafe. A person with a central blind spot due to senile macular degeneration, on the other hand, cannot read the walk sign, but can see when the cars are stopped and will generally feel safer in crossing.

Widening our perspective from visual impairment to visual disability, from the organ of vision to the person, we must also widen the range of the factors we are considering. Visual impairment is one of the factors that determine disability, but it is not the only one.

The abilities of a person depend on visual as well as nonvisual skills. Deficiencies in one type of skills often can be compensated for by extra concentration on other skills. Thus, two avenues are open to reduce the impact on visual impairment. One is vision enhancement; the other is vision substitution.

Vision Enhancement and Substitution

Vision enhancement aids are those that facilitate the use of whatever vision is available. Optical aids are one group; accessory aids, such as the use of large print, form another. In this slide, which is deliberately out of focus to simulate the effect of reduced vision, the regular print has become difficult to read, but with the aid of a magnifier reading is possible again. A regular check written with a regular ballpoint pen is hard to recognize. A large-print check and a felt-tip pen are examples of accessory aids that can make it possible to read your own check again.

Under vision substitution, we talk about the use of other senses to replace or supplement vision. Raised dots on a thermostat knob allow settings to be made by touch. Talking books can often conveniently replace regular books, as radio can replace newspapers as a source of news.

Many simple tricks that do not even require aids can make daily living a lot easier. Paper money can be recognized on touch by folding the various bills differently; coins can be identified by feeling their edges. Optimal contrast makes reduced vision more effective. Dark coffee is most easily seen in a white cup. A glass of white milk stands out against a dark background.

Other simple points can help in orientation and mobility. Proper sighted-guide technique can save much embarrassment.

Visual Handicap

The last example points to the role and skills of others. This brings us to the last aspect of visual loss to be discussed: That of visual handicap. The handicap dimension, again, widens our perspective, this time from the individual to the society in which he functions. We must consider not only what the individual can do, but also what is expected of him.

This includes the demands of the physical environment as well as the expectations of friends, relatives, employers, et cetera.

An example from the field of physical impairment can make this clear: Providing an environment free of steps and stairs does not reduce the disability of the physically disabled, but it considerably reduces their handicap. An architectural environment with appropriate light levels and proper contrast of doors and walls, steps, and stairs

can similarly reduce the handicap of the visually impaired. This should be a consideration in any building, but especially in homes for the elderly where so many impaired individuals can be expected.

The human and social environment is also a key factor. Educating family members and the public at large is an important task. Too often, well-meaning friends who do not understand either the limitations or the potentials of a person with limited vision become overprotective on the one hand, or overdemanding on the other.

By this time it should be clear that the resources that can be brought to bear on the combined problems of aging and visual loss are many and of widely varying nature.

To combat visual disorders and visual impairment through medical and surgical care is the primary task of the ophthalmologist. But medical care traditionally does not deal with visual disability and visual handicap.

Optical and nonoptical aids cannot change a visual disorder but can significantly reduce visual impairment and visual disability. This is the domain of ophthalmologists and optometrists.

Education, instruction, and counseling are additionally needed to round off the services. This is the domain of social workers, psychologists, rehabilitation workers, counselors, et cetera.

When we recognize this spectrum of services, we will also recognize that no single profession alone can deal with all problems. Effective services for the patient with visual loss require a truly interprofessional effort.

As we thus widen the scope of our services, we need no longer dismiss patients with mere sympathy and the statement that "nothing can be done" about their disorders. As we broaden our perspective beyond medical and surgical care to include visual disability and visual handicap, we must state that much can still be done to enhance the functioning of individuals in the environment in which they live.

The Importance of Terminology

Where does that leave us with respect to our earlier question: How blind is blind?

Since a variety of professionals must be involved with the services of low vision patients, accurate communication is a must. This is one of the reasons we have stressed the proper use of terminology.

We have seen that indiscriminate use of the word "blindness" only confuses the picture. The word "blindness" tends to promote black and white thinking; either one is blind, or one can see. It also does not recognize the fact that different individuals may have different needs.

Let me give you some examples of how the more accurate terminology can help to promote better understanding.

The definition of legal blindness in this country is based on the measurement of visual impairment. Substituting the term "severe visual impairment" where legal blindness now appears in legislation and regulations would not change any established right, but would make it easier to recognize this definition for what it is, only one point on a continuous scale.

In health surveys and questionnaires the question is often asked: "Do you have problems reading newsprint?" A positive answer is usually referred to as "severe visual impairment." Since this question

refers to an ability of the individual rather than to a condition of the eye, the term "severe visual disability" is more appropriate.

In several countries blindness is also defined as "visual loss that precludes normal employment." This definition speaks to the individual's position in society and to socio-economic independence. It is a definition of visual handicap.

We may ask again: How blind is blind? There is no single simplistic answer to this multifaceted problem. Many factors are involved. We may say, "You are as blind as you feel," but we must also stress the importance of the attitudes and support of others. So we must add, "and as others make you feel."

Those others include all of us in private and public functions. We hope that the attention your committee is giving to these problems will help to change attitudes and to make more resources available to help reduce the "blindness" of visually impaired individuals.

Senator CHURCH. Thank you Dr. Colenbrander.

Dr. Friedman, would you like to follow?

STATEMENT OF GERALD R. FRIEDMAN, O.D., DIRECTOR, RETINA ASSOCIATES, BOSTON, MASS.

Dr. FRIEDMAN. Senator Church, I would like to thank you and the members of your committee for inviting me to attend and contribute to the important subject of "Vision Impairment Among Older Americans." I would like to utilize the time allotted me in two phases.

First, I would briefly like to present some clinical information on elementary ocular anatomy which I feel is relevant to understanding the problem of the elderly visually impaired.

The second and most important part, I would like to simulate for you what visual loss is, and how it affects our lives. We will take some of the more common visual losses that affect the elderly and distribute some pathological simulators which will allow you to instantly witness what these patients actually have in the way of visual handicaps.

In working with severe visually impaired elderly we must treat more than the eye. It is important we treat the person. We must treat this person as a total organism, not simply an eye problem. We must look at this person's interaction with his environment. This is a visually oriented environment and is becoming more visually oriented. We must look at his interaction with this environment because to the visually impaired elderly this has become a hostile environment. This is an environment with which he is progressively losing contact.

"FUNCTIONAL VISION"

We must look at his needs, not in the form of just visual acuity such as 20/100 or 20/200, we must look at his functional vision, which is the interaction of whatever residual vision he has with the environment. We must look at other problems that he has, other physical and psychological problems, and we must look at another important factor: motivation.

When we talk about motivation we find minimum problems with the elderly patient because the motivating factor with the elderly patient is independence.

In order to obtain or keep this independence, all the visually impaired elderly requires is the basic tools. The low vision examination determines the problem, the low vision aid becomes the basic tool.

How do these low vision aids work to allow this patient to successfully react with his environment? We have in this slide a diagram of the eye cut in cross sections. The front is the cornea, the window where the light must come through. We have the lens which is the focusing element much as it is in the camera. The lens places the image on the retina. The retina is this posterior part and is analogous to the film of a camera. For our purposes, the important part of the retina is this small area known as the macula, the only part of the eye which is capable of achieving 20/20 vision—the only part of the eye which is capable of seeing minute detail. The rest of the area is incapable of seeing fine detail under normal conditions.

The important thing about the elderly visually impaired is that many of the problems that occur occur with this small area, the macula. This area is a very vulnerable area.

This slide shows the back of the eye as seen with an ophthalmoscope. The macula shown here is this tiny area, small compared to the whole back of the eye, and yet the only part of the eye which is capable of resolving small details. When something happens to the macula, vision can fall to 20/200, the notation for legal blindness. The effect of this loss in a visually oriented world is obvious; to the elderly it can be catastrophic.

On this slide we have graphically represented what happens to vision as we move to areas of the retina away from the macula. A quick scan of the graph shows us that the macula, as mentioned previously, is the only part of the retina where 20/20 vision is present—the only place the graph touches the 20/20 line. As we move away from the macula in any direction, something very disturbing becomes evident. Not only is achievable vision decreased, but at an alarming rate per area moved. This drastic reduction in ability of the retina to resolve detail as we move from the macula becomes evident by the fact that when we are just 10 degrees away from the macula we have a potential vision of no greater than 20/200—legal blindness.

As we go further out to the side we find that we are very quickly down to 20/800, 20/1,000 vision. So the only part of the eye that really can function with detail is the center.

This is another slide demonstrating the importance of the center part of the eye and what happens as we move off to the periphery. Although the peripheral part of the eye is functioning it cannot resolve the detail. The purpose of the low vision aid is twofold: to move the image to another part of the eye which still has the ability to function and to enlarge the image so this part of the eye can now resolve it.

If we have 20/20 vision we have no problem and details are quite evident. As the vision starts to decrease in the center part of the eye as pathology and age afflict the macula area, visual acuity drops off and very quickly it can be 20/200 and worse.

This slide illustrates how a person with impaired central vision would see this scene of Boston. Take note that the building and large objects have not disappeared, but the detail, the windows, signs, peoples' faces would not be seen. The problem is that in today's visually oriented world we cannot afford to be without the ability to resolve detail.

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Senator CHURCH. That is 20/200 you were showing on that?

Dr. FRIEDMAN. This is slightly better than 20/200. Nothing has disappeared as a lot of people think with the definition of legal blindness. Legal blindness is often confused with blindness or total absence of sight. A legally blind person can be totally blind or have vision 20/200 or worse—or a visual field of 20 degrees or less in the widest meridian of the best eye. A low vision patient need not be legally blind at all, but have a problem not helped by medical, surgical, or ordinary optical means.

What has happened is that the detail is gone. The large objects are still here and what you are using here is essentially your peripheral retina, that part which is not in the center.

This slide demonstrates another problem which occurs in conditions such as retinitis pigmentosa and advanced glaucoma. In these conditions, the peripheral or side vision is affected with or without a corresponding decrease in central vision. This is the commonly referred to condition of "tunnel vision." With this condition, it is possible to pick up a pin from the floor if you are looking directly at it and trip over a large desk in getting to it.

HUNDREDS OF PATHOLOGIES

Although there are hundreds of pathologies that afflict the eye, we can oversimplify and say they affect the peripheral vision resulting in this tunnel vision or they affect the central part of the eye resulting in a decrease in central vision, or a combination of the two, such as we see right here.

This is the same picture, by the way, as this.

This slide shows another condition which we are seeing more and more of today in which one-half of the picture or one-half of the view is completely missing. The condition demonstrated is an homonymous hemianopsia.

Now this part remaining could have different problems. It could be completely clear, like this, resulting in 20/20 vision, or this could also become very, very blurred. What is this the result of?

This condition is the result of a cerebral vascular accident or stroke. We are seeing more and more of these today.

If we throw this out of focus we will see what happens when the macula is not spared. Depending on where the stroke is you could have a sparing of the macula, resulting in good vision in the remaining field. If it is not spared, you will still have one part visible, but this will also be blurred. How does this affect the other important factors of today, like close work? The reduction in central and/or peripheral vision can have an adverse effect on the important everyday function of reading and writing.

Senator CHURCH. May I interrupt you a moment? I would like to acknowledge the presence of Senator Jennings Randolph who has come to participate in these hearings today. You will have legislation on the floor.

Senator RANDOLPH. In the near future.

Senator CHURCH. Is there anything you would like to say, Senator?

STATEMENT BY SENATOR JENNINGS RANDOLPH

Senator RANDOLPH. Yes, if I may. I will not take too long.

Chairman Church, I am grateful for your reference to the work I have tried to do in the Subcommittee on the Handicapped. In that subcommittee, Senator Stafford and myself and others are interested in new approaches to alleviating vision impairment of older Americans in this country.

I am sure you are all familiar with the Lions Club, and with their noteworthy and significant programs to aid the blind. In 1931 I was the governor of the Lions Clubs of the State of West Virginia. At that time we only had 50 clubs in West Virginia; we now have almost 300. It seemed to me and to others that a service club should be more than a place where you come together and listen to a speech. The very word "service" club itself means that you take unto yourself some active program that will help people.

It was my feeling that the Lions programs in West Virginia should cooperate with our West Virginia School of the Blind at Romney to have operations performed on partially blind children or those who might become blind. We had the problem of raising, through our clubs, $3,000 to take care of the transportation, hospitalization and other expenses of approximately 85 children. The reason I tell the story actually is to speak of that which often goes unheralded. Dr. Jay Blades, who was an eminent surgeon in Bluefield, W. Va., and his associates decided not to charge one single penny for all the operations they performed. Dr. Blades has since died, leaving a great record not only of personal achievement but of service to the blind; his clinic is carried on today by his son and others at Bluefield.

It is important, I think, to point out that because of this program, these young people were enabled to become independent, productive members of society as they grew older.

I also want to mention the Randolph-Sheppard Act which was passed in 1936. I recall that during hearings on this measure, the then Assistant Postmaster General testified and said, "How naive can you be. It is wonderful to have compassion but the blind cannot be trained to do these jobs of the vendors," and I remember saying, "Let's have a pilot project and see what can be done." So the program came into being and today there are 3,995 blind vendors in this country. In 1977 these men and women had earnings totaling $36,540,835.

That was a group of people that many uninformed persons thought could not do the job. But given the opportunity and the training, they did the job.

In 1975 over 27,000 blind men, women, and children were rehabilitated through the vocational rehabilitation program. These handicapped individuals are a vital, vibrant testimony to the value of the investment in Federal programs that developed their ability and their opportunities to fit themselves into our life, economy, and our system.

I commend you today for receiving testimony on the needs of visually impaired older Americans.

"OLDER PERSONS . . . OFTEN OVERLOOKED"

You and I know that the Congress, in 1972 and 1973, addressed the needs of the older persons in this country in the rehabilitation legis-

lation, but they were vetoed by the President. Now during the 95th Congress, the Subcommittee on the Handicapped, with Senator Stafford as the ranking minority member, has held 18 days of hearings in which we have reviewed all the programs for the handicapped that come under the jurisdiction of that subcommittee and of the Human Resources Committee.

We have had brought to our attention the fact that older persons are often overlooked in our Federal programs. There are approximately 265,000 older blind persons in the United States. Existing assistance to the older blind person includes income maintenance, health service and library services, and such programs as social service, housing assistance for the elderly and the handicapped, and older American programs. They do not address the specific special problems of dependency such as the loss of ability and the will to function which affect our older blind citizens.

For this reason S. 2600, the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, includes a rehabilitation program for older blind individuals so that at least in part their needs will be met. This program, we hope, will offer a wide range of services and goods to assist the older blind person to adjust to his blindness and to increase his independence. As we are aware, when a person grows older that person begins to lose hearing and the dependence on vision therefore becomes doubly important. It is important that these services be provided to older Americans with low vision, and that we do all we can to improve their vision.

So I applaud what you are doing, because you are doing the job of taking a closer look than ever before at the needs of visually impaired older Americans.

I want our Subcommittee on the Handicapped to work as closely with you as possible. It is our desire within the subcommittee to help you in any way that you feel we can to bring these programs for the visually impaired to those older Americans who constitute a reservoir of strength, a reservoir of vitality, a reservoir where there is still the vibrancy of people who want to be given an opportunity. They do not want handouts, but helping hands. They need programs that are realistic and well-reasoned to assist them in the older years of their life.

This final story—there was a person a few days ago way, way up in years—I want to tell this story for the reason that years do not necessarily stunt or dwarf the feeling of the spirit of a person—this person was celebrating his 81st birthday and a friend said, "How does it seem to be 1 year older at the age of 81?"

This person replied with a chuckle. "I don't think I am 1 year older really. I have just been privileged to enjoy an additional 365 days of living."

What a philosophy. What strength. The blind—they are in that group of people who can enjoy those 365 days of each year if they have at least that partial sight which permits them to read and to continue to be a part of our society.

I just rambled today, I realize that, but you have been very kind to permit me to come here. Senator Church, I thank you very much.

Senator CHURCH. Thank you very much, Senator Randolph. We appreciate the long service and the record you have on behalf of the handicapped. We wish you were still on the committee.

Senator RANDOLPH. I miss it.

Senator CHURCH. But I would like to know if you will have your bill up this week.

Senator RANDOLPH. We do not have a definite date for floor action on S. 2600, but we are hopeful it will be scheduled soon.

Senator CHURCH. Let me know.

Senator RANDOLPH. Thank you all.

Senator CHURCH. Dr. Friedman, you may continue.

Dr. FRIEDMAN. I would like to change my format slightly in light of these remarks by Senator Randolph.

CASE EXAMPLE

At the end of my statement, I was going to give a case example of a patient that we have seen in our clinic in Boston. Instead, I will present it now.

We have seen patients from 59 countries and 43 States in one low-vision clinic alone. One particular case I think worth mentioning involves an 87-year-old gentleman from rural Vermont. He has lived on his farm for 87 years. This gentleman was referred to me for a low-vision problem, and he has about 20/200 vision.

When I was talking with this man he said, "Doctor, I want you to save my life." I was taken aback slightly by this remark because in reviewing the medical history there was no life-threatening disease present.

I asked him to please clarify his statement, and he replied, "You don't understand. Nobody understands. I have lost my functional vision. I cannot maintain my farm any more and I cannot take care of my wife." His wife has severe arthritis and also has a visual problem.

The only alternative that had been given to this man was to move him and his wife into a major city and place them in a nursing home. He stated he would rather not continue living.

With the prescribed low-vision aid this gentleman now can walk into town and do the shopping, pick up the mail, walk back to his little farm. He can do the cooking chores, and read to his wife. He even drives around in a small tractor taking care of the farm. The financial implications of this also become evident, as this aid cost under $100. I don't think we have to be accountants to realize what the cost would be to maintain him and his wife in a nursing home for the rest of their lives.

Senator CHURCH. What was the aid?

Dr. FRIEDMAN. This was a telescopic type of system which allowed him to successfully put the image of his peripheral retina, and magnify it, so he now had 20/40 functional vision.

From 20/200 he had 20/40. This also allowed him, with a slight modification, to be able to read, to set the dials on the stove, to set the thermostat, to read mail, to even given his wife her medication, and also to do the plowing of his garden. One of the simulators you will use today will demonstrate the same reduced vision.

This is what happens again when we have a functional impairment at the center part of the eye. Our macula is impaired, central vision goes down, we get a blur on what we look at. The worse the impairment, the blurrier this gets. Another simulator will allow you to witness the other type of situation where 20/20 vision is maintained through the center, but the peripheral field is all lost.

You will find this is much worse for orientation, for mobility and walking around, even though 20/20 vision remains through the center. This is a type of patient that could pick up a pin on the floor if they are looking right at it and stumble over the whole desk getting to the pin.

Low Vision Population Increasing

One of the most important factors I would like to bring up and conclude with is that we are dealing with an increasing population.

Senator Randolph brought this up.

I would like to show you some of the reasons why it is increasing and not decreasing. With all the money in research it is still not decreasing. These are the reasons. Causes of many eye and neural diseases are unknown, and consequently there are no cures. Many are hereditary diseases and are passed on from generation to generation.

The inability to transplant eyes—even in the distant future there is not going to be an ability to transplant eyes.

Many of these conditions are degenerative conditions and they go along with age. Ocular manifestations of many systemic diseases: the leading cause of blindness in the United States today is ocular manifestations of diabetes. Trauma: until we cure accidents, we will never conquer trauma. Because of the vulnerability of the eye, we will continue to have reduced vision and blindness due to trauma.

The increased demand for acute vision: Society itself is creating low-vision patients. At one time you could get a job with 20/70 vision or 20/80 vision. That same job today may require 20/20 vision.

At one time you could drive with 20/70 in the State of Massachusetts. Now it requires 20/40. We are living in an increasingly visually oriented society which itself is contributing to the increase in low vision. In humans, the eye does not regenerate.

Senator Church. You say "in humans." Does the eye regenerate in animals?

Dr. Friedman. Certain parts of the eye will, but in the human eye we have no regenerative capability. So when something goes wrong in the human eye we either correct it or we live with it. We have a statistically increasing population.

If a certain percentage of the population has a visual problem, if we increase this population, I think it becomes obvious we are going to get more and more visual problems. Because of the longer life expectancies, the wear and tear on the eyes and the components of the eyes have increased. Modern techniques of vitreous surgery and photocoagulation add to the low-vision population by preventing total blindness.

Low vision is simply a maximum utilization of whatever vision is there. We work with whatever vision is there. If something is affecting the center of the eye, we will take the peripheral part of this eye, try to put the image there, and make it correspond and take over where the center failed.

If the peripheral part is gone, we will try to magnify everything and place it in the center part which remains. It is an extension of total eye care. Where it is possible to have, for instance, 20/800 vision preop in a detached retina—as Senator Randolph explained—postop, you might have 20/200 or you might have better, and this is where most of the eye care stops today.

It certainly is an improvement over the original, but when you look further, low vision could offer you, perhaps, 20/40 or better vision out of this situation, so it is a matter of where we want to stop in the care delivery system.

VISUAL LOSS SIMULATION

I would like to have a few volunteers—two specifically—to put on these demonstrations and tell the rest of the committee what they witness when they put these on.

If we could use the old adage of a picture is worth a thousand words, I think a simulation is worth unlimited words. We will pass the simulator around so everybody can get an example of what happens when we have a visual loss.

Thank you.

Senator CHURCH. Thank you, Dr. Friedman.

Dr. FRIEDMAN. What Mr. Dinsmore has here is an example of tunnel vision as you would find in advanced glaucoma or retinitis pigmentosa.

He will now tell you what he sees or what he does not see.

Mr. DINSMORE. The only thing I can see—I am looking right at the screen with the slide on it—is just the center part that says "macula utilization of residual vision." I can't see the screen surrounding it or any other part of the room. If I looked at the panel I can see Dr. Inkster in the blue suit and Dr. Wedewer behind him, but I can't see anybody else. Only if I look directly at Dr. Inkster—and if I walk toward him, I would not know where the edge of the table was. My impression would be I could just simply walk toward him and not trip over anybody, which obviously I would.

Dr. FRIEDMAN. Mr. Affeldt has a demonstration of a loss of central visual acuity in his right eye, due to a macular hemorrhage in the left eye, which is due to macula degeneration. He can actually describe two different conditions.

Mr. AFFELDT. My vision is very cloudy. However, when I adjust my head to the right, I have better vision. I can read on the screen, in large words, "maximum utilization of residual vision." I can read the numbers.

When I move over to the left, however, the screen can be seen but I cannot read any of the writing or the numbers on the screen.

Dr. FRIEDMAN. Can you see the members of the committee or any people in this room?

Mr. AFFELDT. I can see Jeff Lewis.

Dr. FRIEDMAN. Would you know it was Jeff Lewis if you did not know he was sitting there previously?

Mr. AFFELDT. No, I can't see him. I think I could identify him when I turn my head properly and my vision becomes sharper. Otherwise, I would not be able to. At the present time he is just a blur. I cannot see anything at all.

I can pick up people as I move my head, but the slightest movement the other way will cause them to be entirely outside of my eyesight.

Dr. FRIEDMAN. We will have these available for anybody who wants to try them.

[The prepared statement of Dr. Friedman follows:]

PREPARED STATEMENT OF DR. GERALD R. FRIEDMAN

The severely visually impaired population is neither sighted nor blind; however, this population has been taught and encouraged not to utilize the residual vision present. The ironic consideration is that with minimum help this population can function as sighted individuals in an increasingly visually oriented world. Through properly funded programs and training, the blind can also function in this sighted world. With increasing programs for vocational rehabilitation and education for the young, the elderly visually impaired become the forgotten segment of these populations.

Most rehabilitation programs today emphasize employability and the retired elderly visually impaired is forgotten, yet it is this population most in need of attention and assistance. To this neglected patient, low-vision treatment offers a means of regaining or maintaining precious independence. Utilization of a low-vision aid offers a chance to pursue those daily tasks we take for granted. Reading, mobility, occupation, education, recreation, shopping, housekeeping, contact with family and friends, television, and even paying bills are not luxuries; however, these essentials of daily life in a visually oriented society are denied the visually impaired and particularly the elderly visually impaired.

The low-vision aid offers this person a means of independence through maximum utilization of residual vision. Without this means we deny this person the use of his vision. By creating blind patients from those capable of functioning as sighted, we create a dependency role far more costly, financially as well as psychologically, than the cost of the low-vision evaluation and aid.

FACTORS CONCERNING LOW-VISION EVALUATION AND LOW-VISION AIDS

(1) Low-vision aids are not eyeglasses. (2) The low-vision evaluation is not a refraction (the refractive error of the eye is corrected by prescription of eyeglasses). (3) The purpose of the refraction is to determine the proper eyeglasses which, when worn, will focus the image clearly on the macula of the eye with resultant clear vision. With the severely visually impaired patient, even when the image is focused on the macula, the eye fails to resolve this image because of the diseased, destroyed, or absent macula. An analogy can be drawn utilizing the camera as a focusing instrument to place the image on the film. In the severely visually impaired patient, there is no film to focus the image on, or it is too damaged to resolve the image. (4) The low-vision aid replaces diseased or absent tissue. This tissue is a part of the retina identified as the macula which constitutes only a tiny part of the eyes, but is the only part of the retina which is capable of providing detailed vision. (5) The low-vision aid is analogous to an artificial limb or orthopedic brace restoring function to a nonfunctioning part of the body.

THE ELDERLY SEVERELY VISUALLY IMPAIRED: DEFINING AN INCREASING POPULATION

Causes and cures of many ocular diseases are unknown;
Numerous degenerative diseases afflict the eye;
The inability to transplant the eye;
The increase in population;
The increase in life expectancy;
The incidence of traumatic injury (vulnerability of the eye);
Ocular manifestations of systemic diseases (diabetes, strokes);
Insiduous onset of some ocular diseases eludes detection (glaucoma);
Medical science—preventing blindness but unable to restore complete vision;
Society itself requiring increased vision to fulfill its highly technical needs.

SUMMARY

This severely visually impaired elderly population exists and is being denied vision in a visually oriented world. The ironic factor is that these people are not blind but are in need of a rehabilitation program that will permit them the maximum utilization of their remaining vision. To deny them the use of this vision is to relegate them to the role of functional blindness. The eye as a body tissue is being selectively denied the rehabilitation devices (low-vision aids) that are granted to other body tissues (arms and legs). The lack of function of the eye in today's society remains far more devastating than the loss of function of these other body tissues.

Mr. DINSMORE. Senator Church has stepped out for a moment, but asks that we continue. So, Dr. Inkster, could you provide us now with your testimony? Dr. Inkster is director of the New York Infirmary Center for Independent Living.

STATEMENT OF DOUGLAS E. INKSTER, ED. D., DIRECTOR, NEW YORK INFIRMARY CENTER FOR INDEPENDENT LIVING, NEW YORK, N.Y.

Dr. INKSTER. I certainly can. I appreciate the opportunity to share the experiences we have had at CIL, and I would like to ask that the paper that I have submitted be incorporated as part of the record of this hearing.[1]

Very briefly, I would like to review how the Center for Independent Living in New York came into being. There was a home for the blind that decided to close its doors after it had built up some resources, and they were looking around for a new program. After reviewing two major studies. "The Making of Blind Men," by Robert Scott, funded by the Russell Sage Foundation, and "Blindness and Blindness System in the United States," prepared by the OSTI organization in Cambridge, Mass., they discovered the facts that are commonly known now: that 50 percent of the blindness population are over the age of 65, and yet less than 10 percent of all resources are devoted to the rehabilitation of that older group.

Consequently, they joined with the Administration on Aging to embark on a new program serving just the individuals over the age of 55 who have a severe visual impairment.

The doors of this facility opened on May 14, 1973, so it is a little over 5 years that we have had experience in working with this group exclusively.

FINDINGS SUMMARIZED

I would like to briefly state some of our findings. First, we were surprised to learn that only two out of every three people referred to us would come in or could come in to the central facility. We thought this was unusual, and so we did a followup of 135 of these people and we found that 25 percent of them did not recall our initial contact at all.

Another 25 percent were under the impression that they had been accepted for service and were on some kind of a waiting list. We made some changes in our procedures as a result of these findings that I will discuss later.

Some other things we learned: Of all the people referred to us there was an average 5-year gap from the onset of the disability to connection with any rehabilitation service. Sixty-five percent of the people referred to us had had no previous service at all from any agency. Very few of them had any coping information regarding their medical condition, either eye condition or general physical condition.

We found, of the people who came into our program, approximately 225—30 percent of them—were interested in and capable of work potential. Maybe not full time, 40 hours a week, but part time and voluntary activity.

[1] See page 24.

We found that 80 percent of these people did welcome and looked for things that would maximize their independence. They fought against the dependency systems that they were being offered. The people who did come to the center tended to be brighter than the average person in terms of intelligence. They had more education. Our average educational level for the student coming to CIL was high school graduation. For this general population, completing the eighth grade is about the typical level of education.

Also, we have begun to do a followup of the people we have served; people who have gone through the program and were determined to be well adjusted to their disabilities at the time they left.

We found a great number of them—approximately 40 percent—need additional service because their vision or their physical condition has deteriorated and additional skills and techniques need to be learned.

Approach To Adult Learning

These are some highlights of our findings. As a result of these findings we have been experimenting with some concepts. One of the concepts is a premise that we held at the beginning of the program; that if someone had attained the age of 55—and that was our admission requirement—that they had certainly earned the right to self-determination. So we adopted a policy of andragogy versus pedagogy; andragogy meaning adult learning versus pedagogy, child learning.

In pedagogy, the progression of education is controlled by the teacher. In andragogy, you put the person you are working with in charge, much as if you were hiring a tax consultant. You stay in charge; you tell the tax consultant exactly what you want, what your problems are and you bring out from him his system of approaching problem solving and his expertise to assist you in solving your tax problem.

In working with the elderly blind we found this policy has great benefit in terms of movement toward the goals of the rehabilitation program. Our diagnostic week, where we try to determine exactly what these problems are, end with a meeting with the student, where each staff member reports, as a consultant, to the student, exactly what they saw and what they recommend.

At the end of this meeting the student has to decide what recommendations he chooses to respond to and which he chooses not to. As a result of that, a curriculum is developed.

This has worked out well. They can monitor their own program. They meet the needs they feel are real and relevant. They take control readily.

Admittedly, it is occasionally very uncomfortable for the student when they begin this, but the end result in terms of self-worth and self-esteem is overwhelming and highly significant.

The 5-year gap problem is primarily related, I feel, to the lack of real communication between the medical community and the rehabilitation community. This has been historically so. Agencies for the blind raise their own funds, set out in the community and do their work, which is fine. I feel that there is a place for the medical community to follow the pattern of, for example, the orthopedic surgeon and be concerned with maximum function even after physical restoration cannot be achieved.

Medical coping is a problem. I feel that any physician, or at least the medical group that is treating a patient, should inform him as to what his medical condition is, what chances the future holds, and what to do when a change in physical function occurs.

Ongoing Followup Needed

Analysis data from our followup study found that 50 percent of our "graduates" had lost the ability to function. Consequently, we feel that an ongoing followup is needed, intervention service to provide brushup skills and new techniques in order to maintain the original investment in rehabilitation services.

Our other followup study of people who did not come to the center revealed that we lost 50 percent just by accepting their statement of lack of interest. So, followup here is important to make sure that their interest in and understanding of the program is clear.

In other programs we find that people are referred to meals-on-wheels, for example, with a visual problem who really do not desire meals-on-wheels but have not been offered a choice, an option to learn these skills of preparing their own food independently and thereby maintaining their independence in their own home. So, we feel there should be a braking mechanism in all programs to make sure that the individual is aware of alternative services that may be more appropriate than the dependency service that is being offered.

I was going to use the example of mental health when States moved patients out of the institutions and developed alternative treatment programs in the communities as an option to State institutions. It is very similar to this; alternatives should be identified and developed.

The 30 percent of the people who did come to our center that expressed an interest in continuing to make contributions in their community were not given exposure to all of the professional rehabilitation services that exist. I inquired of the New York Commission for the Blind and Visually Handicapped how many people in New York City had been referred for work evaluation over the age of 65 during the calendar year 1976. It is not surprising to hear that not one had been referred to this recognized procedure for assessing vocational potential that is available to younger people who are disabled.

Sixty-five means that they have no vocational potential in the rehab program, and we feel that this should be reviewed in terms of contributions older Americans can make to the community and that "substantial gainful employment" might be revised to include contributions to the community through voluntary or part-time employment.

Self-help and self-study sources indicate two out of three would not come to a centralized facility. Every program that I have talked to and every administrator who maintains such records has indicated they are only getting this percentage into their programs. So, programs have to be developed that go out into the community and into the home. This is an expensive operation. But the field of service for the blind is sophisticated enough to develop preprogramed courses on cassettes that trained paraprofessionals, under the supervision of a professional, can deliver service to remote areas of the State by having people indigenous to their area, training their neighbors. We feel this

should be explored as a way of reaching underserved visually handicapped in the ghettos of New York as well as the remote areas of New Mexico.

Program choice is important. I think that programs for the elderly blind should be available on a center basis for intensified rehabilitation services and education. Also, in the community, where an itinerant teacher goes to the community and makes services available in a congregate way, and finally, in the home for those people who either chose not or cannot leave their homes but still would like to remain living in their homes and need the educational skills and techniques to do that.

At CIL, in our 5 years, we have received numerous requests for assistance to learn what we have learned so that other people will not have to make the same mistakes that we have made. The technical assistance type of program that is available to other rehabilitation services should be made available to organizations and groups planning to work with visually impaired older Americans so that people who have developed programs and gathered information can share this information and help programs get started in communities where the need exists.

Usually, groups do not have the money to pay expenses for people to come in and help them do a needs study or design a program of activities based on that study. So, we hope that these things can be incorporated into new legislation. We want to endorse Senator Jennings Randolph's comments and encourage the passage of Senate bill 2600, especially those elements of it that encourage services to older, visually handicapped Americans. We would also like to urge that medicare and medicaid programs be expanded to include payment for orientation, mobility, and rehabilitation teaching services, much as OT and PT are offered to people to help them remain independent in their own homes. This would include the provision of low-vision aids which enable visually limited persons to function and carry out their duties in their homes, as well as travel about their communities.

Again, I want to express my sincere appreciation for having the opportunity to share our experiences at CIL with the committee and those who will read this report.

Senator CHURCH. Thank you very much, Doctor, for your testimony.

[The prepared statement of Dr. Inkster follows:]

PREPARED STATEMENT OF DR. DOUGLAS E. INKSTER

There are today more than 20 million individuals in this country over the age of 65. By the year 2000, the figure is likely to be around 30 million; and if the birth rate retains its present low level, the proportion of the population over the age of 65 will be significantly increased.

Within the aged minority, there are subminorities whose needs are not being met, whose existence is even ignored, or at best, given the same fleeting recognition that characterized programs for the aged a decade or so ago. One of the most significant of these minorities within a minority is the elderly blind—older individuals who have lost or are losing their sight as a result of disease or ailments often associated with aging. According to current figures, there are between 220,000 and 450,000 legally blind individuals over the age of 65 and as many as 2 million more are functionally blind and cannot read newsprint. These figures represent over half of all the legally blind people in the country. And the proportion is increasing. Yet, it is an undisputed fact that less than 10 percent of service resources are directed toward this group. Most funds and rehabilitation services go to younger people—people who are considered to have "contributive

potential" to society. Older people are not considered "contributive." The standard cost-benefit equation does not work in their favor. As a result, virtually no funds are allocated. Fortunately, there are signs of change.

The New York Infirmary/Center for Independent Living—NYI/CIL—was established in May of 1972 as a model project jointly supported by the Administration on Aging and the Rehabilitation Services Administration to demonstrate that newly visually impaired individuals, particularly the elderly, can maintain themselves independently in their own community, free of costly institutions or nursing homes following effective rehabilitation in normal daily living skills.

The NYI/CIL provides a wide range of rehabilitation courses for approximately 60 resident and nonresident students a year, but continues to function primarily as an experimental laboratory where new concepts are being developed in such areas as teaching methods, self-held approaches, and evaluative techniques.

Experience with the elderly blind at NYI/CIL has shown that by stimulating the individual's capacity for self-determination and self-help, learning rates are increased and potentials for independent living are greatly enhanced.

The aim of the program has been to offer effective training in the adaptations necessary to overcome some of the more dependency-causing characteristics of blindness. Students are directly involved in every aspect of the program. They are required to set their own training and rehabilitation goals, select their own courses, and determine their graduation date. In addition, they are taught to monitor their own progress; they are directly involved in all progress review sessions, and they recommend specific program modifications or shifts in program emphasis.

The results of this approach have been encouraging. State rehabilitation counselors have commented on the dramatically improved levels of self-dependency evidenced by their clients following training at the center, and clients themselves, in various media forms, have expressed a new sense of personal independence as a result of this participatory training. Moreover, many elderly ex-students exhibited an enthusiasm for involvement in public service and other activities including regular counseling of other newly visually impaired individuals in their communities and the establishment of "watchdog committees" to monitor the effect of existing delivery systems of local civic organizations with regard to the utilization of financial resources for the handicapped.

Following research and experiments in new rehabilitation approaches and concepts, the NYI/CIL has compiled a considerable body of data and information which it is anxious to make readily available to all agencies and organizations serving this group or sharing similar interests. For the purposes of this hearing, the following needs have been identified that might be addressed through legislation. This priority listing is subjective and open to discussion.

The major recommendations, based on the NYI/CIL experience, are as follows:

LEGISLATIVE RECOMMENDATION NO. 1

Need.—To establish a working climate of mutual inquiry for problem identification and solving that recognizes the older person's maturity, enhances positive self-concepts, and encourages self-direction in problem-solving.

Experience.—Throughout the NYI/CIL experience, the client has been placed in a position of key decisionmaker. He/she is the key figure at staff meetings where service goals and objectives are discussed and established. Instructors and other personnel providing direct client services report findings and recommendations to the client and must demonstrate the capacity to tailor educational curriculums and services to comply with an individual prescription, provide the client with criteria that will enable him/her to monitor and judge his/her own performance. It has been found that this consultant approach to service delivery promotes personal autonomy and the resultant elimination of restrictions of latitude of choice contribute positively to high self-esteem, morale, life satisfaction and personal happiness of older people. These are worthy benefits of this self-help, self-monitoring, and self-control approach that have application to all services.

Legislative recommendation.—In all federally sponsored programs, professionals serving older Americans should be required to demonstrate a working knowledge of the "andragogical" approach to service delivery by functioning

as a consultant to their clients. They should be required to place the client in charge and follow these seven steps in service delivery:

Setting a climate for communication;
Establishing a structure for mutual planning;
Assessing interests, needs, and values;
Formulating objectives;
Designing corrective activities;
Implementing corrective activities;
Evaluating results (reassessing needs, interests, and values).

LEGISLATIVE RECOMMENDATION NO. 2

Need.—To bridge the gap between medical eye care and blindness systems.

Experience.—Statistical analysis of cases referred to NYI/CIL reveal an average 5-year gap between the onset of disability and the linking with any rehabilitation services. It is strongly suspected that this is due to a lack of direct communication between the medical and rehabilitation professions serving the visually impaired population. The following recommendation should have some impact on increasing this communication and salvaging valuable lost time.

Legislative recommendation.—Medicare/medicaid program services should be expanded to include services of rehabilitation teachers and orientation and mobility instructors of the older visually handicapped population, in addition to the existing nursing, physical therapy, occupational therapy, and other physical restoration services. It may be desirable to require these services to be prescribed by ophthalmologists which would emphasize to this medical specialty a broader responsibility for "maximizing" the physical functioning of those cases where vision cannot be maintained or restored.

LEGISLATIVE RECOMMENDATION NO. 3

Need.—To develop medical diagnostic and evaluation systems that identify medical abnormalities, define treatment and monitoring regimens, and provide structured counseling programs for the individual on self-monitoring and medical maintenance procedures to prevent further decrement.

Experience.—The NYI/CIL has demonstrated that such "coping" information, the older individual is better able to manage changes in physical functioning and status by taking appropriate corrective action, prescribed in advance, to stabilize, reduce, or reverse the disability.

Legislative recommendation.—Medicare/medicaid should identify a primary service provider for each individual to function as the principal medical counselor. This provider would be held responsible for the ongoing orientation of the patient to health problems and future expected changes. Model programs might be established to develop diagnostic evaluation tools that can be used by paraprofessionals in an essentially nonmedical setting. Such tools could be in the form of a procedures manual with instruments on how to collect, analyze, and develop a "risk" profile for each individual served. Such tools or kits could be made available to agencies, facilities, and health maintenance organizations across the country.

LEGISLATIVE RECOMMENDATION NO. 4

Need.—To invest in an ongoing followup of clients after referral and delivery of services to determine emerging needs and provide the additional services in order to protect the initial service investment.

Experience.—Services are often relevant at one point in time, but are not followed up or reviewed to insure initial investment is protected by early identification of emerging additional needs and delivering services to meet them.

A followup of referrals to NYI/CIL closed as "not interested" revealed that 25 percent did not recall being contacted. Another 25 percent thought they had been accepted for service and were on a waiting list. Routine followup on cases referred for service has increased NYI/CIL linking effectiveness. Also, NYI/CIL learned that one-third of its service population had some previous experience with other agencies; yet, all exhibited a fundamental lack of basic skills. Thus, previous rehabilitation exposure was not effective enough to obviate NYI/CIL rehabilitation. In addition, as a result of NYI/CIL postservice followup, it was realized that deterioration in daily use of skill learned was experienced by about half of the students due to further deterioration of vision and health, resulting in the need for supplemental training. Older Americans are a population with rapidly changing characteristics.

Legislative recommendation.—All federally funded programs serving older Americans be required to build in an ongoing followup component to their program to assess program effectiveness over time, modify program services to achieve outcomes in line with goals, and provide supplementary service where necessary to protect initial investment in goal attainment.

LEGISLATIVE RECOMMENDATION NO. 5

Need.—To incorporate a braking component in all service programs designed to slow down the rush toward dependency on outside service resources.

Experience.—Many current programs identify needs of the visually handicapped elderly population and develop systems to meet these needs through outside resources such as meals-on-wheels, transportation services, home care aides, etc. Many individuals would prefer to prepare their own meals, utilize public transportation,[1] and take care of their own housekeeping chores, but this choice is not pointed out to them.

For example, Meals-On-Wheels may not be an ongoing need. Should the visually handicapped individual receive rehabilitation teaching services to learn adaptive techniques in the area of daily living skills, including food preparation, this person will ultimately be able to care for his/her own nutritional needs in the home. In the same vein, if a visually handicapped elderly person would prefer to learn independent travel skills that would enable him/her to use available public transportation, then an O & M instructor should be made available to teach these skills and thus provide the individual with an alternative to special transportation services. The same holds true for home care aide services.

Legislative recommendation.—Review of all service programs with the objective of adding a "braking" component. Existing programs should require screening of all referrals to identify those individuals who would choose an alternative to the service to which he/she is being referred and then provide those individuals with appropriate services to achieve that goal.

LEGISLATIVE RECOMMENDATION NO. 6

Need.—To provide the opportunities for the elderly to gain greater economic security through whatever they can contribute to their community's vitality and to encourage retirement based on choice and not on chronological age.

Experience.—The elderly segment of our population must be restudied in terms of their work potential with the goal of maintaining financial independence as a choice option available to members of this group. Professionals in work evaluation, work development, and placement must recognize these new challenges. NYI/CIL is currently developing and implementing a continuing or "second careers" research and demonstration program (funded by the Rehabilitation Services Administration, Grant No. 30–P–65081) for older visually impaired individuals over 55. Findings will be made immediately available to the field.

It is expected that such developments will ultimately result in greater financial independence in old age for an estimated 20 percent of those individuals presently relegated to poverty because of outdated legislation that penalizes the individual who would rather work.

Legislative recommendations.—The current Vocational Rehabilitation Act should be amended to remove age as a criteria for determining work potential and to modify the requirement for an expectation of substantial gainful employment to require substantial employment. This revision of the act would recognize that regular voluntary activities are, in truth, a contribution to the community and are worthy and respectable vocational goals.

The disabled older worker should have the same rights as proposed for the ablebodied worker. Thus, comprehensive rehabilitation services directed towards continuing or second careers should be available to those handicapped older people who have the desire and demonstrated ability to continue to make contributions to their community through full, part-time or volunteer activity. Vocational counseling, work evaluation, work adjustment, vocational training, sheltered employment, job-seeking skill training, and job placement services should all be made available to qualified individuals regardless of age.

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[1] We would support current efforts to require all new public transportation systems to be so designed to accommodate visually handicapped elderly as well as other handicaps by following the model of the Bay Area Rapid Transit System in San Francisco, Calif. We also encourage the construction of buses which can accommodate wheelchairs and walkers.

Use of the social security trust funds to underwrite the cost of rehabilitation services of an insured person should be extended to qualifying individuals beyond the age of 65. If working after retirement age, an individual might continue paying social security. The additional contributions should increase retirement benefits at the time of decision to retire. Alternatively, at the age of 65, such an individual may choose to "freeze" his/her retirement benefits and further contributions would not be required.

LEGISLATIVE RECOMMENDATION NO. 7

Need.—To develop self-help and self-study rehabilitation materials through programed instruction on cassettes and step-by-step guides for use by older visually impaired adults.

Experience.—At NYI/CIL, it was discovered that two out of three individuals identified as eligible for service chose not or could not participate in centralized programs. If this is a representative sample, this could imply that as many as 600,000 people will have to be served in their own community, possibly in their own home. NYI/CIL has developed four self-study courses on cassettes with a large print transcript for newly visually handicapped adults. The first course covering housekeeping skills was tested in eleven agencies throughout New England. The test revealed that this was a viable way to stimulate learning without the need for a full-time instructor. The Administration on Aging funded the development of three more self-study courses covering the following subjects: basic indoor mobility, personal management, and sensory development. These are now being tested through a program instructing older Americans to bring services to their neighbors through self-study kits. Neighbor serving neighbor through programed instruction on cassettes shows promise of a new effective, but economical service delivery system.

Legislative recommendation.—The development of self-study rehabilitation materials written by professional personnel, experienced in working with the older and visually handicapped adults, should be supported and their use developed in the field. These will aid in the development of an economically feasible itinerant service delivery system by allowing paraprofessionals, indigenous to the area they serve, to use prerecorded lesson plans in serving their visually handicapped neighbor and encourage independent self-study in rehabilitation centers, the home, and other environments. Encouraging commercial distribution of such prerecorded lessons on cassettes may also enable individuals in every community to benefit from efficient, effective, and pragmatic rehabilitation skills.

LEGISLATIVE RECOMMENDATION NO. 8

Need.—Twenty-five States do not have available to them specialized rehabilitation facilities or community-based rehabilitation services for the visually handicapped.

Experience.—NYI/CIL has received requests for service from individuals living in Arizona, Colorado, Connecticut, Maine, Missouri, Louisiana, etc. Referrals are made to the facility closest to their place of residence. Also, as previously stated, two out of every three referrals to NYI/CIL could not or chose not to come to a centralized facility. Those that did come tended to be more aggressive, had gone further in public school, and have had previous success experiences in coping with personal problems. The real bulk of the target population was not being reached.

Legislative recommendation.—Health care programs should plan for the development of regional facilities with a rehabilitation center supplemented by community-based outreach programs which will provide options for rehabilitation services to older Americans with a visual handicap to meet individual needs. Community-based programs could use professionally supervised and trained paraprofessionals working out of general hospitals on an itinerant basis.

LEGISLATIVE RECOMMENDATION NO. 9

Need.—Most developing service programs have few resources to provide guidance in the allocation of resources to meet the needs of older Americans with a visual handicap.

Experience.—As the experiences of NYI/CIL become more widely known, increasing requests are being received for visitations (163 visitors last year), training (over two dozen within the last year), and consultations (over 30, but

mostly within the region). Through consultation, in-service training, and sharing ideas for utilizing existing community resources, many fine programs are developing to meet needs peculiar to their geographic area.

Legislative recommendation.—Funds should be made available to award technical assistance grants to public and nonprofit agencies to employ mobile consultancy teams of highly experienced professionals to assist in designing community needs studies, make assessments of existing community resources, develop regional and/or community tailored service plans with time frames for implementation, and offer intensive indepth, inservice training to personnel to be utilized in service delivery.

Senator CHURCH. Our final panelist this morning is Mr. Wedewer.

STATEMENT OF DONALD H. WEDEWER, TALLAHASSEE, FLA., DIRECTOR, STATE OF FLORIDA DIVISION OF BLIND SERVICES

Mr. WEDEWER. Thank you. It certainly is appropriate, I think, that someone from Florida come here, because we in Florida have a large population of elderly people and many of them are blind. We like to share our experiences and our needs with you.

I would also like to say that Senator Randolph took away a lot of what I was going to say this morning.

Senator CHURCH. Senators are good at that.

Mr. WEDEWER. We in Florida have had to face a problem of dealing with elderly blind people for a number of years. We have 9 million people in Florida, and statistics show we have 2 million classified as elderly. It is a large population and many are blind.

For many years we, as a comprehensive State agency for the blind, have served blind people of all ages, from little children to the elderly people. For the elderly people, however, for many years we have been primarily limited to a prevention of blindness kind of medical program.

We have also recognized the fact that, as an old blind friend of mine says, nothing helps a blind person like a little bit of vision. You have heard this here in the low-vision discussion. So we have spent a lot of State money doing eye surgery, eye treatment, eye care to help elderly blind people in that respect.

But until 4 years ago all we did for elderly blind was to send 5 rehabilitation teachers to the 67 counties of Florida and to these people with home teaching. That was the extent of rehabilitation for the blind.

Now those of us who have worked in vocational rehabilitation for the blind know that rehabilitation works. It worked for me in World War II, after being blinded, and it works for blind people in that group. What we have found is that no one has paid any attention to the elderly blind with regard to rehabilitation except for minirehab teachers programs for many years. Consequently, nothing much was done.

TAPPING INTO TITLE XX

With this facing us in Florida, we finally tapped in, 4 years ago, to title XX funds coming from Congress here. Now in every State title XX funds are not tapped by the blind agency. I think you all know every State has either an agency for the blind or a program serving blind people that is part of another agency or a section. Twenty-nine

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States have a separate State plan and draw on letter of credit direct money for vocational programs from the Federal Government. The bill that Senator Randolph talks about—we are certainly for that.

A little later we will talk about funding and what we really need from that title XX.

Most of the services we provide for the elderly blind are through a network of private facilities. At this time we feel, and I think Dr. Inkster would agree, that the best delivered service is a rehabilitation center. Now we have a rehabilitation center; one like the Army started and everybody imitates. That rehab center is for vocational handicapped, for vocational service, and for younger people, but the rehab centers like that don't attract elderly blind people. However, in 10 areas of the State a local agency for the elderly blind people offers services with the same increments, independent living training, recreational activity, and sometimes even new career training for the elderly. Those places do exist in some communities. We are funding them, each one, to a tune of $100,000 to have an elderly blind program. We have eight of those in full operation in metropolitan areas. It is a network. We sign contracts every year with them using title XX State money and then their local money to match.

In addition, we have two more developing. In a State where you don't have those, you could still develop them. A couple of ours developed when our own staff social worker, a counselor, rehabilitation teacher, and using adult basic education teachers, home economics teachers, demonstration teachers from the Agriculture Department, developed programs using Lions Club buildings and church rooms.

We have developed group training for elderly blind communities not large enough to have their own facilities but eventually some of these groups have caught on and we actually now have large facilities functioning that we fund from that kind of group training. That takes care of the communities that are not big enough to start with.

In fact, in one of the communities we have the elderly retired citizens' RSVP group, and they now are the board and run one of the facilities for us which developed right out of ours, working hand in hand with our retired friends.

Now the other area of group training is by far the best with the State agency using the rehab teachers' technique with team work. We have expanded that program to some 15 teachers, again using title XX State and local money. So we have a network program, and I think it works very well.

Now, unfortunately, not all States are equal in what they do for the blind, like in any other way. Where they have these 29 State separate agencies, they are more visible, they have more money, power, and more strength. I hope that eventually we will see all 50 States go back to that kind of strong program.

Meanwhile, every State does have a vocational rehabilitation—VR—agency that has a blind division separate, so money flows through. The VR mechanism is a good system coming down State, Federal partnership funding in the State agency, in the position to use the private facilities, at the same time, while using them—actually giving the local communities an opportunity to participate and develop training facilities locally.

We do not believe in big government or expanding our own place, but to share statewide. Every State has facilities. so that network

potential is there. It is a State agency with Federal Government assisting, certainly in the area of leadership, with money and expertise.

The Issue of Funding

Now today I will get to the funding part of it. Today we all understand inflation is a big problem, and it is not always everybody else's problem. It is our own, too. I mean by that we should not look to the other agencies or the other programs to cut money and expand our own. So what I would recommend strongly is that the House bill, which nas passed—Senator Randolph's bill which, hopefully, will pass in good order without too much funding cut—will be brought together in a conference committee and funded in a strong way.

What is important in Senator Randolph's bill is that the $10, $20, and $30 million passage in there for elderly blind be kept in. That is extremely important, and I hope that will prevail in his bill and the Senate will prevail.

Beyond that, it is also important that the title XX funds continue to come, but there are some blocks in many States. Fortunately, we got into the act early, but now most States are not using title XX. If the blind people and their agencies have not fought for that money, they are not getting it and they are usually told: "It is already all allocated; I am sorry."

I think from this level, if we go back to an old mandate that was in the original mechanism mandating *x* percentage—in my paper,[1] which I hope people will get a copy of, I recommend a minimum of 1 percent go to the elderly blind program. We actually get more than that. We get some $1.5 million in Florida out of just a little over $100 million. However, I think that is a start and it should mandate that kind of activity for the elderly blind.

I don't think that is too strong. I certainly would not substitute Senator Randolph's money to the VR for title XX money. I think both of them could be used well.

Now the medicare legislation involving low-vision aids that Senator Williams introduced is excellent, and certainly it is needed. We would caution that it not be a carte blanche sort of thing; that it just not be indiscriminately issued to elderly people. So we recommend that regulations be set up so there is some training after the issuance of the aid and that aids are not given out in a carte blanche way, because they are expensive, but rather in a meaningful way and hopefully through the State agencies and facilities they work with in cooperation with the medical community, and we all work closely with them.

So I think the funding mechanism through the VR-type system, through the State agencies for the blind and facilities that serve blind people, can be done well and does work serving every part of our State. We all know about the needs of the blind in that area.

The Elderly and the Young Blind

I would suggest, although there are differences between the elderly blind and young blind, major differences do not exist. We do find that

[1] See page 33.

the same kind of rehab services work with the elderly blind. They can learn mobility and they can learn communications skills and so on. We are fortunate in our agency; we also have libraries for blind and we can introduce them to that service quickly and extensively and alleviate this problem of adjusting to the psychological problems of losing sight, which we really have not touched on here today.

But that is why, when Dr. Inkster talks about 5 years, often it is a hostile person who is actually fighting blindness and fighting those who are trying to help. The library services are underutilized, I think, many times because they are in the hands of librarians who are not really in the field of rehabilitation, and I think that is unfortunate. But we can't change it from up here, I am afraid. It is a State issue.

But it is a fact that library services are not potentially utilized because the biggest loss you heard today is in the ability to read. That is the biggest loss for an elderly blind person, and the library service—almost immediately they can become independent because of all the resources, the books and magazines available through the library system. That is the one they seldom find out about early and are not properly introduced to. That is unfortunate.

If something could be done to tie that in better for the States that don't have libraries in blind agencies, that should be done.

Summary

Summing up, I would like to emphasize what I think is a better cooperation between the State agencies and private facilities. Unfortunately, I go to meetings and find in some States there is some sort of hatred or feud, and that is too bad; so the funding mechanism breaks down.

Now I know under the Older Americans Act there is money used in some States for elderly blind. Unfortunately, that money is short term. I think we need to take some of the money and put it in basic services rather than pumping so much into a bureaucracy that grinds out this mountain of paper that we all have to read or throw away in the end. What we really need is the basic money going through the VR and through the flow system. In that way we can still fight inflation. We can cut back in that area and put interest where it is needed most. That is why I encourage medicare money, in which people participate in part B, and encourage the VR system as a mechanism and include delivery systems that are already there. We don't need new ones. There is too much money spent on surveys and studies.

Then with all the wasting of money that does occur where we made a study and another survey, that money could well be saved up here. We see a lot of it and there is a lot in the House bill, too; it is not all needed. We do need the basic money just to keep up with the inflation, and that is the way we would like to have it. So I would encourage, then, that in looking at the problems here of the elderly blind, that we look back on a system that has helped so many of us who are blind, a rehabilitation process that does work, and install it in the system as part of it to meet the needs of all these many, many elderly blinds.

I can tell you this; we are not meeting all the needs in Florida. One of our facilities has a 1-year waiting list to get into the system. This is a long time for an older person or for anybody. That is our problem.

Just not enough money to cope quickly with all that, so we need some more facilities and a little more staff and a little adjustment to meet these needs.

Thank you, Mr. Chairman, for giving us the time. I would like anyone to come visit us in Florida and see what we are doing. We are not perfect in every way, but we would like to share our experience with the rest of the Nation. The elderly blind who come to Florida do become younger and live longer.

Thank you.

Senator CHURCH. Thank you very much.

[The prepared statement of Mr. Wedewer follows:]

PREPARED STATEMENT OF DONALD H. WEDEWER

INTRODUCTION

Florida's Division of Blind Services is a State agency formed as such by the State legislature in 1941, following an appearance of Miss Helen Keller before a joint meeting of the house and senate. Since that time, the agency has been actively involved in providing services to the blind and severely visually handicapped of all ages, including parent counseling for parents of blind children: vocational rehabilitation of the blind; operation of a rehabilitation center; a vending facility program under the Randolph-Sheppard Act; talking-book library services provided through the Library of Congress; a variety of services to meet the needs of the elderly blind, including home and facility instruction; eye medical care; family guidance; and many others.

PHILOSOPHY

As a basic philosophy for its varied programs, the Division of Blind Services subscribes to one which states that blind and severely visually handicapped individuals of all ages, with competent professional counseling and guidance, coupled with adequate training programs, can—and should—function very adequately in all of life's situations. We have strong convictions that the highest caliber of services to the blind are provided by highly specialized State agencies for the blind and private facilities which limit themselves to serving blind persons. Admittedly, other clearly identified programs or facilities serving the blind, along with other handicapped persons, sometimes provide quality services. Experience clearly shows that integration of specialized services for the blind into other programs, however, will generaly result in inferior services to meet the needs of this special population.

We also have a strong view that (again, with the provision of adequate professional services) there is no need for special, separated. living facilities for adult blind. Experience clearly demonstrates that the great majority of blind individuals can stay in their home living situations, or, if the situation dictates, in normal retirement facilities, nursing homes, etc. There is no need for "homes for the blind." We have surveyed blind people and found that blind persons prefer to live in their own homes or apartments or, if necessary, in private facilities which are open to all persons handicapped or nonhandicapped. We are proud to say that in Florida we have no homes for the blind and recommend against such homes being constructed in the future.

NEEDS AND TRAINING TO MEET THOSE NEEDS OF THE ELDERLY BLIND

The older blind person shares in common with older people in general a number of needs which simply stated are: Need for more adequate income; need for better transportation; need for more adequate medical care and need for less expensive housing.

In addition to the needs shared by other older people, blind and severely visually handicapped individuals have a number of special needs requiring attention. Such needs can be overcome by special training. Most blindness occurs with advancing years, with 50 percent of the blind population recognized to be over the age of 60. For those losing sight in mid-life or later, there is a need to learn the skills of living as a visually handicapped individual in the following areas:

(1) Independent travel (mobility and orientation training);
(2) Personal care and grooming;
(3) Homemaking;
(4) Household arts;
(5) Communications (braille, typing, handwriting, telephone dial training);
(6) Training in the use of electronic recording equipment such as talking books, cassette tape recordings for reading purposes, acquaintance with library for the blind services in their State so they can independently read books, magazines, and other reading material.

Also, the elderly blind can be helped in their social and psychological adjustment to the loss of sight by:

(7) Expert counseling;
(8) Introduction to appropriate social services;
(9) Therapeutic craft activities;
(10) Participation in discussion groups;
(11) Participation in social and recreational groups;
(12) Making them aware of special appliances and training them in their use such as braille alarm clocks, braille rulers, braille games, braille watches, braille carpentry tools, special braille or adapted cooking utensils, etc.;
(13) Familiarizing them with radio-reading services where available;
(14) Teaching them special benefits available to them as sight handicapped persons as provided by Federal, State, and local laws, to include such things as: extra income deduction, real and personal property tax exemptions, white cane law, antidiscrimination statutes, etc.;
(15) Acquaint them with special transportation for the handicapped and how to use it if such transportation exists in their community or area;
(16) If there is some residual vision, referring them to low-vision clinics so they may avail themselves of low vision aids;
(17) Acquaint them with telephone assurance program.

An all too common attitude on the part of family, community, and social groups is that of over-protectiveness of blind people, to such an exaggerated extent that normal social activities are almost completely dropped. The need is for orientation of family and community to the fact that blind people are not necessarily helpless, and there is a need to help family and community understand how to deal comfortably and competently with visually handicapped individuals.

STATE AGENCIES

Services to the blind under the aegis of State agencies vary considerably from State to State. Twenty-seven States have identifiable agencies for the blind, roughly similar to Florida's Division of Blind Services. All States have programs of vocational rehabilitation of the blind, either under a specialized State agency, or as a section of an overall general rehabilitation agency. Unfortunately, the majority of State agencies have legislative authority and funding only for vocational rehabilitation programs, leaving serious gaps in such important service areas as parent counseling for parents of blind children and particularly programs designed to serve the needs of the elderly blind. Florida's Division of Blind Services is fortunate in having a broad legislative base, and reasonably adequate funding for service programs for blind people of all age groups.

LOCAL AGENCIES

Many of the larger cities of the Nation have local service organizations for the blind. Most such agencies provide social outlets and social services for blind residents of the community and others provide training in independent living skills, sheltered workshop activities, etc. They are generally funded by United Fund organizations and public fund solicitations. In major metropolitan areas, a number of service organizations for the blind may function independently. New York City, for instance, lists more than a dozen organizations serving blind people, and also serves as headquarters for many national service organizations.

IDEAL SERVICE DELIVERY SYSTEM FOR THE ELDERLY BLIND

Ideally, the prime responsibility for the delivery of services listed above in the section under needs (1 through 17) should be that of the State agency or program serving the blind. All Federal funds serving the elderly blind should be funneled through that agency insuring that all elderly blind in the State are

afforded equal opportunity or access to such services and the State agency would then clearly be identified as the agency responsible for serving the elderly blind and be held accountable for the quality and quantity of such services as provided for in Federal statutes and regulations. In addition, because there are sometimes many private agencies in some communities competing with one another, the State agency will be in the position to select appropriate private facilities for use.

Where good private agencies exist, the State agency should contract with them to provide suitable services. Where no State agency facility or private facility exists, the State agency can provide such services through their social service workers, rehabiiltation teachers (home teachers), counselors, and through group activities and training classes organized by State professional staff. Consequently, the State agency will probably bear the direct responsibility for training of the elderly blind in rural areas. This can best be accomplished by the use of the group training class using local facilities such as churches or public buildings, bringing together adult basic education instructors, extension workers, home economics teachers, nurses and other instructors in providing the teaching. Where individual teaching is required, the home teacher from the State agency can provide it in the person's home. The State agency is wise to contract with private facilities in the larger communities where they do exist. Private facilities are then accountable to the State agency for quality and quantity of services and there will be no duplication of services or conflicts as to jurisdiction.

FLORIDA'S SERVICE DELIVERY SYSTEM

The State of Florida, as earlier noted, is fortunate in providing a broad legislative base for its Division of Blind Services, which permits development of delivery systems to provide services to blind and severely visually handicapped people of all ages. This is in contrast to most State agencies, whose services are limited largely to the vocational rehabilitation age client. In particular, the agency has been able to develop a statewide program to help meet the needs of the older blind person. Funding for programs for the elderly blind, as well as for blind children, is derived from State general revenue funds, and from social security title XX funds, provided under a purchase of services agreement with the State Department of Health and Rehabilitation Services. The latter source of funding, title XX, is a recent development as far as the agency is concerned and has permitted substantial expansion in services to the elderly blind.

Florida's service delivery system is much as described above in the ideal delivery system. Nevertheless, our statewide services are not adequate because either a private facility does not exist in some localities or the State agency staff is not adequate to provide the same service. New facilities are being planned and a network of private facilities in the larger communities now exists in eight cities and two more are expected to open their doors in the next couple of years. One facility currently has a waiting list of more than 1 year. The average length of time for rehabilitation in a private facility is 3 months. Elderly people attend these classes a minimum of 2 days a week and, in some cases, 5 days a week. Attendance often depends on availability of transportation and the physical condition of the elderly person.

Followup training from the group training sessions is provided in the elderly blind person's residence or apartment. Thus the purpose of keeping the blind person at home and of the institution in most cases becomes a reality.

Area Agencies on Aging can play an important role in the final return of the elderly blind person into the mainstream of elderly people in their community. The main role of such organizations which, of course, do not have the expertise in the area of adjustment to blindness, should be to encourage the elderly blind people to participate in their senior citizens programs as they presently exist. If senior citizen councils or facilities are uncomfortable, special instruction can be obtained from the State agency serving the blind or private facilities serving the blind in their community.

FUNDING AND LEGISLATION

Presently, as we understand it, most programs for the elderly blind rehabilitations are funded through title XX or the Older American's Act, State general revenue, and, in a limited way, others are rehabilitated with vocational rehabilitation funds. We would recommend the following consideration for legislation and funding:

(1) Authority for training programs in independent living for the elderly blind be vested in the Rehabilitation Administration Services. Within that agency exists the Office of Blind Services which would be responsible for monitoring such programs.

(2) Funds for independent living be provided for in a special category under the Rehabilitation Act as currently stipulated in S. 2600.

(3) Title XX funds be amended to again include a mandatory provision designating that a minimum of 1 percent from the State allotment be provided for the elderly blind. Hopefully, it would be more. Preferably the vocational rehabilitation agency for the blind, or its counterpart in a general handicapped program, would have direct access to title XX money through a letter of credit so that it would not have to become part of a State plan of a large umbrella or welfare agency.

(4) Additional funds through Older American's Act to State commissions on aging would not be necessary to serve the elderly blind.

(5) Low-vision aids should be available through medicare as now being considered in present legislation but provisions should be made that State agencies for the blind certify their need and be responsible for follow up on training in the use of such aids. Otherwise, such aids will be widely distributed where they are either not needed or because of lack of training in their use wind up in dresser drawers.

(6) Although we understand there is a possibility of some legislation to provide mobility and orientation training under medicare, we believe that such funding would best be provided directly through State agencies serving the blind. Possibly such funding still could be derived from medicare reimbursement.

(7) We are conscious of the necessity to limit government spending to slow down inflation. Therefore, I would recommend that the thousands, even millions, of dollars spent on research, surveys, and special studies be eliminated or at least declare a moratorium on them for 3, 4, or 5 years. Probably there have been too many surveys and studies on aging, blindness, and other research concerning the handicapped. This money could better be used in direct services to the client. In addition, probably a significant number of Federal jobs could be eliminated—again—saving money that could be better used in direct services to the clients. Sometimes we cannot get our work done because of the studies we are obliged to read and the questionnaires we are forced to fill out. There simply is too much research over trivia and far too many grants and, over and over again, the wheel is reinvented. The Federal Government is the biggest culprit, eliminating excessive use of Federal funds for research would also eliminate the "jungle of jargon" that emanates from Washington. Again, please spare us and put the money where it helps.

SUMMARY

Florida's experience with service programs for the elderly blind clearly shows that the quality of life of older blind people can be greatly improved through provision of professional services, capably administered. Not totally adequate, of course, our program is looked upon with considerable envy by other State agencies who lack the structure, the funding and the authority to provide necessary services for this important segment of the blind population. Its importance certainly equals that of established programs of vocational rehabilitation for the blind, and we would hope that the Congress would take the lead in developing nationwide programs to meet the needs of the older blind person.

Senator CHURCH. I think I might start with you in the questions. We have a few minutes left this morning for questions.

As director of the State agency for the blind in Florida, what requirements must an older person meet to qualify for rehabilitation services in your State?

Mr. WEDEWER. We normally require they are legally blind following the usual definition of legal bindness. However, we are not picky about it. We have right now 15,000 people on our list that we are serving today that are elderly blind, and it turns over. That is all they need to qualify; is that visual problem.

Now under title XX, you have to have x percentage of people meet the eligibility requirements. We find we have that number of people

that meet that financial qualification. Therefore, we serve everybody, so no one is eliminated. Everybody who is legally blind or near legally blind or has double eye pathology can be served under that program. That is the only qualification.

Need For Home Care

Senator Church. We have heard a good deal of testimony this morning about the increasing numbers of older people in the years ahead. We have been trying in this committee to emphasize the need to expand the kinds of services that will enable older people to remain in their own homes and will avoid institutionalization as long as possible.

I wonder what you might tell us about how we can encourage this kind of in-home care, community-based care, and specifically, whether you can tell us how much flexibility the title XX part of the Social Security Act allows for the development of this kind of service.

Mr. Wedewer. Title XX, of course, is broad in its scope, and that is why you can almost put anything into it to call it social service. Much of it is rehabilitation, or whatever. So it is very broad and it is not restrictive. So that part is good.

Now as far as getting it down to the community and the facilities there is nothing that tells State agencies they must do this. It has to be a good working relationship. Someone might stipulate in legislation that there be a sharing with private facilities. I don't know how that would work, necessarily. It just requires at this point a good relationship between the State. As you know, right now one large State agency—the umbrella or whatever it is—receives title XX money, and the problem there is, as I mentioned, even in a State agency such as ours, many of them do not get 1 cent of it—the blind agency—because they don't have enough political strength. Those that have enough strength in their State can do that. Getting it to the community level like we do has to come through people working together at this point.

There is nothing that mandates it. There is nothing that mandates even money for the blind, and I would like to see that provision back, like I said. I can't give any advice on how to get it there, except the State agency working with it, and possibly something mandatory in the title XX legislation.

I did mention the Older Americans Act. We forget the old age part of it, but they are good for followup. Once you finish up with the older person you try to get them back into social activity. That is where the senior citizens' program takes over.

We are grateful—Dr. Inkster mentioned they closed the home for the blind—we have no homes for the blind in Florida. We don't have any. We don't want them. Blind people should live in the sighted community.

Cooperation Among Providers

Senator Church. You know, the 1973 Rehabilitation Act amendments which authorize rehabilitation services for old blind persons contains a direction to the State rehabilitation agencies to cooperate with other private and public institutions and agencies to assist the older blind persons.

What form does that cooperation take in the State of Florida?

Mr. WEDEWER. It does take cooperation, and I did not mention that. It is in my paper.

You are right; it does. And more agencies are serving the elderly and all handicapped because of that. There is a problem there, though, and that is simply this. There is just not enough money to rehabilitate all the handicapped people of vocational age and at the same time do the elderly.

All of us do some work with elderly with rehab money. Some use project VR money that we know about to get it started. Some of it is used, but there is not nearly enough money. In fact we are almost all short now of serving the vocational. And you don't want to take the kids out of college and all that, so we are using some. Here is one of the good spinoffs in developing these adult elderly blind programs.

We find that if we have blind young people in a community and they can't attend our regular rehab center in Daytona Beach, we buy, with VR money, services of that agency such as Mr. Inkster mentioned, which is much the same. They can learn braille and communication skills and white cane travel in that facility. So we have had reverse spinoffs of those communities. That has helped.

We are also saving some of our elderly blind money by putting VR money in there and paying for the service. There is some of this of what you are saying, but you are really robbing Peter to pay Paul here.

WASTE IN RESEARCH?

Senator CHURCH. It is not often that witnesses can tell us what all of us know; mainly, that specifically an awful lot of money is being wasted. You have mentioned the amount of money that went into duplicate kinds of research and the enormous papermill, time, and cost involved in making out endless questionnaires in connection with various kinds of studies.

How do you suppose we can get a handle on this? We recognize a certain amount of research is necessary, but yet this can become a big boondoggle, and often has become a big boondoggle.

Mr. WEDEWER. I appreciate what you are saying because that is the way we feel. We agree research is needed and so on, but the Federal agency will hire private contractors for research. They come out to us. We spend a lot of time working with them, filling out their questionnaires.

Finally, there is a big fat document that I don't think anybody reads much. That is what really happens. Then along comes the recommendation that because of that survey, they found out they need to survey other needs, and on goes another one and out comes another contract. I think simply we work through RSA and HEW. I think we can eliminate some staff and eliminate some research and put the money in the basic program and just put a cap on it somewhere. It is overdone and I recognize it is needed.

Also, it takes away a lot of our time to get into the act. We do some of our own research in the field in the States. It is not just as though we just sit there and keep doing the same thing year after year.

I think maybe just letting the States do it, using the basic money if they need that for research, too. I don't see a need for so much grinding out of paper.

Senator CHURCH. I am inclined to think the only way we can cope with this problem is simply to reduce the amount of Federal money available for it. Otherwise, you would never come to grips with it.

Mr. WEDEWER. I agree with that.

CLOSING THE REHAB TIME GAP

Senator CHURCH. Dr. Inkster, I wonder if I might ask you a question. In your written statement you refer to a 5-year gap between the onset of a disability and linking up of that person with the rehabilitation services. What is the cause for the long lapse?

Dr. INKSTER. It is difficult to determine in terms of asking the people who would not come why they did not come and asking the people who did come why it took so long. Some time is spent seeking medical sources that will give them better news. Individuals will travel great distances to an ophthalmologist who might promise them some cure, and so there is some time spent in searching.

There is time spent also in what is broadly described as adjustment, in mourning, in depression, and then finally beginning acceptance and then planning to do something about it. There is not a standard time for this. It varies in terms of the ability of the person to adapt to dramatic changes.

Senator CHURCH. There is nothing much really we can do about it.

Dr. INKSTER. I think there is. When talking to ophthalmologists about this problem the most common response I get is, "When I tell someone that they have cataracts, which is probably one of the nicest things I can tell them, they seem to quit listening." Many ophthalmologists would like to have the resource of a psychologist or social worker on their staff. Then, as soon as they have to tell someone they have cataracts or some other impairment, they could immediately schedule an appointment with someone knowledgeable in helping their patient deal with that news, not stop living, but begin planning for the future with this new impairment, this new image of themselves.

This does not exist. There is no training provided for assistance to ophthalmologists in terms of blindness and coping with this kind of irreversible eye condition.

There has to be some planning for transition from the medical into the rehabilitation community. There is no bridge now. Low vision is a nice neutral ground that might be used as a bridge. Dr. Colenbrander's chart shows how it bridges across. There is an aversion to blindness. We have grown up with negative images of blind people, and most people avoid them when they can.

It is a rare person that will offer assistance unless they are forced into a situation. These feelings are suppressed because we don't want to admit them. However, when blindness hits you, you still have those feelings and you don't want to become a member of that group unless you really have to. This is one kind of adjustment that goes on. If we can build a bridging mechanism to immediately support the person who gets the news of an irreversible eye condition, that person may more readily accept the low vision and educational resources available. There is need for some kind of mechanism to start the linkage right away.

Ophthalmologists need some kind of support services. Making such services mandatory through medicare and medicaid would be one way. I don't know how long it would take for the individual physicians, optometrists, and educators to actually begin functioning in this way.

Mr. WEDEWER. In Florida we passed a law mandating referral by the medical community to rehabilitation agencies. The penalty clause was taken out. Medical schools need a rehabilitation element in their training, and they are so busy when you talk to them they don't put it in. The doctors don't really refer them.

When you are blind—when I was in an army hospital I wanted to go back to college and be discharged, and I refused to go to the rehab center. I didn't want to go. Finally they gave me military orders and sent me.

We can't do that. That is one of our problems. So the gap there is adjustment to blindness. People losing sight don't want to be thought of as blind. They don't like the word blind and sometimes doctors tell me, "Take blind out of the name of your agency. Call it Division of Impaired Vision." It frightens them. But you are right; we need to get to them much sooner.

One of the things we did, we did use Federal money and VR money in the right way. We now have actually a grant going—someone going around the State teaching what can be done. We use the Lions Clubs a great deal in teaching the public that if someone has a problem, get this service in making the facilities a little better than they are.

Many of our facilities in the past have been known as shelter workshops and drudgery places, and we always ask a person like yourself, Senator Church, "If your mother were blind, would you send her to that facility?" That is the crunch. Most of us say no.

But the facilities are getting better, so we will send our mothers.

BRAKING MECHANISM NEEDED?

Senator CHURCH. One further question from your testimony, Dr. Inkster.

I noted that in your prepared statement you have a rather intriguing recommendation for braking components, to slow down, as you put it, the rush or dependency on outside service. Would you expand on that point?

Dr. INKSTER. I would be very happy to. Really, I don't have any statistical facts to support it. It is just the impression that I have in becoming aware of the systems that are developed to help older people as a part of the development of the Center for Independent Living of the New York Infirmary.

I have had to relate to meals-on-wheels for some of our students—we call the clients whom we serve, students—I find that when we refer to a program for temporarily needed services, the students are eagerly incorporated into the program's service body. It is another referral and it helps justify their existence.

There is not that element of intervention where the program makes the referral aware of alternate service options. Ask the question: "Does this person really need this service or is there an alternative service program that would maintain independence?" I use the example in the formal paper of someone being referred for transportation services. It

may be that with the provision of an alternative service disclosure policy, the older visually impaired person elects to take instruction in orientation and mobility, using the long cane or even the use of a dog guide, thus making transportation services unnecessary.

I suggest that programs for the aging should build in a kind of braking mechanism where referrals are interrogated as to whether services are needed or whether an alternative service could maintain the individual at a high level of independence. I hope that clarifies it a little.

Senator CHURCH. Yes; thank you. How that can be done is something we need to think about.

PROGRESS IN PREVENTION AND TREATMENT

Dr. Colenbrander, your projection of increases in the number of older persons with severe vision impairment is one of the most striking parts of your testimony. Is there any way to temper this? Is there any prevention that would help to avoid these large numbers?

Dr. COLENBRANDER. We are doing our very best. If you compare the amount of visual loss that exists today with, say, 50 years ago, enormous advances have been made, especially in the infectious diseases with antibiotics. Major advances have been made in preventing trauma and its consequences.

What we are up against now, especially in the older individuals, are, by and large, degenerative diseases. Senile macula degeneration is an important topic of research at the National Eye Institute.

Senator CHURCH. You are doing pretty well, aren't you, in detecting glaucoma as compared to, say, 20 years ago? At least I noticed whenever I take a physical examination I am always examined for glaucoma.

Dr. COLENBRANDER. Yes; we are much more aware of the need for early detection of glaucoma, and we can get an edge by treating it early. Glaucoma is a disease of old age and the incidence increases with age; we are also fighting that increasing incidence. In the 80-year group, it is higher than in the seventies, and in the nineties, it is higher again.

Senator CHURCH. But the treatment itself, if you discover the glaucoma through the pressure test prior to any serious damage to the eye, is that treatment anything more than a remission or does it check it?

Dr. COLENBRANDER. We have a number of treatment modalities—either with eye drops, with surgery, or with general medication—which reduce the pressure to a level where it is not dangerous. A continuous high pressure damages the eye. If we get the pressure down to a normal level, the eye will stay at that normal level and will not experience visual loss.

Some patients may say, "Well, I don't notice any change from these eye drops. They give me a headache, so why should I continue?" It is only a year or two later, after they have discontinued their eye drops and stopped seeing an ophthalmologist, that they notice the visual loss, which is then irreversible. So, glaucoma is the area where we can do most, but we cannot hope to be 100 percent effective.

In macular degeneration we can do a little with laser coagulation, but many people who hear the word "laser" think it is magic and they believe anything can be done; but it cannot.

Cataracts we can take out. That is a condition we are least uncomfortable with.

Eye damage resulting from diabetes is another area of intense study, and we are making some advances. But the population is increasing faster than our advances.

Senator CHURCH. Do you wear glasses because of a partial macular degeneration?

Dr. COLENBRANDER. No; I wear glasses because of nearsightedness.

Senator CHURCH. What is that caused by?

Dr. COLENBRANDER. An abnormal condition where the effective power of the lens does not match the length of the eyeball. What these glasses do is adjust that discrepancy. Like when you are taking a picture with your camera, you focus the lens for different distances.

Senator CHURCH. Is the nearsightedness or farsightedness caused by actual distortion in the shape of the eyeball?

Dr. COLENBRANDER. It is not just mechanical distortion. There are hereditary factors. There are developmental factors. But it is not a degeneration. When we focus the lens, my macular, which is normal, can reach 20/20 vision. Macular degeneration should be compared to a camera that has no film in it. No matter what lens you put on that camera, you can't take a picture if you don't have good film. That is an entirely different situation.

Senator CHURCH. I see.

Let me ask anyone on the panel whether there is a problem, and how serious it might be, in acquainting the people at large who may be suffering from visual impairment with the existence of rehabilitation services or with the fact that there are certain treatments available that may be helpful.

Is this a serious problem anymore? I judge it used to be.

Mr. WEDEWER. It still is a problem. We mentioned the Lions Club. I am a Lion, and many of us are. The Lions are supposed to be close to the situation, and we have had a man go around to some of the clubs and ask them, and in some clubs of 50 members, no one knows where or what services you could get if you lost your sight. Yes, it is a problem; there is no question about it.

That is why I think more needs to be done, maybe, by the American Foundation for the Blind, and some of the other organizations for the blind could do some of it. We, as agencies, mostly in government, cut out the PR men or information people to save money. We don't have them, and it is hard to get the information out. We are trying to do it with the free stuff, and public service radio and television. It just takes a lot of hard work.

Dr. COLENBRANDER. It takes hard work, but it is very well possible.

I might refer you to an article in the January issue of the Journal of Visual Impairment and Blindness describing work with an adult discussion group of elderly visually impaired individuals and describing that process of adaptation through the stages of rejection and adaptation, to where these people took on an activist advocacy role and actually went out to get others involved and distribute more information about what services are available.

"FALLING OUT OF THE SYSTEM"

Dr. FRIEDMAN. There is also a problem of not only disseminating information and making services available, but there is an acute problem in keeping the patient from falling out of the system. The rehab pro-

gram and rehab system becomes so complicated that many times the patient leaves the system for one reason or another before he can fully benefit from the services that are available.

Dr. INKSTER. I would like to comment in terms of utilizing more resources than we presently do. We tend to be stuck with our institutions and our current systems. I can remember my father, when he began to have trouble reading, going down to the dime store and sorting through a whole bunch of glasses until he found some he could read with. I am not sure that maybe that is not where we might start in communicating with people, to make our systems available to low-vision centers. Prerecorded techniques of how to perform tasks that are troublesome when you lose some of your vision might be on a cassette that could be available for a few dollars in a dime store or vision center. This could be the first exposure toward full rehabilitation. That exposure, the quicker it happens, will lessen the fear or aversion to joining the system. We ought to broaden our minds beyond our current institutions and seek out what other institutions, private enterprise, commerce, what have you, that can be utilized or tapped to get the message out and get linkage established at whatever level.

Mr. WEDEWER. We have not mentioned radio reading services that are provided through some of our programs. That is another way of getting to the people with vision problems who listen to those programs, telling them constantly about what is available.

Senator CHURCH. On the other side of the coin, are ophthamologists and optometrists sufficiently familiar with the rehabilitation services that may be available?

Mr. WEDEWER. No, they are not. It is so hard to reach them because they are so wrapped up in what they are doing. When we find an ophthamologist or optometrist who is interested, we jump on them and make a consultant out of them right away because we need those kinds of people. It is hard to get that kind of people involved. The most they will ever say to people where they failed—it is their failures—usually, that they need rehabilitation. That is the only word they know and they know we pay some of their bills for their patients, but they are not much concerned about rehabilitation as a group.

I don't know where to start except in the medical school. They don't think it is important enough to put in. It does represent, many times, their failures.

Senator CHURCH. You mentioned your father going down to the dime store, shuffling through the glasses. It reminded me of an uncle of mine who did the same thing when he began to need some help. For the rest of his life, that is how he managed to get his glasses, and it seems to me he did as well as anyone else who was going to an optometrist and has special fittings.

I read about the medical profession closing in to exclude that; forcing people to come for prescriptions. What is the situation in New York, for example? I haven't been looking for glasses in the five and dime store, but I am not entirely opposed to that. Are they still available for people of limited income who feel they can't afford professional help? Do you know?

Dr. INKSTER. I can't recall actually having seen them in New York, but I was in a town in Ohio in one of these discount centers—I think it was Bargain City—and I noticed some glasses there. They were just the magnifying glasses, but they still sell them.

I am not sure about New York. There must be some in New York. They have everything in New York.

Dr. COLENBRANDER. In the State of California, these are available at Sears or at drug stores and, on occasion, if a patient needs nothing more than that, I have told them you have the option of going to an optician and selecting a fancy frame or you have an option of going to a drug store, spending $7 and getting basically the same lens.

One real danger there is that glaucoma would not be detected. A cataract will be detected as soon as the vision starts going down. You don't get a cataract without knowing it. But glaucoma detection is important. As far as ophthalmologists being aware of rehabilitation services, we have rehabilitation service in our eye department and we have what we call a low-vision coordinator with training in the education of the visually handicapped. It has made an enormous difference in the delivery of our care and also in the awareness of the ophthalmologists who are being trained in our program, to the existence of those services and in getting to know more about it.

Senator CHURCH. I wish we had more time this morning. I could ask you a great many more questions. But I think the record, which will consist not only of your actual testimony but of the papers that you have prepared, is a good foundation for the inquiry which we made into this subject.

I want to thank all of you for coming. We appreciate it very much.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

APPENDIXES

Appendix 1

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER FROM JAMES GASHEL, CHIEF, WASHINGTON OFFICE, NATIONAL FEDERATION OF THE BLIND, WASHINGTON, D.C., TO SENATOR FRANK CHURCH, DATED AUGUST 1, 1978

DEAR SENATOR CHURCH: This will reply to and thank you for your letter of July 20, relating to the committee's survey of service programs and legislative initiatives to meet the needs of older Americans with vision impairments. I will be pleased to give you some brief comments in this letter in response to the questions you have asked, but I would also be glad to meet at a later time for a more detailed discussion.

With respect to the Williams-Keys bill, we support the idea of medicare reimbursement for low-vision aids; however, we have some concerns about the idea of establishing a policy of medicare reimbursement for the full range of services which should be be available to older blind persons. What I mean by this is that some have proposed that medicare should be available to pay for mobility training, counseling services, and braille instruction, just to name a few of the services suggested. On the surface this might seem like a good idea, but we are concerned that this practice would result in a substantial medical orientation to what are essentially personal adjustment services. Blind people who are receiving training services should not be made to feel that they are patients or that they are sick, for if they do, it is likely that they will forever regard blindness as an affliction. This is obviously not a healthy attitude.

Expanding services to older blind persons should take the approach of title IV of S. 2600. This would tie the new programs to the already-existing vocational rehabilitation system for the blind. This in itself would be very desirable, but title IV also has the advantage of encouraging States to develop comprehensive programs to serve the blind through identifiable agencies. Idaho has been a leader in this regard, having one of the more successful commissions for the blind in this country. The Idaho commission is charged with the responsibility of serving blind people of all ages, and it fulfills this mandate with both State and Federal funding by taking advantage of any programs which might have funds available to support its efforts. In the States which have comprehensive service programs for the blind of this type, the entire population is better served, with no group (such as the older blind) falling through the cracks. Of course, Ihado and the other States with comprehensive service programs would benefit greatly if title IV becomes law since this would make new sums of Federal money available for expansion of their programs.

You also asked about pilot projects. I am sure you are aware of the authority under section 304(b) of the Rehabilitation Act of 1973, as amended, for the funding of special projects to serve older blind persons. One of the larger (and, I believe, more successful) projects funded under section 304(b) is located in Texas, and administered by the Texas Commission for the Blind. You may want to be in touch with its director, Mr. Burt L. Risley, at P.O. Box 12866, Austin, Tex. 78701. I think you might also want to survey (and perhaps visit) the State commissions in Iowa and Idaho. While I believe neither of these States has a special federally funded project for the older blind, they do provide services to this population to the extent that it is possible under current funding arrangements. The director of the Idaho Commission for the Blind is Mr. Howard Barton, Statehouse, Boise, Idaho 83720. The director in Iowa is John Taylor, 4th and Keo, Des Moines, Iowa 50309.

On February 7, 1977, 12 of us testified on these and related issues before the Subcommittee on the Handicapped of the Senate Committee on Human Resources. I suggest that you review the record of this hearing for additional background information. The testimony of the 12 witnesses will explain why we favor the comprehensive services approach and what the advantages of this are for particular groups among the blind, especially older blind persons. Incidentally, based on evidence available to us, we would estimate that there are approximately 250,000 older Americans who have visual impairments severe enough to consider them legally blind and thus (in rehabilitation terminology) severely handicapped.

I hope these comments are helpful, and I have noted the meeting on August 3. Thank you for inviting me to the hearing, and I do hope to be present.

Cordially yours,

JAMES GASHEL.

ITEM 2. LETTER FROM DOROTHY DEMBY, NATIONAL SPECIALIST ON AGING, AMERICAN FOUNDATION FOR THE BLIND, INC., NEW YORK, N.Y., TO SENATOR FRANK CHURCH, DATED AUGUST 7, 1978

DEAR SENATOR CHURCH: The U.S. Senate Committee on Aging and its staff are to be commended for a growing interest in the special problems, needs, and potential of over 1 million older Americans who represent about 65 percent of the severely visually impaired population in the United States. This commendation refers to the August 3 briefing/hearing, Washington, D.C., on "Vision Impairment Among Older Americans," conducted by the committee in preparation for a health care status report.

It was heartening to me, as national specialist on aging, American Foundation for the Blind, to hear you and Senator Jennings Randolph of the Subcommittee on the Handicapped, not only express your respective interest in vision problems but also to show sensitivity to the issues and information presented in the testimonies of four excellent witnesses.

I write this letter as a concerned individual, professionally involved in national program development on aging and blindness, as a social issue, over the past 11 years.

It was in 1969 that the American Foundation for the Blind assumed an advocacy role in what was recognized as a critical issue: "Because the major causes of blindness are conditions associated primarily with aging and because more people are living to an older age, the number of aging blind persons is steadily rising."

In spite of the fact that more is being done these days about disabilities and impairments such as blindness, services and programs for older people with severe vision problems by no means are adequate in quality or quantity. Shocking conditions continue to dehumanize the older blind individual in a variety of settings: often unattended and unidentified in their own home; inappropriately placed in nursing homes; isolated at social centers; undiagnosed health conditions, etc.

This situation calls for, among many things, understanding about blindness, specific legislation, more funding and team work at the national, State, and local levels. It also calls for specific programs that lead each older visually handicapped person to his/her maximum functional independence.

Those who have been tackling this problem concur that goals and objectives of any group, agency, or individual interested to do something about aging and blindness need to be concerned with:

Integration into the mainstream of society;

Provision of quality services (accessible, available, adequate, and acceptable) to the blind individual;

Reduction of isolation;

Widening of communication networks;

Expansion of public's understanding on vision problems;

Independent living programs to meet special needs related to mobility, communication, and independence;

Comprehensive health care programs, including vision care;

Policies and standards;

A continuum of care to meet changing needs.

The American Foundation for the Blind has persisted in its role as principal national advocate and catalyst on all of these issues affecting older blind persons. The program objectives established in 1969 by AFB's National Task Force on Geriatric Blindness were:

(1) To sensitize public and private agencies and individuals (both citizens and professionals) to the special needs of older persons with severe visual problems;
(2) To influence these agencies and individuals into action; and
(3) To translate this action into the delivery of meaningful services to older visually handicapped people at the local level.

Implementation of these objectives on aging and blindness by AFB has resulted in:

The establishment of a Board Advisory Committee on Aging;

The development of a national policy statement on aging and severe visual impairment;

A 1971 White House Conference on Aging—special concerns sessions on aging and blindness;

Demonstration and pilot projects on integrating services; provision of in-home services within various states; low-vision services;

Development of educational materials, such as guidelines, handbooks, fact sheets, and other materials;

Legislative activities;

National and regional conferences on aging and blindness;

Training courses on aging and blindess;

Consultations.

The foundation's 1977–80 plan of work in aging has, as a focal point, a continuum of services at the local level, to meet the changing needs of the older blind person. In this area, concerns and gaps continue to be related to shortcomings in legislation, funding, advocacy, information exchange, prevention, family education, program standards and the need for an organized body of knowledge on blindness and aging. Consumer involvement needs to be expanded through opportunities, choices, and options for the older blind population—many of whom are multiple handicapped, poor members of any ethnic minority group.

These issues call for the attention of legislators. They call for financial support. Other materials for this hearing have given you details and documentation. The American Foundation for the Blind will be pleased to share with the Senate Committee on Aging the proceedings of the Second National Conference on Aging and Blindness, held in March 1978 in Atlanta, Ga. The recommendations therein will be of special interest for your committee's health status report on visually impaired. You will find further insight into the problems, needs, and potential of an increasing number of visually impaired older persons in the United States from the point of view of almost 500 professionals and older people who came to the conference.

Sincerely,

DOROTHY DEMBY.

ITEM 3. STATEMENT OF IRVIN P. SCHLOSS, DIRECTOR, GOVERNMENTAL RELATIONS OFFICE, AMERICAN FOUNDATION FOR THE BLIND, INC., WASHINGTON, D.C.

Blindness and severe visual impairment are conditions whose handicapping effects vary with the individual, depending on the degree of remaining useful sight; the person's ability to use residual sight effectively and efficiently in the performance of various tasks; the presence of other impairments, such as loss of hearing or loss of tactual sensitivity; and age. It is estimated that 90 percent of all information is received by humans through sight. With loss of sight, humans must rely principally on the sense of hearing followed by the sense of touch.

The aging process inevitably results in loss of hearing in the high-frequency range—the range useful for orientation and mobility for blind persons. Younger individuals blinded in explosions, such as servicemen blinded in combat or civilians subjected to bombing or shelling, invariably lose high-frequency hearing from nerve damage as well. Noise pollution in modern urban centers is accelerating hearing impairment at an earlier age in persons who may later suffer serious vision loss, as well as in younger blind persons who would otherwise not incur the same degree of hearing loss until later in life.

The principal problems resulting from blindness are loss of mobility, ability to read print, employability, and ability to perform other daily living activities.

THE SEVERELY VISUALLY IMPAIRED POPULATION

The National Society for the Prevention of Blindness (NSPB) estimates that there are some 490,200 persons in the United States who are legally blind. The

definition of blindness used in arriving at this estimate is the same as that used in section 216(i)(1) of the Social Security Act; i.e., central visual acuity of 20/200 or less in the better eye with correcting glasses, or a contraction in the field of vision to 20 degrees or less in the better eye if central visual acuity is better than 20/200. The prevalence rate of legal blindness is 2.25 per 1,000 of population.

The NSPB also estimates that 75 percent of the legally blind population is 45 years of age and older. It also estimates that some 45,750 Americans become legally blind each year and that 78 percent of this number is 45 and older.

Based on preliminary data from its 1977 health interview survey, the National Center for Health Statistics of the U.S. Public Health Service estimates that there are some 1,391,000 civilian noninstitutionalized individuals in the United States who have severe visual impairment. The definition of severe visual impairment used in reaching this estimate was inability to read ordinary newspaper print with the aid of correcting glasses. The prevalence rate is 7 per 1,000 of population for all ages.

The National Center estimates that 142,000 of these individuals are under age 45 (prevalence rate 1 per 1,000), that 259,000 are between the ages of 45 and 65 (prevalence rate 6 per 1,000), and that 990,000 are 65 and older (prevalence rate of 44 per 1,000).

Based on a 1973–74 survey of 1,075,800 nursing home patients, the National Center for Health Statistics found that 30,400 were blind, which the survey questionnaire characterized as "sight completely lost." In addition, the same survey indicated that there were 107,900 nursing home patients with "sight severely impaired," which the survey questionnaire characterized as able to "recognize the features of familiar persons if they are within 2 to 3 feet." With this definition, it is likely that virtually all of the individuals described as having "sight severely impaired" would be legally blind if their visual acuity were measured. Of the number described as blind, 10 percent were under age 65 while 90 percent were 65 and older. Of the number described as having sight severely impaired, 5 percent were under 65 while 95 percent were 65 and older. We have no authoritative estimates of the number of blind or severely visually impaired individuals in other types of institutional settings, such as homes for the aged.

The leading causes of blindess in the United States—senile cataracts, diabetic retinopathy, glaucoma, and macular degeneration—are conditions which principally affect people over 40. In addition, blindness is sometimes caused by cardiovascular diseases, such as arteriosclerosis, hypertension, and stroke, as well as other conditions which frequently accompany the aging process. Since the prevalence of blindness in the United States in the light of current scientific knowledge is a function of population growth, we can expect that the number of older blind persons will increase as the number of older persons in the population increases.

Since only preliminary data are available from the 1977 health interview survey of the National Center for Health Statistics, it is necessary to use the detailed report of the 1971 survey for other characteristics of the severely visually impaired population. Of the total estimated population of 1,306,000 severely visually impaired persons in the 1971 survey, 503,000 are male while 803,000 are female. For the age group under 45, approximately 69,000 are male, and 51,000 are female. For those 45–64, it is estimated that 119,000 are male, and 157,000 are female. For the group 65 and older, 314,000 are male while 595,000 are female. It is likely that the 1977 survey will reveal similar proportions of males to females in this population group.

In 1971, according to the National Center, 518,000 severely visually impaired individuals had less than $3,000 annual family income. Of this number, 427,000 were 65 and older. Although similar data from the 1977 surveys are not yet available, it should be noted that, according to the Social Security Administration, there were 77,362 individuals on the supplemental security income (SSI) blind rolls in December 1977 with a median age of 59 for this group. Also, Social Security Administration estimates that 9 percent of the individuals on the SSI aged rolls (approximately 180,000 persons in December 1977) and 4.7 percent of the SSI disabled rolls (approximately 99,000 persons in December 1977) were severely visually impaired, using the same definition as the health interview survey. It should be noted that all persons on the SSI aged rolls are 65 and older, while the median age of those on the SSI disabled rolls is 55. It is likely that some 36 percent of the individuals on the SSI aged and disabled rolls described as severely visually impaired are legally blind. Thus, there are approximately 356,362 severely visually impaired individuals in financial need serious enough to be eligible for SSI payments in December 1977.

The 1971 health interview survey revealed the following prevalence rates per 1,000 of population for severe visual impairment on a regional basis: South, 68.2; Northeast, 39.1; North Central, 38.7; and West, 32.7.

No one knows the exact number of totally blind individuals in the United States. Authorities associated with rehabilitation centers for the blind and other agencies providing direct services to blind persons estimate that between 12 and 20 percent of the legally blind population have no useful vision. Therefore, we can assume that a maximum of nearly 100,000 persons in the United States are totally blind or have only light perception without light projection. The rest have varying degrees of residual sight, which may be useful to them in the performance of various tasks, especially if the usefulness is enhanced by optical aids, training in various techniques, and other aids and devices.

FEDERALLY ASSISTED PROGRAMS

During the past 45 years, a considerable body of Federal legislation has been enacted in the human services area. The programs established by congressional action range from income security and health care services for individuals administered directly by the Federal Government to Federal financial grants to State and local governments for a variety of purposes, such as health care for needy persons of all ages, education of handicapped children, employment and training services, and vocational rehabilitation of the disabled.

Some are designed for special groups relatively small in number; others are virtually universal or cover large segments of the population. Some have specific Federal requirements for compliance; others allow broad authority to States and localities in carrying out a program as long as basic general requirements are met. Whatever the type of federally assisted program, the important thing to emphasize is that, for nearly half a century, the pattern in the United States has been to establish a federally assisted program to deal with special needs.

With specific regard to the older blind and severely visually impaired, the impact of federally created and assisted programs is great from both a positive and negative viewpoint. On the one hand, many of the federally created programs, particularly those involving income security and health services for older persons, are especially helpful to our special segment of that population. On the other hand, the special programs designed for younger people with limited or no sight are not routinely available to older persons with the same vision problems. Ironically, by far the largest segment of the blind and severely visually impaired population remains the most neglected.

The American Foundation for the Blind (AFB) believes that the most effective way of assuring essential rehabilitative services to older blind and severely visually impaired persons is to include these services in medicare or in any national health insurance program which may be enacted. These services are low-vision service, including prescribed low-vision lenses, to enhance the usefulness of residual sight, as well as orientation and mobility training, rehabilitation teaching services, and other special services designed to restore a patient to maximum functional independence after loss of sight.

Similar basic rehabilitative services, such as physical therapy, occupational therapy, and speech therapy are covered for persons with other disabling conditions. For example, a stroke victim who loses full use of limbs and has slurred speech is covered for the services of a physical therapist or speech therapist. If he is blinded by the stroke, he is not entitled to therapeutic services which would enable him to function more independently without sight.

As a means of correcting shortcomings in the medicare program for persons with sight loss, the AFB supported enactment this year of H.R. 13248, a bill to cover the cost of low-vision service to the legally blind under part B of title XVIII of the Social Security Act, which was introduced by Representative Martha Keys of Kansas. A companion bill, S. 3038, was introduced by Senator Harrison Williams of New Jersey.

These bills were limited to legally blind persons whose residual sight could be enhanced by low-vision aids owing to cost considerations. However, cost constraints this year for expansion of medicare make enactment unlikely. Attempts will be made during the 96th Congress to secure enactment of similar legislation and in succeeding Congresses to cover mobility training and rehabilitation teaching services under part B of medicare.

AFB believes that ultimately comprehensive rehabilitative services of the type previously described should be made available under parts A and B of medicare, or a comprehensive national health insurance program, so that indi-

viduals of all ages who sustain substantial sight loss can receive these rehabilitative services in any setting, including hospitals, skilled nursing facilities, other long-term care facilities, rehabilitation centers, in their own homes, and on an out-patient basis.

Until specialized medical rehabilitative services for individuals with severe sight loss can be assured under medicare or a comprehensive national health insurance program, the AFB will continue to support legislative effort to assure these services to older blind persons in the Rehabilitation Act of 1973, title XX of the Social Security Act, and other appropriate Federal grant-in-aid programs to the States. A pilot target program of grants to States for rehabilitation services to older blind persons was included in the Rehabilitation Act of 1972 for blind persons aged 55 and older, as was a special program authorizing comprehensive rehabilitation services without a clear-cut vocational objective (independent living rehabilitation). The bill was pocket vetoed by President Nixon. An identical bill was vetoed by the President early in 1973, and the Congress failed to override.

The Rehabilitation Act of 1973, which was approved by the President early in the autumn of that year, contained authorization for special projects in the rehabilitation of older blind persons. Projects are currently under way in six States at an annual cost of $441,000.

Pending legislation in the Senate (S. 2600) to extend and improve the Rehabilitation Act of 1973 includes provisions for grants to the States for rehabilitation services for older blind persons, as well as provisions for independent living rehabilitation services. The AFB is supporting these provisions as well as the independent living rehabilitation provisions of H.R. 12467, the House-passed bill extending and improving the Rehabilitation Act of 1973. If the 95th Congress fails to enact a target program for rehabilitation services for older blind persons, the gap in services to assist this major segment of the blind population will continue, while the numbers requiring service will also continue to grow.

In 1956, the Congress added authority for provision of social services to promote "self-care" of cash public assistance recipients to the cash assistance titles of the Social Security Act. State welfare or social services agencies, which administered the cash assistance programs, also administered the social services program, except in Delaware, Massachusetts, New Jersey, North Carolina, and Virginia where separate State agencies for the blind then administered the title X cash maintenance and the social services program for legally blind recipients of all ages. The Federal Government paid 50 percent of the cost of social services to promote self-care, with the Federal share provided on an open-end funding basis.

The Public Welfare Amendments of 1962 strengthened these provisions and authorized Federal reimbursement to the States of 75 percent of the cost of specified social services designed to promote self-care and self-support and "prevent dependency." Financing was still open end, with the Federal Government obligated to reimburse States for approved services.

Except in the five States where separate State agencies for the blind had specific legal authority to obtain reimbursement from the Federal Government, there does not appear to have been much evidence that these social services funds were being used to provide or purchase specialized rehabilitative services for blind persons, particularly for older blind persons. It is likely that older blind persons benefitted to some degree in some States from more general social services.

In 1972, as a result of concern in both the Congress and the administration over the rapidly increasing cost to the Federal Government of social services on an open-end funding basis, Congress put a ceiling of $2.5 billion on the authorization of appropriations for social services while still retaining a 75 percent Federal share. Late in 1974, the Congress enacted title XX of the Social Security Act, establishing a bloc grant mechanism under which requirements for States to obtain Federal funds for social services were minimal and States were given maximum latitude as to the social services they provided.

There is a statutory requirement that States must spend 50 percent of social services funds on recipients of SSI, aid to families with dependent children, and medicaid. State agencies for the blind which had previously administered social services programs for blind persons could continue to do so under title XX. However, as a result of State reorganization, only agencies in Massachusetts, North Carolina, and Virginia now administer title XX State plans for blind persons.

Amendments to title XX in 1976 authorized States to have the option of providing social services on a group eligibility rather than individual means test

basis in geographic areas of the State where substantially all of the resident have incomes below 90 percent of the State median income. This has implications for provision of social services to older persons in senior centers, as well as older blind and severely visually impaired persons.

In 1976, an AFB study of first year comprehensive annual social services program (CASP) plans revealed that only 17 States indicated that they would provide specialized services to blind persons, such as orientation and mobility and rehabilitation teaching services. An HEW publication summarizing CASP plans for the fiscal year 1978 revealed that 12 States said they were providing special services to blind persons, while 33 States were providing a variety of general social services to blind persons.

Since 45 States would reach their title XX expenditure ceilings by September 30, 1978, thus foreclosing the possibility of expansion of the program to include services to blind persons in succeeding years, the AFB this year supported increases in the entitlement ceiling for title XX. H.R. 12973 as passed by the House of Representatives, would authorize increases in the ceiling to $2.9 billion for fiscal year 1979; $3.15 billion for fiscal year 1980; and $3.45 billion for fiscal year 1981 and succeeding years. This bill is currently pending in the Senate, and AFB, in concert with other organizations interested in handicapped individuals, is supporting its enactment.

Although title XX of the Social Security Act is presently the most logical mechanism for providing specialized rehabilitative services to older blind persons to foster their ability to attain maximum independence, the competition at State level for these funds between the disparate groups eligible for services makes it unlikely that the older blind and severely visually impaired population will be adequately served without special earmarking in the Federal act as has already been done for child care services.

The Older Americans Act of 1965 was enacted to assure provision of a wide variety of necessary services to the growing proportion of older persons in the population who need them. This is to be accomplished through the establishment with Federal financial assistance under the act of State and area agencies on aging, which can serve as advocates to assure utilization by older persons of other federally financed programs, as well as through programs established by the act itself. There is also authority for model projects, including specific provisions for special services to older handicapped Americans. Amendments enacted in 1975 require State agencies on aging to spend not less than 20 percent of their allotments for community services for transportation services, home services, legal and other counseling services, and residential repair and renovation programs.

The Older Americans Act of 1965 must still be regarded as having its greatest impact on the lives of older blind and other handicapped persons at some time in the future. Except for the nutrition for the elderly program, the bulk of Federal funding has necessarily been devoted to the establishment and operation of State and area agencies on aging, research programs, training of personnel, and increasingly for social services. Special services to blind and other handicapped older persons can be handled on a model project basis as well as through community services. Obviously, substantially higher appropriations will be needed in the future—coupled with expanded program authority—if the Older Americans Act of 1965 is to fulfill its potential for assuring essential services to older blind and handicapped persons, let alone the needs of low-income older persons without serious handicapping conditions. Legislation in the current Congress to extend and improve the act promises some expansion in services to blind and other handcapped persons. The House-passed bill, H.R. 12255, contains authority for special projects related to older blind persons in 10 States. In addition, it includes provisions relating to long-term care services. Similar provisions for long-term care services are contained in the Senate-passed bill, S. 2850. The AFB is supporting these improvements and expects a committee of conference to approve a bill which will contain expanded provisions for long-term care services and for special projects for older blind persons.

CONCLUSION

Major gaps in services to older blind and severely visually impaired persons continue to be lack of general availability of quality low-vision services with the cost covered by a Government-financed program, as well as the lack of adequate financing of specialized services designed to foster independent living and prevent premature institutionalization. No federally created health care program covers low-vision services for all who might benefit, and the only federally financed pro-

gram under which specialized services for independent living of older blind persons can currently be provided—title XX of the Social Security Act—has too many demands upon it.

The AFB believes that the most effective way of assuring older blind and severely visually impaired persons of low vision and specialized rehabilitative services, such as rehabilitation center training, orientation and mobility services, and training in other daily living skills, is to cover them as health and allied health services under medicare and, subsequently, under a comprehensive national health insurance program. Similarly, long-term care services, such as homemaker and mobile meal services, should be covered under medicare and a national health insurance program for those who need them as a means of delaying costlier institutionalization.

The advantages of coverage of these services as part of a comprehensive national health insurance program are uniformity of entitlement and payment mechanisms and assurance of quality professional standards through accreditation of providers of services. Unlike existing Federal-State matching fund programs, a comprehensive national health insurance program would not be subject to the vagaries of Federal and State appropriations processes with their dependence on matching fund allocation formulas and inevitable limitation on the numbers of people served.

Until a truly comprehensive national health insurance program is implemented, a separate title should be added to the Rehabilitation Act of 1973 to cover independent living rehabilitation services to handicapped persons of all ages without regard to potential employability. A special target program of rehabilitation services for older blind persons should also be added to the Rehabilitation Act of 1973 or enacted as a freestanding law as provided for in S. 2600. A Federal-State matching fund program of this type could be phased down as medicare and national health insurance increasingly cover the cost of these services.

ITEM 4. STATEMENT OF THE AMERICAN OPTOMETRIC ASSOCIATION, WASHINGTON, D.C.

The American Optometric Association appreciates this opportunity to assist the Senate Special Committee on Aging in its study of vision impairment among older Americans. This issue is indeed an important one that affects nearly every senior citizen, and we would like to commend the committee for taking an active interest in it.

Our statement will cover the following points:

(1) The need for medicare to reimburse select optometrists for covered services that are within the license of optometry but are currently reimbursed only if provided by a physician (M.D. or D.O.);

(2) The need to expand medicare coverage to all optometric and medical eye/vision care services which are required by older Americans;

(3) The importance to senior citizens of legislation, introduced by Senator Williams, Representative Keys, and Senator Randolph, which would provide for medicare or other Federal coverage of services and low-vision aids for the partially sighted. On this point we will describe the vision conditions which constitute partial sight, the various types of low-vision aids which optometrists and physicians prescribe, and applicable cost factors; and,

(4) Throughout the statement we will cite appropriate data concerning the incidence of vision impairment among older Americans and existing programs which demonstrate the contribution that optometric services make to their health.

MEDICARE SHOULD REIMBURSE FOR COVERED OPTOMETRIC SERVICES

Medicare's current eye/vision care coverage severely restricts both the scope of care available to older Americans and the availability of health care professionals to provide even the current limited scope of care.

Current coverage now extends only to costly "crisis care" when the eyes are concerned. Thus, hospital and surgical services are covered, as are eye examinations provided by physicians (M.D. or D.O.) when a patient has symptoms of possible eye injury or disease. The services most universally required by senior citizens—routine eye examinations and eye appliances—are not covered.

Many senior citizen leaders have stressed the need for specific medicare coverage of routine eye/vision care, including refraction and eyeglasses. They have

pointed to such facts as a recent National Center for Health Statistics report showing the almost universal affliction of visual acuity problems in the population group over age 65. Similarly, a 1975 senior citizens' survey demonstrated that 40 percent of older Americans have problems going up and down stairs; nearly 30 percent have difficulty reading the newspaper; and among those surveyed who drive, 45 percent have some trouble or can't drive at night. For these reasons, senior citizen and optometric organizations have sought medicare coverage of routine eye/vision care as essential for accident prevention and the ability of older Americans to live full, active, independent lives.

Yet, even medicare's very limited scope of services is further restricted by discriminating against patients who selects optometrists for covered services. A senior citizen with symptoms of possible eye injury or disease may secure an eye examination from a physician (M.D. or D.O.) under medicare and be reimbursed; but medicare will not pay for the same examination if it is performed by an optometrist. Some senior citizen groups, noticing this fact, have worked out agreements with physicians at a reduced fee. In fact, one Minnesota group has gone so far as to state the "tricks of the trade" in making sure that an eye exam is reimbursable.

The need for the widest availability to older Americans of eye/vision care manpower is particularly underscored by the high incidence of blindness and potentially blinding eye problems in this age group. The National Society for the Prevention of Blindness has estimated that 4.1 percent of the population, mostly senior citizens, have glaucoma. Some 7 percent of senior citizens are legally blind; three-fourths of these are partially sighted and can, with the help of low-vision aids, apply their residual vision in a limited fashion. In 1976, HEW found an incidence of cataracts of 11.4 percent, or three-fourths of the annual incidence of cataracts in the entire population, among persons over age 65. Finally, a 1973–75 Johns Hopkins University study in Massachusetts showed the following prevalence of eye disease, primarily among senior citizens: diabetic retinopathy, 3.1 percent; and senile macular degeneration, 8.8 percent.

A 1976 HEW study on medicare coverage for eye and vision care services notes that many areas of the country, particularly nonmetropolitan areas, are served only by optometrists. Approximately 40 percent of the counties have an optometrist but no ophthalmologist. There are twice as many optometrists as ophthalmologists. Also noted by the HEW study is an Institute of Medicine description that: "Optometrists are trained to recognize disease conditions of the eye and ocular manifestations of other diseases, and to refer patients with these conditions to the appropriate health professional. We would estimate that optometrists refer some 5 to 10 percent of their patients to physicians, primarily to ophthalmologists. Still another observation from this study is that even in urban areas: "Under present circumstances the vision care needs of the elderly are not being met in timely fashion, and that to do so requires full utilization of all types of vision care manpower, including optometrists. . . ."

The qualifications of optometrists to perform currently covered medicare eye examination services are further underscored by table 1 in the 1976 HEW study. The table lists the following services which are within the scope of practice of both optometrists and ophthalmologists, and then notes that except for "refraction" and "ophthalmic prosthesis and services," medicare will now reimburse only ophthalomologists for these services:

Personal and family health history, symptoms and vision requirements;
Visual acuity—distance and near, with and without correction;
External examination (eye and adjacent structures);
Direct and indirect ophthalmoscopy;
Biomicroscopy;
Tonometry;
Central and peripheral visual fields;
Ophthalmometry/keratonometry;
Refraction—objective and subjective distance and near;
Ocular motility and binocular function;
Visual perception, color vision, stereopsis, motor;
Evaluation for contact lenses;
Evaluation for low-vision aids;
Evaluation for vision training therapy;
Ophthalmic prosthesis and services.

In summary, the reality faced by the optometric patient who acquires medicare eligibility is that his or her eye examination suddenly becomes reimbursable if

performed by an ophthalmologist but not by the optometrist. This patient must then decide whether to remain with the optometrist and pay the bill, or seek out an often-less-accessible ophthalmologist whose services would be reimbursed.

We would recommend that the Congress erase this absurd, arbitrary distinction by simply altering the definition of an optometrist as a physician under medicare. This definition now reads, "establishing the necessity for prosthetic lenses." It should read, "functions which he is legally authorized to perform in (his or her) State (that are covered by medicare)."

Such coverage already has ample precedent in Federal programs and, in fact, medicare stands virtually alone in restricting its beneficiaries' ability to select optometrists. Optometrists in direct service Federal programs such as the military and Indian Health Service have responsibility for the detection and referral of possible eye disease and ocularly manifested systemic disease. The Federal Employees Health Benefits Act specifically provides that a patient may select an optometrist for any covered service that is within his license. Most federally qualified health maintenance organizations utilize optometrists, and most of these utilize them in a primary entry/primary care setting. Most of the 40 States which cover optometric services under medicare also assure freedom-of-choice of provider. Another example is CHAMPUS, which recognizes the ability of optometrists as well as physicians to perform eye examinations in connection with the treatment of covered eye diseases and injuries. Finally, the privately practicing optometrist has a legal and ethical responsibility, enforced by State law and court decisions, to detect and refer suspected eye and systemic diseases.

MEDICARE SHOULD COVER ALL REQUIRED EYE/VISION CARE

Senator Ribicoff and Representative Corman, together with nearly 200 of their colleagues, have introduced legislation to add routine optometric or medical eye examinations and eyeglasses to medicare coverage. The principal bills, which also provide that doctors of optometry, as well as doctors of medicine and osteopathy, may be reimbursed for any covered service within their license, are S. 514 and H.R. 2020.

The House Select Committee on Aging, under the leadership of Representative Pepper, has introduced a number of comprehensive medicare expansion bills which include needed routine eye and vision care.

The American Optometric Association has joined senior citizens' groups in actively supporting the enactment of this type of legislation. As noted above, nearly every senior citizen has at least a routine sight problem, with a strong possibility of eye disease as well. Underscoring the need for this legislation are some additional facts from our 1975 senior citizens' survey.

Among the senior citizens who did not go to an eye specialist the last time they felt the need for eye care, 48 percent did not go because of lack of money.

Forty-five percent of the senior citizens surveyed with limited finances would visit their eye specialist more often if money were no problem.

Over 80 percent of those responding do not have company or personal insurance (other than medicare) that pays for all or part of their eye care.

Five out of six senior citizens would urge federally subsidized programs to pay for eye care services including glasses.

Nearly one-third of those surveyed feel their inability to see well prevents them from performing different activities such as household chores, recreation, business, etc.

One out of every four citizens surveyed indicated they had an eye problem which required regular care, and only about 15 percent of those surveyed categorized their vision as excellent.

The need for low-vision services and aids alone is discussed in the next segment of this statement. (Some 750,000 older Americans are visually handicapped by this condition to the extent that such aids and services are needed.)

As is true with refractive and other relative uncomplicated sight problems, many persons do not notice symptoms of the early stages of eye disease or of systemic diseases which may be detected in eye examinations. Coverage of routine eye examination thus is essential not only for the diagnosis and treatment of sight problems, but also for the early detection of potentially blinding eye disease as well as of such systemic diseases as diabetes, arteriosclerosis, and hypertension, which often show up first in the eyes. Routine eye examinations, if covered under medicare, could provide early detection for these frequently occurring diseases and thus bring further benefits to the elderly citizen. This surely must be considered a major unmet need which medicare should cover.

The importance of eyeglasses to senior citizens is demonstrated by the fact that vision problems may precipitate other problems as a result of accidents and injuries attributable to visual difficulties. A good deal of correct balance depends on good vision and the elderly are particularly prone to suffer from defective vision. Falls in the elderly constitute a serious hazard. The death rate among those over 65 years from accidents rises sharply with age. In fact, accidents are the sixth major cause of death among the elderly, and 85 percent of all injuries sustained by persons 65 and older are caused by falls. Twenty-five percent are attributable directly to uncorrected visual problems.

In many cases, geriatric patients labeled as senile, reclusive, bothersome, or irritable actually have vision problems which affect their behavior. Once the problems are corrected with proper vision care, the patients' behavior often changes remarkably for the better. A study of the Ebenezer Center, a leading geriatrics center in Minneapolis, Minn., has confirmed that in many cases older persons may "have been inappropriately labeled mentally impaired as a result of unresolved vision needs."

There are specific areas of disability which although not life threatening illnesses per se, are nevertheless extremely vital to the well-being of the individual. The human being is primarily dependent upon his vital functioning. The incidence of visual impairment, however, is rather significant among the geriatic population. Quite often, the aged neglect attending to their visual handicaps due to their inability to afford such care. With improved vision the aged find their other disabilities easier to bear because they now can read, sew, knit, or engage in a number of visually oriented activities.

The following statement by the Director of the National Eye Institute underscores the importance of vision to the individual:

"The greatest toll taken each year in the United States by eye disease is not measured in terms of mortality—few disorders originating in the eye cause death—but rather in degrees of physical limitation and financial burden. But such measurements are inadequate, or they do not convey the hardship or mental anguish of having to function in a complex environment deprived of normal vision. Perhaps for these reasons, Americans have indicated that they fear blindness more than any other physical affliction with the single exception of cancer."

The statistics cited are inadequate for describing the burden imposed on the individual by vision disorders. They cannot convey the hardship and anguish experienced by the elderly in functioning in an environment without normal vision. Thus, the vision care needs of the elderly population are a significant component to the overall health and welfare of the elderly. Certainly, this is a vital area of need, when one considers these needs and contrasts them with the inadequate attention presently being devoted to this area. Medicaid covers routine eye/vision care in most States; so does vocational rehabilitation. Why not medicare?

MEDICARE SHOULD COVER LOW-VISION CARE

Senator Williams and Representative Keys have introduced, respectively, S. 3038 and H.R. 13248. These bills, if enacted, would include optometric and medical low-vision services and aids for the legally blind within medicare coverage.

In addition, Senator Randolph has included important provisions within title IV of S. 2600 that would accomplish the same objectives as the Williams' and Keys' proposals, using general revenues as the financing mechanism.

The American Optometric Association supports the concept of financial assistance to partially sighted older Americans in obtaining the optometric and medical services and aids that can enable them to see. Thus, we favor the enactment of legislation such as S. 3038, H.R. 13248, or title IV of S. 2600.

As noted above, some 7 percent of senior citizens are legally blind; three-fourths of these are partially sighted and can, with the help of low-vision aids, apply their residual vision in a limited fashion. The prevalence of low vision among senior citizens is more than eight times the rate for all other age groups. Also, partial sight is the third most prevalent chronic health condition among the aging. Partially sighted are those who cannot identify letters 30.45 mm high (approximately one and one-quarter inches) from a distance of 20 feet (20/70), but can identify large objects in their vicinity. Their condition of partial sight may stem from any of the following problems:

(1) Diffuse blurring (e.g., scarring of the cornea from accidents, ulcers, or infection; excessive fluid in the cornea due to corneal dystrophy, postoperative

cataract, or corneal surgery; or vitreous hemorrhage from diabetes, hypertension, sickle cell anemia, or trauma).

(2) Blurred or poorly defined central vision without field loss (e.g., complete or incomplete ocular albinism; refractive amblyopia secondary to strabismus; swelling of the macula area of the retina in diabetes; congenital cone dysfunction; or involuntary repetitive eye movements.

(3) Central or macular (the macula is an area of the retina) field loss (e.g., senile macular degeneration, hemorrhagic macular disease, juvenile forms of macular degeneration, macular cysts and holes, diabetic macular disease, some optic nerve disease such as glaucoma, or degenerative myopia).

(4) Extensive peripheral or perimacular field loss (e.g., retinitis pigmentosa; advanced chronic simple glaucoma; neurological diseases such as multiple sclerosis, brain tumors, organic brain injury, stroke, or trauma: detached retina from a variety of causes; diabetic retinopathy in the hemorrhagic or proliferative phase; advanced retinal damage from infantile retinal and vitreous inflammation; or occlusive disease in retinal artery or vein).

(5) Sector or segment loss (e.g., early retinitis pigmentosa, early glaucoma, neurological disease affecting the optic nerve, guadrant loss from stroke, occlusion of artery or vein branch, diabetes with sector proliferation, segmental detachments of the retina, or mild or moderate forms of infantile retinal and vitreous inflammation).

(6) Mechanical factors affecting visual acuity, such as glare, lighting, pupil size, or aphakia, may cause even greater reduction of vision in the presence of other pathology.

Visually impaired people with sight far outnumber those who have no usable vision. The partially sighted person has potential for independence if he or she gets optical or other aids, and learns to adjust to the way his or her vision has changed. Some of these aids are telescopic, microscopic, and contact lenses; light control devices; closed-circuit television, and functional aids.

Optometric research leading to further refinements of these special optical aids is a continuing project to which many individual practitioners and optometric teaching institutions have addressed their efforts. Dramatic progress has been made in the last 20 years and even greater breakthroughs are anticipated for the future.

A number of Federal programs now cover services and aids for the partially sighted. For example, state vocational rehabilitation plans cover eye examinations for visual loss, visual training, eyeglasses, and low-vision aids. The late D. C. MacFarland, Ph. D., reported to the 1966 AOA conference on aid to the visually limited that in 1965 approximately 20,000 persons with partial sight were helped under vocational rehabilitation. Many State medicaid and crippled childrens' services plans cover low-vision services, and partial sight is a form of physical handicap covered under the Education of Handicapped Act.

In the private sector, urban low-vision clinics associated with the Pennsylvania College of Optometry and the Southern California College of Optometry are two important success stories describing the contribution that optometric low-vision services can make to the partially sighted. Also, over 40 percent of optometrists in the United States provide these services.

Cost figures are available for services and aids to the partially sighted. Typically, a low-vision evaluation adds 50 percent to the fee for an optometric diagnostic eye/vision examination. With $26 being the average fee in 1975 for an optometric examination of a person 65 years or older, the total charge would thus approximate $39.

Around 90 percent of all low-vision aids are high intensity lights, available commercially at $12, and hand-held magnifiers, which are sold commercially for $8 to $100, depending upon the complexity. Telescopic systems typically cost $200, with TV monitor systems running around $1,200. Surely this legislation is a fair investment by our Nation in the well-being of its senior citizens who have contributed to its growth.

CONCLUSION

It is well known that the elderly as a group tend to have low income. In addition, the elderly are those who are most afflicted with visual problems which can limit their independence in our society, increase their susceptibility to falls and injuries, and lessen their total enjoyment of life that comes from being able to see. For older persons, who have gradually become spectators rather than participants in life's affairs, vision assuredly must be preserved and enhanced where possible.

By allowing for medicare coverage to include those services that are within the practice of optometry, but are currently reimbursed only if provided by a doctor of medicine or osteopathy, government policy will do much more to increase the availability and efficiency of covered services.

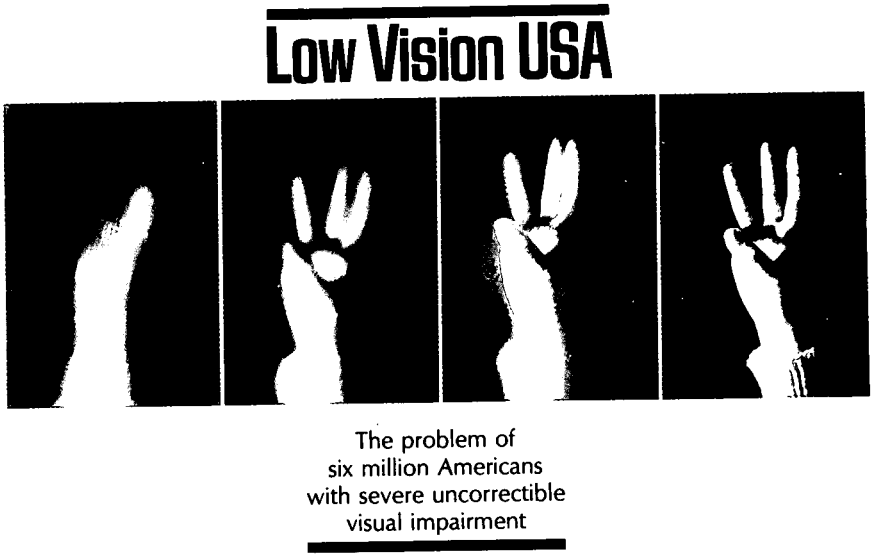
At present, the services most universally required by senior citizens—routine eye examinations and eye appliances—are not covered benefits under medicare. As noted in this statement, many diseases of the eyes common to this age group could be detected by regular examinations, but almost half of the surveyed elderly did not have regular eye examinations because of lack of money. With medicare coverage, many blinding eye diseases could be alleviated with regular examinations, and early detection of many other systemic diseases, which often show up first in the eyes, could be treated.

In addition, visual aids for the partially sighted, which have provided miraculous improvements for those who would not otherwise see at all, should not be excluded from medicare coverage.

With government assistance, ability to pay for visual services can result in improved consideration for the needs of older Americans.

Appendix 2

Articles From "Sundial," Published by Eye Research Institute of Retina Foundation, Boston, Mass., Submitted by Dr. Gerald R. Friedman [1]



[1] See statement, page 12.

LOW VISION CARE:

A new, ongoing obligation of the ophthalmologist*

by H. MacKenzie Freeman, M.D., Senior Clinical Scientist and Vice President, Eye Research Institute of Retina Foundation

Today, advances in retinal and vitreous surgery and photocoagulation have resulted in improvement or preservation of vision in eyes that were heretofore inoperable or untreatable. Upside-down surgery may unfold a giant tear. A vitreous balloon can be used to break retinal adhesions making retinal reattachment possible and enabling some vision in the eye to be salvaged. Vitreous membrane scissors may make it possible to reattach a retina where multiple scleral buckling operations have failed. Open-sky vitreous surgery makes possible the removal of preretinal membranes so that a retina may be reattached. Argon laser photocoagulation may arrest or improve certain cases of macular degeneration. A long standing vitreous hemorrhage may be successfully removed by closed vitrectomy. But in many cases these new procedures are performed on patients with eye conditions so severe that treatment, no matter how successful, can bring improvement only into the low-vision range.

We have taken a hard look at the results of our surgery in terms of visual performance and have come to recognize the need and obligation to include low-vision care and rehabilitation in the spectrum of patient management, which should not end following successful surgery.

Further, with increasing life expectancy, more people will reach the age where macular degeneration is prevalent. The sad truth of the matter is that laser photocoagulation will help only a small percentage of those affected. But the elderly, now more involved in society, are no longer complacent about accepting poor vision as a part of aging. They demand, quite rightfully, that all possible steps be taken to improve their vision. Therefore, we should evaluate the eyes of these frustrated persons as thoroughly as possible. Granted, a large percentage of these patients can be brought only to low levels of visual acuity with laser photocoagulation; nonetheless, even a small improvement by low-vision aids in that salvaged vision may mean much to the patients. It can make a world of difference in their lives, enabling them to be independent, self-supporting members of society, or to enjoy the pleasures of retirement.

Traditionally, retina surgeons have striven to improve techniques and instrumentation to achieve better anatomic results. Now we are approaching a second equally important milestone in retinal care, which involves improving functional results in desperate cases. We feel that our obligation does not end with a reattached retina, a vitreous cleared of chronic hemorrhage, or a macular condition arrested or improved. The orthopedic surgeon does not perform a hip procedure and then consider patient management completed. He calls in a team of physiotherapists to teach the patient how to make the repaired hip function optimally. Similarly, we must realize that where our treatment ends, low-vision evaluation should begin.

New vitreoretinal surgical techniques can take the patient only so far. The ophthalmologists must encourage him further along the next step in a continuum of eye care which involves a comprehensive study of retinal function, a low-vision assessment to determine visual needs and desires, followed by the prescription of low-vision aids, then mobility training, and social and vocational rehabilitation.

Why should ophthalmologists take on this added responsibility of overseeing care? Without question ophthalmologists are best fitted to assume this leadership role inasmuch as they can diagnose and define which patients may benefit from surgery, photocoagulation, medical therapy, or low-vision aids. They are equipped to oversee total eye care and to follow ocular conditions most knowledgeably. Now more than ever, the ophthalmologist should promote, stimulate, and support the establishment of multidisciplinary Low-vision Clinics. Here the opthalmologist, the optometrist specializing in Low-vision, the optical engineer, the social worker and the visual aid therapist must work as a team to give the patient maximum use of remaining vision.

An operation for a giant retinal tear at Massachusetts Eye and Ear Infirmary using the upside-down operating table conceived, designed and built at the Eye Research Institute of Retina Foundation. This is one of the retinal and vitreous surgical procedures mentioned by Dr. Freeman that now give useful vision to many victims of eye diseases once considered untreatable.

**This article is adapted from a paper delivered by Dr. Freeman to the Symposium Low Vision at the Eightyfirst Annual Meeting of the American Academy of Ophthalmology and Otolaryngology, October 1976 and reprinted in full in Ophthalmology Transactions, published by the Academy.*

Low Vision USA

Low Vision Specialist and Assistant Scientist of the Eye Research Institute of Retina Foundation, Gerald R. Friedman, O.D., discusses the dimensions of the problem.

A young, low vision patient tries a ring telescope–an important low vision aid. As Dr. Friedman points out, low vision knows no age boundaries.

There are 6.4 million people in the United States alone who suffer from some form of severe visual impairment. Of this 6.4 million, 400,000 have no useful vision, which leaves 6 million with some degree of sight. These statistics are generally accepted as being underestimated and unfortunately, they also represent a visually impaired population which is increasing and not decreasing. The incapacitating nature of visual impairment is readily demonstrated by the fact that most of these people are in good health but for their eyes. However, they cannot function in the visually-oriented world of today. Ironically, and this is most important to remember, these people are not *totally* blind.

Among the reasons for the increase in visual impairment in our population are: the eye's vulnerability to injury; degenerative conditions of the eye accompanying age; systemic diseases which also affect the eye; increasing life expectancy which leaves the eyes vulnerable to the aging problems of all organs of the body; and the increasing population itself.

Two causes of the increasing incidence of visual impairment warrant special attention because of the seeming paradox involved. These are: a) advances in medical and surgical treatment of the eyes and b) the advanced technology of today's society.

Advances in eye treatment have made it possible to preserve sight on a level never before thought possible. New techniques in vitreous and retinal surgery and photocoagulation with the laser have preserved the vision of eyes which previously would have been lost. In preserving vision, these advances have cut down blindness, but in many cases leave reduced vision, hence adding to the visually impaired population, an outcome, however, far preferable to total blindness.

On the other hand, the technological society of today, while giving us miraculous developments to enhance our lives, even to preserve life, is itself responsible for creating de facto visual impairments by simply denying the visually impaired access to jobs because these jobs now require superior vision. Certain jobs which once required 20/40 vision, today require 20/20 vision, a level of vision much higher than the 20/40. States which once required 20/70 vision to operate an automobile, now require 20/40, a much higher visual level than 20/70. These are but two examples of society contributing to the creation of a visually impaired population through definition and legislation.

Low Vision Defined: What then do we call this group in excess of 6 million which cannot "see", but is not "blind"? Historically, these people would be considered to have inadequate vision to function and would be classified for all intents and purposes as blind. Today, we are in a fortunate position to offer them a much better future than that definition would imply. First, we call this condition "low vision", not blindness, and second, of far greater importance, we can offer low vision people the means of utilizing whatever vision they have left, no matter how great or how little that may be. In a visually oriented society, this can be the difference between independence and dependence, of being a productive part of society, or a victim of it.

If one has good sight, one can perform two simple experiments and experience two forms of low vision. To personally experience the impairment of central vision, cover one eye and observe the area around you, looking through a glass of salt water. During this exercise, look out the windows and also look at the newspaper. The impairment of peripheral, or side vision, can be appreciated by closing one eye and looking through a straw with the other eye. Again, look out the window and at a newspaper. These exercises demonstrate two distinct types of visual impairment. What they have in common is that *some* vision remains. This residual vision is what keeps this person from being considered "blind". The person with low vision then, is not blind; the term "blind" should be reserved for those without *any* remaining vision.

"Low vision" is the vision one has left (residual vision) after all the medical treatment of the cause of the disability has been utilized. A more technical definition of low vision would be, "any pathological congenital or traumatic condition of the eye which results in a decrease of central vision or peripheral

continued

Low Vision USA *continued*

field and which is not amenable to medical, surgical, or ordinary optical means." If this remaining vision is insufficient to read or travel, or even watch TV, low vision evaluation and specially designed systems can, in a gratifying number of instances, increase this remaining vision to a usable level.

Low vision knows no age boundaries. It affects the young as well as the elderly. People are born with it and people develop it later in life. Although low vision is often associated with increasing age, it is interesting to note that a study of the low vision population seen in two of the low vision clinics in Boston show that 40% of those seen were under the age of 35 with a substantial number under the age of 16. The population seen at one of these clinics consisted of patients from 51 countries and 36 states which offers further insight into the geographical distribution of those with low vision.

The systems which are utilized to enhance the remaining vision range from the relatively simple to the extremely complex. Each has its specific advantages and can only be determined after careful low vision evaluation which first determines the amount of useful vision remaining, then, the most efficient way to utilize it.

Making the Most of Low Vision

The low vision systems do far more than help someone to read, although reading is extremely important in society today. They can make it possible to stay in school or go on to advanced study, find and keep a job, walk from one point to another, fulfill household and cooking requirements. The effectiveness of the low vision system varies with the ability of the patient to master it; the highly motivated patient rarely has difficulty. The need to use vision varies considerably and is dictated by one's environment. This need combined with motivation accounts for the variations in results achieved with low vision systems. If you were to observe people with 20/80 vision in their daily lives, you would think some of them had no problem at all with their eyes, while others had no vision at all. The group which is attempting to make the most use of their vision is the group which would have little difficulty in adapting to the low vision systems.

In summary, the low vision systems give the user an ability to compete in his visual world to a degree never thought possible. Utilization of these low vision systems is seldom easy, but one has only to consider the alternative, *not* seeing, to realize the advantages which these systems offer. Research in the area of low vision is being carried on in order to find new and better ways to evaluate the residual vision and develop new techniques and technology to enable the more efficient use of the precious residual vision for as long as possible.

Making the Maximum Use of Minimal Vision

Marvin Brotman demonstrates what proper motivation can do for the visually-handicapped.

He walks down the street at a fast dog-trot. Only occasionally does he use a white cane. "Mostly," he says, "so that aggressive Boston motorists will know that I might not be able to play the usual pedestrian games." It is difficult to guess on first acquaintance that Marvin Brotman's vision is limited to 5% sight in one eye.

For the past two years, Mr. Brotman has been Executive Director of FERRAT (Friends of Eye Research, Rehabilitation and Treatment). But his interest in both eye research and rehabilitation of the visually impaired extends much further back than this. Legally blind since birth, Brotman insisted on making maximum use of his remaining vision despite constant admonitions, "You will strain your eyes."

"Ours is a separate problem and must be dealt with as such—in education, rehabilitation and in terms of how the public comprehends our situation," Brotman said in speaking of low vision people like himself.

In 1953 Marvin became one of the first legally blind people to receive a M.S. degree from the Graduate School of Journalism at Columbia University. Following this, he was a science writer for a large midwestern newspaper. Marvin later went into public relations, serving as PR Director of Kansas' largest private hospital. He later moved to Denver and became Director of Public Relations for the famed National Jewish Hospital and Research Center.

Marvin is one of the founders of the Council of Citizens with Low Vision (CCLV). The new membership-advocacy group is in the process of organizing low-vision people throughout the nation in order to improve the quality and availability of specialized services. Marvin is also a member of the Legislative Committee, American Association of Workers for the Blind; he also is active in the Affiliated Leadership League of Agencies of and for the Blind.

Mr. Brotman with a closed circuit TV Reader/Writer. This superb low-vision aid was developed by Dr. Sam Genensky and colleagues at the Rand Corporation. Dr. Genensky, a nationally known mathematician, is a low-vision person himself.

Marvin travels extensively on behalf of FERRAT. Through his efforts, agencies and organizations for the blind, senior citizens groups and others have learned more about the progress and needs of the eye research community and have given invaluable support to FERRAT's efforts to increase Federal funding of vision research. Since FERRAT's inception in 1975, funding has grown from $44 million to $85 million—nearly double.

"Our goal for fiscal '79 is $118 million," Brotman said. "The National Eye Institute would get this sum, then dispense the greatest percentage of it in the form of grants to eye research centers throughout our nation."

MEDICAID ANTI-FRAUD PROGRAMS: THE ROLE OF STATE FRAUD CONTROL UNITS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

WASHINGTON, D.C.

JULY 25, 1978

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CONTENTS

Page

Opening statement by Senator Frank Church, chairman 1

CHRONOLOGICAL LIST OF WITNESSES

Beal, Frank S., Deputy Administrator for Operations, Health Care Financing Administration, Department of Health, Education, and Welfare; accompanied by Donald Nicholson, Director, Office of Program Integrity 3

Ruff, Charles F. C., Deputy Inspector General, Department of Health, Education, and Welfare 8

Hynes, Charles J., deputy attorney general, State of New York, and special prosecutor for nursing homes 22

Press, Stephen H., Hartford, Conn., chairman, program integrity subcommittee, National Council of State Public Welfare Administrators 28

APPENDIX

Correspondence relating to hearing:

Item 1. Letter and enclosure from Senator Frank Church, chairman, Senate Special Committee on Aging, to Frank S. Beal, Deputy Administrator for Operations, Health Care Financing Administration, Department of Health, Education, and Welfare, dated August 9, 1978 37

Item 2. Letter and enclosure from Senator Frank Church to Frank S. Beal, Deputy Administrator for Operations, HCFA, HEW, dated August 10, 1978 37

Item 3. Letter from Frank S. Beal, Deputy Administrator for Operations, HCFA, HEW, to Senator Frank Church, dated September 21, 1978 40

Item 4. Letter and enclosure from Senator Frank Church to Charles F. C. Ruff, Deputy Inspector General, Department of Health, Education, and Welfare, dated August 7, 1978 42

Item 5. Letter from Charles F. C. Ruff, Deputy Inspector General, HEW, to Senator Frank Church, dated August 25, 1978 43

Item 6. Letter from Senator Frank Church to Stephen H. Press, director, Medical Care Administration, State Department of Social Services, Hartford, Conn., dated August 9, 1978 45

Item 7. Letter from Stephen H. Press, director, Medical Care Administration, Hartford, Conn., to Senator Frank Church, dated August 23, 1978 46

Item 8. Letter and enclosure from William M. Hermelin, acting administrator, Government Services Division, American Health Care Association, Washington, D.C., to Senator Frank Church, dated July 24, 1978 47

MEDICAID ANTI-FRAUD PROGRAMS: THE ROLE OF STATE FRAUD CONTROL UNITS

TUESDAY, JULY 25, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 10:08 a.m., in room 1212, Dirksen Senate Office Building, Senator Frank Church, chairman, presiding.

Present: Senator Church.

Also present: William E. Oriol, staff director; Garry V. Wenske, assistant counsel for operations; Alan Dinsmore and Nancy Coleman, professional staff members; Jeff Lewis, minority professional staff member; Marjorie J. Finney, correspondence assistant; Theresa M. Forster, fiscal assistant; and Madonna S. Pettit, research assistant.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. The hearing will please come to order.

My opening remarks this morning will be brief since we are going to deal with a very challenging subject and we want to have the fullest discussion possible in our limited time period.

I shall also ask the witnesses this morning to summarize their statements in order to enable the committee to hear fully from everyone and to permit us to move directly to questioning. I would like though, to make a few key points before hearing from you.

First, the Federal Government, in partnership with the States in the medicaid program is the largest purchaser of medical services in this country—and over one-third of the money spent is supposed to purchase vitally needed services for our citizens aged 65 and over.

Unfortunately, investigations and hearings before this committee show that medicaid fraud exists on a massive scale. These proceedings revealed such practices as providers charging medicaid for expensive personal luxury items, kickbacks to nursing home owners by suppliers, and forced contributions by relatives as a condition for accepting a patient.

The first annual report of the Inspector General of the Department of Health, Education, and Welfare estimates losses in the Federal share alone of the medicaid program due to fraud and abuse at approximately $653 million—in fact, the total amount of loss due to fraud, abuse, and waste for all HEW programs is estimated by the HEW Inspector General at a staggering $7 billion. The executive vice president of the Idaho Hospital Association, John D. Hutchison, points out that this figure is over 50 times more than the total 1976 expenses of all Idaho hospitals put together.

My point is this: Whatever the losses to the system are, and we still have only estimates of these losses, the bottom line is a loss to the taxpayers in the States and the Federal Government and, most important of all, reduced medical services to those who can least afford the loss.

My second point is that the hearings and investigations before this committee have revealed a pattern of massive fraud deterred by only patchwork investigation and prosecution. In fact, a recent congressional report revealed that 20 States had never referred a suspected medicaid fraud case to State or Federal law enforcement agencies for prosecution.

On October 25, 1977, the President signed into law the medicare/medicaid antifraud and abuse amendments. This legislation, which became Public Law 95-142, was designed to facilitate Federal and State efforts to identify and prosecute cases of fraudulent and abusive activities and to strengthen penalities for persons convicted of provider related violations.

Section 17, one of the most important provisions of this law, authorizes 90-percent funding for the States to establish investigative fraud control units for a 3-year period. This provision was intended to encourage the creation of a central organization, distinct from the State medicaid agency, with the capacity to detect, investigate, and prosecute medicaid fraud.

This committee is greatly concerned that only nine States are now certified to take part in this program. While we understand that a large number of other States have expressed interest in the program and that a number of these may be certified in the near future, we are also concerned that Federal share funding will expire on October 1, 1980, and we want to examine the consequences of this.

My third point is this: This law gives States 3 years to prove themselves. This is reasonable. However, only one of the nine certified States is in the top five spenders in the medicaid program. New York State's special prosecutor, who is with us this morning, pointed out recently that it took 3 years in the courts to simply gain access to one suspected provider's account books. What about those other States. They may have less than 2 years to prove that their State fraud control unit can work.

The major questions before this inquiry are:

One: Why has so little progress been made in the implementation of the medicare/medicaid antifraud and abuse amendments' call for the creation of these units?

Two: What steps are being taken to encourage the formation of these units?

Three: What will happen after October 1, 1980, when the Federal matching share for the financing of these units expires?

Four: What steps are being taken to implement the provisions of the law which deal with ownership and management disclosure for medicaid providers—a significant aid to the work of the State fraud control units?

Our witnesses, I am sure, will have more to say about this situation and we look forward to your comments and recommendations.

Senator Pete V. Domenici, the ranking minority member of this committee, is unable to be with us this morning. He has, however,

submitted a statement for the record, which will be entered at this time.

[The statement of Senator Domenici follows:]

STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, I am pleased today that we are holding hearings on the role of State fraud control units, an area which I believe we need to reexamine. Although we enacted legislation only last year to establish the medical State fraud control units, to date, only nine States have certified units. This is extremely distressing since the Federal Government is subsidizing 90 percent of the cost for the establishment and operation of these units, and the funding for these units expires on October 1, 1980. Subsequently, I am greatly concerned over why more of these units haven't been established and if a sufficient number will be in operation long enough to effectively evaluate their performances.

This legislation was designed to curb the increasing problem of fraud and abuse in costly, problem-riddled medicaid programs. At the same time, however, we have to be cautious that these State fraud control units don't become federally funded harassment units. I believe we need to explore alternate ways to provide funding for these units; that is, make these units dependent upon their actual recoveries. We are in a time now where we have to begin to truly curb Federal expenditures and Federal subsidizing and force some programs to pay for themselves. That is why I am particularly interested in ascertaining actually how much money these units have been able to recover to date, and how much we can anticipate their being able to recover.

I look forward to hearing from our distinguished witnesses this morning and their response to my questions.

Senator CHURCH. Our leadoff panel this morning consists of Charles Ruff, Deputy Inspector General of the Department of Health, Education, and Welfare; and Frank Beal, Deputy for Operations of the Health Care Financing Administration. Mr. Beal is accompanied by Don Nicholson, Director of the HCFA Office of Program Integrity.

Gentlemen, if you will briefly summarize your statements, the full text of those statements will be included in the record and then we will go to questions.

STATEMENT OF FRANK S. BEAL, DEPUTY ADMINISTRATOR FOR OPERATIONS, HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY DONALD NICHOLSON, DIRECTOR, OFFICE OF PROGRAM INTEGRITY

Mr. BEAL. Thank you, Mr. Chairman.

I am Frank S. Beal, Deputy Administrator for Operations of the Health Care Financing Administration. With me is Don Nicholson, Director of the Office of Program Integrity.

We appreciate this opportunity to discuss with you progress in implementing the Medicare/Medicaid Anti-Fraud and Abuse Amendments of 1977—Public Law 95-142. This law greatly strengthens the ability of the States and the Federal Government to take action against fraud in the medicare and medicaid programs.

FRAUD CONTROL UNIT STARTUPS

Let me first discuss implementation of section 17. This section provides the incentive of 90 percent Federal matching funds to States which establish independent units to investigate and prosecute medicaid fraud. Because of this provision we are beginning to see a major

infusion of State investigative and prosecutorial resources in the area of medicaid fraud.

The Department met its obligation to publish regulations concerning the establishment and operation of the units within 90 days after passage. Based on comments received and implementation experience acquired since then, we published amended regulations this week clarifying several areas of concern.

At the present time there are nine State fraud control units certified under the provisions of Public Law 95–142. Annual budgets of these units range from $300,000 to $1.5 million, with total annual budgets of $5.3 million. We are presently reviewing applications for certifications from 11 other States. The 20 units which have been certified, or whose applications are being reviewed, cover States which expend 72 percent of medicaid funds.

Many other States are preparing applications and we expect that by the end of this year, or even sooner, at least 35 States will have fraud control units in operation covering 85 percent of medicaid expenditures. Our efforts to encourage States to establish units and to assist them in making applications are having substantial results.

Some States or jurisdictions have indicated that they will not establish independent fraud control units. Several reasons for these decisions have been given.

First, some States do not want to separate the fraud unit from the agency administering the medicaid program as mandated by Public Law 95–142.

Second, some States believe that they do not have the workload necessary to justify establishing a separate unit.

Finally, some States are reluctant to establish a unit in light of the fact that the 90 percent Federal funding expires October 1, 1980.

We believe the decision to place the 3-year limit on increased Federal funding was a sound one. It gives HEW time to evaluate the performance of the program and gives the Congress an opportunity to determine the proper level of Federal support after 1980.

A primary key to the success of a fraud control unit's performance is the relationship of the unit to the State medicaid agency which has a major responsibility through its claims processing and other activities for the detection of provider fraud. We mandate that there be a memorandum of understanding between the fraud unit and the medicaid agency which provides data concerning vendor billing patterns and practices which are necessary to the fraud units investigative work. We will closely monitor this flow of data to insure that fraud units are receiving from medicaid agencies the information they need to investigate fraud.

Improvements in Fraud Detection

Mr. Chairman, you have asked us to address specifically the use of a data system as a tool for deterrence, detection, and investigation of fraud. A sound data system is an indispensable component of a meaningful fraud control program. Such systems are critically important in identifying providers whose billing and practice patterns indicate a potential for defrauding or abusing the medicaid program.

As part of its technical assistance role, the HCFA Office of Program Integrity assists the States in developing systems of prepayment and postpayment controls. The quality of these reviews is a standard feature in our periodic assessment of State medicaid programs.

As part of our effort to improve medicaid management generally, and fraud and abuse detection in particular, HCFA is placing increased emphasis on State development of medicaid management information systems—MMIS. There is a generous Federal financial incentive to such development and we are increasing our technical assistance to the States. To date, 18 States MMIS systems have been certified as meeting all Federal requirements and we expect to certify at least another 7 by the end of this year, and many more in 1979.

Each medicaid management information system contains a subsystem which compares patterns of provider practice and recipient utilization and identifies providers and recipients whose experience is exceptional with respect to established norms. This output is analyzed by State medicaid agency personnel to determine whether the patterns are indicative of fraud or abuse. The output of their analysis is crucial input to the State fraud control unit's investigative activities.

Disclosure Provisions

Mr. Chairman, let me now briefly describe implementation of the disclosure provisions of Public Law 95–142. These sections impose upon providers and contractors disclosure requirements that are central to fraud and abuse detection efforts, including information concerning ownership, subcontractor relationships, supplier relationships, and convictions of owners and others of offenses related to their involvement in our programs.

Proposed rules covering sections 3, 8, 9, and 15 will be published in a few days.

The regulations require providers and contractors routinely to report ownership information. For providers, we will use the medicare medicaid provider certification process to gather this information. This information, and related information required to be made available, will be used to determine the potential for fraud and abuse. The Office of Program Integrity has been charged with developing systems, including data processing systems where useful, to achieve this end.

Mr. Chairman, the last 2 years have seen remarkable advances in HEW's efforts to eliminate fraud and abuse from its health care programs. The creation of the post of HEW Inspector General; the establishment of the Office of Program Integrity in HCFA to integrate medicare and medicaid fraud and abuse detection activities; the passage and implementation of Public Law 95–142; expedited development of medicaid management information systems; and a determination at all levels in the Department to root out fraud and abuse have all contributed.

These efforts will continue to have top priority so that we can strengthen public confidence in the integrity of our health care programs.

Thank you very much.

[The prepared statement of Mr. Beal follows:]

PREPARED STATEMENT OF FRANK S. BEAL

Mr. Chairman, members of the committee, I am Frank S. Beal, Deputy Administrator for Operations of the Health Care Financing Administration. With me today is Mr. Don Nicholson, Director of the Office of Program Integrity.

We appreciate this opportunity to discuss with you the progress in the implementation of the medicare-medicaid anti-fraud and abuse amendments of 1977 (Public Law 95–142). We strongly support this legislation because it strengthens the States' and Federal Government's ability to take action against fraud and abuse in the medicare and medicaid programs. The elimination of fraud and abuse is one of HEW's highest priorities.

SECTION 17—INCENTIVE FUNDING FOR STATE MEDICAID FRAUD CONTROL UNITS

Mr. Chairman, as you indicated in your letter of invitation, section 17 is one of the most important provisions of Public Law 95–142. This section, which provides an incentive of 90 percent Federal matching funds to States that establish independent medicaid fraud control units, recognizes that the State is the most appropriate investigator and prosecutor of medicaid fraud. Because of this provision, we are beginning to see a major infusion of State investigative and prosecutorial resources in the area of medicaid fraud. The Health Care Financing Administration's Office of Program Integrity, in cooperation with the Office of the Inspector General, is charged with responsibility for developing the policies necessary to implement section 17 and to evaluate the State operations under that policy. Interim final regulations were published in the Federal Register on January 23, 1978. Final regulations resulting from comments received and from experiences during the initial implementation stages are scheduled for publication this week.

CURRENT STATUS

At the present time, there are nine certified State fraud control units, located in Louisiana, Alabama, Michigan, New Mexico, Connecticut, Rhode Island, New Jersey, Washington State, and Colorado. The annual budgets of these nine units range from $300,000 to $1,500,000, with a total annual funding of $5.3 million. This will fund 164 professional staff—35 attorneys, 45 auditors, and 84 investigators.

In addition, we have received applications from 11 other States and anticipate receiving many more this year. The 20 States whose units have been certified or whose applications are being reviewed for certification account for 72 percent of medicaid expenditures. We expect 35 units to be certified by the end of the year covering nearly 85 percent of medicaid expenditures.

HCFA EFFORTS

We have encouraged every State to set up a special fraud unit and have taken a number of steps in this direction:

We conducted two 2-day training sessions in January for our regional staffs on the section 17 regulations and guidelines. Following that, letters were written to the Governors of each State asking that representatives be sent to special training sessions conducted by our regional staffs—10 sessions were held throughout the country;

Secretary Califano, in a letter to the Governors dated April 5, 1978, encouraged each Governor to become familar with the newly enacted provisions and asked them to support the formation of fraud units;

We made presentations before components of the National District Attorneys' Association and the National Association of Attorneys General to discuss the effects of section 17; and

We have had countless contacts with State officials to explain the provisions of section 17 and help them to establish fraud units.

STATE CONCERNS

Twelve States or jurisdictions have indicated they do not plan to establish fraud and abuse units under section 17. The unwillingness of States to apply for Federal matching has occurred for a variety of reasons:

Some do not want to separate the fraud unit from the agency administering the medicaid program;

Some States of jurisdictions feel they do not have the workload necessary to justify the establishment of a separate unit that meets the requirements mandated by law and regulations;

Finally, some States are reluctant because of the 3-year limitation on 90 percent Federal funding. Calculated over the period of certification, they have concluded that the added Federal revenues do not balance the work involved in establishing the units.

Although some States may be reluctant to file an application for section 17 funding because of the funding limitation, we believe that it was appropriate to place the 3-year expiration of funding clause in the legislation. The performance of States over the next 3 years can thus be evaluated to determine the proper level for continued support. We require periodic reporting by State, fraud units on the volume of cases worked, the amounts of overpayments established, and the number of convictions obtained. The time limit on Federal funding also provides added incentive to fraud units to demonstrate effective performance. Based on our experience with the program over the next 2 years, we will be prepared to recommend appropriate legislative changes.

CERTIFICATION PROBLEMS

For States which do wish to establish fraud control units, our most frequent problem has been in reaching agreement with States on the level of funding. The funding levels are tied to, and limited by, the level of medicaid expenditures in a State. The law provides that a State can be funded at a level up to $125,000 per quarter or one-fourth of 1 percent of the receding quarter's medicaid expenditures, whichever is greater. In order to secure annual funding to the limit of what is allowed by this formula, a State must project its workload figures and manpower needs. Some States have had great difficulty supporting their funding requests, and the resulting need to negotiate has delayed the certification of some fraud units.

The requirement that the expenditure cap for the 90-percent funding be calculated on a quarterly basis has been particularly troublesome. Medicaid expenditures can vary sharply from quarter to quarter. Basing Federal payments for a fraud control unit on the preceding quarter's medicaid expenditures can cause large fluctuations in Federal participation for the unit. We believe that basing Federal funding for a unit on the previous year's medicaid expenditures would allow more predictable budgeting and operation.

RELATIONSHIP TO STATE MEDICAID AGENCY

A primary key to the success of a fraud control unit's performance is its relationship to the agency administering the medicaid program. The law allows the higher Federal funding only for *investigation* and *prosecution* of Medicaid vendor fraud. Detection of the potentially fraudulent vendor is the responsibility of the State medicaid agency. Without identified cases for investigation, there is no need for a fraud control unit to exist. For this reason, it is a condition for certification that a fraud control unit have a memorandum of understanding with the State medicaid agency to assure referrals are made. This memorandum of understanding must also provide for data reflecting vendor billing patterns and practices which may be necessary to the fraud control unit's investigation. We will closely monitor the flow of information from State medicaid agencies to fraud control units to ensure that the units are receiving the data they require to effectively investigate potential program fraud.

DATA SYSTEMS

As a part of its oversite and technical assistance role, HCFA's Office of Program Integrity assists the States in developing and maintaining systems of pre- and post-payment controls. A good postpayment data system is indispensible to any State medicaid agency as a tool in fraud and abuse detection. Although important in medicare, the significance of data in medicaid takes on added importance because the medicaid patient is not required to pay deductible and coinsurance. Under medicare, if there is something amiss with regard to the providers' billing for services, this will often be noticed and reported by the medicare patient who must pay a portion of the bill.

Under medicaid, however, the incentive for patient feedback to the case worker or other responsible medicaid official is not as strong. Therefore, it is critically important that medicaid programs have data systems capable of identifying health providers who demonstrate a potential for defrauding or abusing the program.

Medicaid regulations require each State medicaid agency to have a system of postpayment review. In our ongoing review of State medicaid agencies, one area that we continually focus on is postpayment review and the way that the States are utilizing the data available through those systems to analyze patterns of practice and take corrective or punitive action where appropriate.

MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)

As part of its effort to improve medicaid management and to improve States' abilities to detect fraud and abuse, HCFA is placing increasing emphasis on the development by States of medicaid management investigation systems.

There are now 18 State mechanized claims processing and information retrieval systems certified as MMIS. Thirteen other States are actively developing MMIS and we expect to certify 7 of these before the end of this year.

MMIS systems can detect fraudulent or abusive use of medicaid services by physicians, pharmacists, and others who provide services as well as by persons who receive services. While the system designs and reporting formats vary from State to State, each system:

Covers all categories of medical services (inpatient hospital, physician, pharmacy, etc.) and all classes of recipients;

Analyzes medicaid utilization experience by means of statistical norms of care;

Compares patterns of provider practice and recipient utilization and identifies providers and recipients whose experience is exceptional and automatically produces summarized information about them.

While the collection of data is necessary for the detection of medicaid fraud, it is not in itself sufficient. The data must be carefully analyzed and it is critical that the analysts at the State agency level have the ability to draw meaningful conclusions from that data. The output of their analysis is the crucial input to the fraud control unit's efforts to investigate and prosecute fraud.

DISCLOSURE PROVISIONS

Finally, Mr. Chairman, I would like to describe briefly our efforts to implement the disclosure provisions of Public Law 95-142. The legislation imposes on providers several reporting requirements that are central to our fraud and abuse detection efforts. A proposed regulation will be published in a few days that will require providers to routinely disclose ownership information as mandated by section 3 of Public Law 95-142. The medicare and medicaid provider certification process will be used to gather this information. This information and related information, required to be made available under the law, will be used to identify potential fraud and corporate interlocks that involve hidden ownership and other practices. We expect that once the new detection system is fully developed, it will complement the fraud and abuse systems and controls currently in place.

Mr. Chairman, we are encouraged by the Federal-State cooperation that we have seen since the enactment of the medicare-medicaid antifraud and abuse amendments. We intend to pursue aggressively our responsibilities to stamp out program abuses and the fraudulent activities that can cripple our efforts to serve beneficiaries and to preserve program moneys.

Mr. Nicholson and I will be happy to answer whatever questions you and your committee members may have.

Senator CHURCH. Please proceed Mr. Ruff.

STATEMENT OF CHARLES F. C. RUFF, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. RUFF. Senator, would you prefer that I follow with a brief summary?

Senator CHURCH. If you have one, why don't you do that and then I will ask questions.

HCFA-INSPECTOR GENERAL RELATIONSHIP

Mr. RUFF. It might be useful just very briefly, although I will try not to duplicate Mr. Beal's statement, to indicate what the relation-

ship has been between the Office of the Inspector General and the Office of Program Integrity of the Health Care Finance Administration in connection with attempts to implement section 17. We, of course, have the statutory mandate of the Inspector General's Office to supervise all fraud detection and enforcement efforts within the Department, and in that connection of course we were eager to see the passage of section 17 of Public Law 95–142 and have welcomed it as a major step forward in what we see as the crucial joint effort between the States and the Federal Government to address the problem.

Although HCFA has the responsibility for funding and certification of these units, we have worked closely together from the beginning to insure that our office had an appropriate role in certifying units, particularly from the point of view of their investigative and prosecutive capacities. Indeed, each application for certification, before it is approved by the HCFA Administrator, must be concurred in by the Office of Inspector General. To date, we have had absolutely no difficulty in working out this joint arrangement and I would expect this cooperation to continue as the remaining States submit their applications.

Now during the period in which the regulations were being drafted and since that time we have met regularly with representatives of both the National District Attorneys Association and the National Association of Attorneys General to discuss the special problems the section 17 regulations pose to them in making these applications in an attempt to offer some informal guidance through the application process. Particularly we were concerned that we implement through the regulations and through the close scrutiny of the application what we viewed as the essential congressional intent to create, wherever possible, a central and continuing body of expertise. Hence our regulations, we think consonant with the statute, create a strong preference for the placement of the fraud control unit in the Office of Attorney General or other statewide prosecutive agency. Even in those States which do not have such a prosecutive authority, we have been very encouraged to see a remarkable cooperation between the attorneys general and the district attorneys to create a unit which meets their needs but still complies with the requirements of the statute and regulations.

Progress at State Level

Our continuing role in the implementation of section 17 is principally that we will serve as liaison between the unit and other Federal law enforcement and prosecutive agencies. We hope to be able to provide some guidance, where necessary, in auditing techniques. We are working at this very moment with representatives of the special prosecutor's office in New York and the attorney general's office in New Jersey to develop a training program for auditors, investigators, and prosecutors, which we hope we will be able to put on in the fall and which we hope will be able to reach out to not only those States which have ongoing efforts in this area but those which have newly come to the medicaid law enforcement business. All in all, I think that our relations with the States over the past several months, as we moved to the implementation of section 17 of the regulations, have been excellent. I am encouraged by the efforts of the States to adjust. Sometimes

there have been difficult jurisdictional problems to solve in order to meet the requirements of our regulations, which we feel are consonant with the legislative intent.

I would be glad to answer any questions that the Senator may have or to explore, if you wish, some of the other aspects of Public Law 95–142.

[The prepared statement of Mr. Ruff follows:]

PREPARED STATEMENT OF CHARLES F. C. RUFF

Mr. chairman and members of the committee, thank you for the invitation to appear before the committee today to discuss the Federal funding of State medicaid fraud control units. We greeted the passage of section 17 of Public Law 95–142 with enthusiasm, and we see the development of State investigative and prosecutive expertise as a major step forward in our joint effort to combat fraud in the medicaid program.

Until recently, State investigation and prosecution of fraud by medicaid providers have been spotty, at best. With the exception of such States as Massachusetts, New York, New Jersey, Colorado, and California, where well-organized investigative and prosecutive offices have existed for some time, the resources needed to deal with sophisticated and complex criminal activity of the type involved in medicaid fraud simply were not available. Nor, it must be noted, was the Federal effort adequate. HEW's investigative staff was minimal, and only in a few of the larger U.S. attorneys' offices was there any substantial enforcement effort.

A change in this picture was first signalled by Congress' creation of the Office of Inspector General at HEW. Over the first 15 months of our existence, as our investigative staff has grown from 10 to almost 80 professionals, we have devoted an ever-increasing amount of our resources to medicaid fraud cases. Further, the Office of Program Integrity, Health Care Financing Administration, has intensified its own efforts to provide support and technical assistance to the States in this area. But we have always recognized that there could be no real impact on the problem unless there was a substantial improvement in the capacity of the States to handle these cases.

Immediately after the passage of Public Law 95–142, the Secretary appointed the Deputy Administrator of HCFA, the Deputy General Counsel, and the Deputy Inspector General to oversee the preparation of the regulations to implement section 17, and they were published a few days before the deadline set in the legislation. HCFA followed with the publication of guidelines, and a number of meetings were held at which Program Integrity and Inspector General's staff briefed the regional personnel who would be responsible for the certification of the fraud control units.

It was clear from the very beginning that, although HCFA had the principal responsibility for administering the certification process and the funding of the units, the Office of Inspector General must play an important role. We agreed that the Inspector General would assist Program Integrity in reviewing State applications to insure that adequate provision was made for the investigative and prosecutive aspects of the unit's operations, and we agreed that the Inspector General's concurrence in the recommendation for certification would be required before the application was finally approved by the HCFA Administrator.

Accordingly, the special agents in charge of our investigations field offices joined with their counterparts in the Office of Program Integrity to provide assistance to the States in developing their applications for funding. In addition, this Office has worked both formally and informally with representatives of interested States, and with such organizations as the National Association of Attorneys General and the National District Attorneys Association to solicit their comments on the draft regulations and guide them through the application process.

In assisting HCFA to draft the regulations, we acted in the belief that Congress intended to encourage the development of a central body of investigative and prosecutive expertise which would prove so valuable that the State would elect to continue its operation after the end of the funding period. Because the legislation had so clearly been modeled on the structure of the New York Special Prosecutor's Office, and because we felt strongly that early and continuing participation by prosecutors was vital to the success of the unit, our regulations created a strong preference for the first of the three alternatives provided by the act—that is, placement of the unit in an agency with Statewide prosecutive authority.

This preference caused difficulties for the district attorneys in some States, and, in response to their concerns, we included a provision for referral by the attorney general of individual cases to district attorneys whose offices had a demonstrated interest and capability in the prosecution of medicaid fraud. The regulations also provide that, where a State has no central prosecutive authority and elects to adopt the alternative method of referring all cases to the local prosecutor, the fraud control unit must consult with the prosecutor at the earliest possible stage in order to insure that the case will be developed in a manner which meets his needs. To date, we have seen an extraordinary effort on the part of such States as Colorado and Washington, to name but two, to coordinate the work of the attorney general and the district attorneys in a way that is adapted to their special requirements, but at the same time complies with the regulations under section 17.

Once the State units are in place, this office will assume responsibility for providing advice, as needed, in investigative and audit techniques and will serve as liaison between the units and other Federal law enforcement and prosecutive agencies. In addition, we have principal responsibility for developing and coordinating training for fraud investigators and prosecutors assigned to the units, and we have begun planning, with the cooperation of some of the more experienced States, to present an extensive training program for unit personnel in the Fall.

We expect the State fraud control units to carry the major burden of enforcement in this State-administered program, but this does not mean that the Federal presence will diminish. The Office of Investigations will continue to work with the Justice Department on the more complex provider frauds, particularly those having multi-State or national implications and those involving either organized criminal influence or public corruption. We intend to pursue, together with the Office of Program Integrity and the States, a variety of fraud detection programs, and we hope that the product of these programs will be of value to both Federal ane State investigators.

In sum, we view the creation of the fraud control units as a major advance in the fight against program fraud, and we feel confident that they will, over the next 2 years, prove themselves to be so cost-effective a law enforcement device that the States will elect, without any hesitation, to continue them even without Federal funding.

Senator CHURCH. Thank you very much.

This program took effect at what time? When was the effective date of the program relating to the State units?

Mr. BEAL. Senator, the regulations relating to the program were published, I believe, on January 23 of this year.

Senator CHURCH. How long was that after the law itself was to take effect?

Mr. BEAL. It was approximately 90 days. The law specifically required that we have regulations published within 90 days, sir.

Senator CHURCH. So the regulations were in effect as of January this year?

Mr. BEAL. That is correct; yes, sir.

Senator CHURCH. And as of now, nine States have set up these special investigative and prosecutorial units?

Mr. BEAL. We have certified, as of yesterday, nine States for this, Senator.

Senator CHURCH. How many States have applications pending?

Mr. BEAL. Eleven States, Senator.

Senator CHURCH. So up until now, only 20 of the 50 States have applied?

Mr. BEAL. Yes. That is, that have formal applications in our office. There are other States that are in the process and are working with us in the preparation and have worked with us over the last months, back and forth.

Senator CHURCH. How many States would you estimate, based on all the data now available, will set up these units by the end of the year?

Mr. BEAL. We have reasonable confidence, Senator, of 35 of the States or jurisdictions. There may well be more than that.

Senator CHURCH. I think that means that, with the 90-percent Federal funding, at least there is considerable interest on the part of the States to participate in the enforcement effort.

Mr. BEAL. Yes, sir.

THE FEDERAL EFFORT

Senator CHURCH. Now in addition to these State units that are being established, what direct investigative and enforcement efforts will you undertake at the Federal level in connection with medicaid fraud itself?

Mr. RUFF. It would be more appropriate if I were to respond to that, Senator. The direct investigation of medicaid fraud falls under the jurisdiction of a number of agencies, principally in HEW, the Office of Inspector General, Office of Investigations. We have grown in the past year from a minimally staffed office of some 10 investigators to almost 80 professional investigators, and assuming that our appropriation makes it the rest of the way through the Congress, we will have authorization for 160 professional investigators in the next fiscal year to get the staff up to that level.

I think it is fair to say that over the past several years the direct Federal investigative involvement in medicaid fraud, as opposed to medicare fraud, has been minimal. There have been a few U.S. attorneys' offices throughout the country—particularly the southern district of New York, the northern district of Illinois, and a few others—which have been very much involved, using the services of the FBI and the postal inspectors, but by and large I think it is fair to say that the direct Federal effort has not been what it should be, which is why we did welcome the State fraud control units.

At the moment I would estimate that perhaps 15 of our man-years in the Office of Investigation are devoted to medicaid fraud and related matters. We would expect that to increase as our staff increases. We would also expect, as I indicated in my prepared statement, that the States will probably bear the burden of the day-to-day enforcement in the medicaid fraud area with the Federal Government playing the role of investigator and prosecutor in the particularly complex multi-State or national investigations or those which have particularly sensitive organized crime or public corruption implications.

JURISDICTION AND DUPLICATION PROBLEMS

Senator CHURCH. So you would see the line of demarcation between the Federal and the State effort being drawn on the basis of the character of the nature of the offense. If it were a multi-State offense that would involve jurisdictional problems for the individual State governments, then it would be appropriately a Federal matter, is that correct?

Mr. RUFF. There is, of course, a Federal jurisdictional interest in any medicaid fraud case given the Federal participation in funding but, yes, when the system is working at its best, I would hope that the line we would be able to draw would place the principal burden on the States and leave to the Federal Government the sensitive area.

Senator CHURCH. I agree with you there because the thing that I think we should strive to avoid is an unnecessary duplication of effort.

Mr. RUFF. I agree, Senator.

Senator CHURCH. And I should think that if the Federal effort would be directed toward the instances of fraud that involved a number of States' operations that extend to a number of States, that would make a good deal of sense. You may get very complex forms of fraud, and that seems to be the way we are trending, that might require specialized skills unavailable at the State level and there Federal assistance might be necessary in cases of that character.

Mr. RUFF. Absolutely, Senator. We would be responsive in any ad hoc situation in which our special skills were required.

Senator CHURCH. I don't want to be too critical in our jump to the premature conclusion because I recognize that you are just beginning to move into this field and you have not had a great deal of time to prove yourselves, but this committee, in my judgment, should establish some benchmarks for determining how effective these stepped-up efforts to deal with the problem of fraud actually prove to be. We need some sort of cost-benefit ratio in determining whether the public is getting its money's worth out of this enforcement and investigative effort.

Now starting at the State level, our objective in passing the law was to give the States incentive to enter the field by providing seed money for the initial establishment of these fraud units, but we will be greatly mistaken, I think, if we don't attempt to furnish the States with sufficient incentive to maintain those units on the basis of State appropriations and work the Federal dole out of the system. Now the only way I can think of for doing this is to provide, by law, for State retention, either all or some part of the recoveries, so that the State agencies can make their case before the legislature on the basis of 3 years of experience. It is clear that this would be money well spent, and the return to the State would be more than sufficient to cover the costs. I think if we don't do that, we are likely to find that the Federal contribution becomes permanent and the cost-benefit ratio will prove to be very disappointing.

I would like to have your own feeling about how we could move toward giving the States this incentive and working the Federal Government out of the picture insofar as a constant Federal subsidy is concerned.

Mr. RUFF. My personal view, Senator, is that your suggestion is a wholly appropriate one. I would have to consult with my brethren to know what the numbers are. That may indeed be the simplest and most straightforward way of continuing the Federal incentive, recognizing that it is indeed a Federal contribution, although perhaps not specifically denominated as such.

We would be giving up the 55-percent—approximately—that otherwise we would be entitled to have. At some point I would like to see that cut off. I think the States ought to bear some burden in this area, but I think the general idea of recoveries being retained by the State at least appeals to me personally without stating the departmental position on it.

Senator CHURCH. What do you have to say about that, Mr. Beal? Do you think it would work, first of all, and do you think it is necessary to yield to the States? Under present law States can recover

their portion, can't they, of whatever may be collected in a fraud case?

Mr. BEAL. Yes, sir, that is correct. The States, of course, contribute to program costs in the medicaid program anywhere up to 50 percent of the cost of that program, so when they recover program moneys properly spent, they share substantially in that recovery, depending on their share, which varies from State to State. They do have that because, in some cases, they are recovering their own State programing funds.

Senator CHURCH. Have you any notion as to whether the inducement would be sufficient to lead these States to appropriate the necessary administrative cost for adequate investigative units if we were to simply follow the present practice of letting the States keep their share of the recovery?

Mr. BEAL. I think, Senator, a great deal of this will depend on how this particular program develops and evolves over the next couple of years if it proves itself, and we have considerable confidence that it will. State medicaid directors and Governors can make the case to their legislatures that in fact this program is paying for itself. But again I think that has to depend to some extent on the experience we see in the next years.

968 CASES UNDER REVIEW

Senator CHURCH. Yes, well, coming to the Federal side, I have an exhibit here which comes from the first annual report of the Office of the Inspector General which determines the cases handled by the Office of Investigation, and this has to do with health care cases, long-term care, hospitals, pharmacies, laboratories and clinics, physicians, other practitioners and beneficiaries, and it shows that presently there are 968 cases under review. Part of these are listed under the Office of the Inspector General and the larger number, in fact, under the OPI. What does OPI stand for?

Mr. RUFF. That is the Office of Program Integrity, Senator, and until the recent months when we have moved to assume full responsibility for criminal investigation of all medicare as well as medicaid cases, the Office of Program Integrity bore the principal responsibility for the investigation of medicare fraud cases.

Senator CHURCH. In addition to the Office of Program Integrity, you have an additional category of Project Integrity that is divided into parts directly monitored. Can you explain that to me?

Mr. RUFF. Yes; Project Integrity is the program that was begun in the spring of 1977, in an attempt to analyze all of the 1976 claims filed by physicians and pharmacists in the medicaid program, to identify billing practices that might be an indication of fraud. We selected 2,500 physicians and pharmacists, approximately 50 in each State, for further investigation. Since that time considerable work has been done by us, by the individual State agencies with whom we cooperated, and by the Office of Program Integrity, so that at this point some 500 cases have been identified as meriting full scale criminal investigation and that is the figure that you see before you.

Senator CHURCH. Now that Project Integrity has been handled by what branch of the Department?

Mr. RUFF. It has been handled by our office through the Office of Program Integrity.

Senator CHURCH. I see.

Mr. RUFF. Our auditors did the computer work; our investigators have done some direct investigations as well as monitoring; and Mr. Nicholson's program has full participation as well.

Senator CHURCH. Now this shows that at the Federal level of the investigation there are just slightly less than 1,000 cases that are under some stage of processing for possible enforcement action and possible prosecution. I have some other figures here which I want to check with you for their general accuracy. Now beginning with the total cases that are being processed—just under 1,000—I have figures here that show that in 1977 the Office of the Inspector General formally referred 19 cases to the Department of Justice and had informal contact with U.S. attorneys in 38 other cases. As of the date of the report, March 1, 1978, six indictments had been returned with convictions in four cases. Seven cases are pending decision by the Department of Justice.

Now I have further information to this effect. During the same period the Office of Program Integrity referred 83 cases to the Department of Justice with 20 indictments returned and 12 convictions. Project Integrity, a special pilot program, has resulted in 197 cases involving civil representation in the amount of $395,000 and, as of this date, none of that money has been recovered. This would show that in 1977 and up to March 31, 1978, about all we have to look at in terms of completed cases are 19 with 19 convictions. Now I assume that at the State level these units have not been set up long enough so that there is any record available.

Mr. RUFF. That is correct, Senator. We did have a very rough figure of something in the neighborhood of, I believe, 129 State medicaid convictions, but it is very difficult to collect that information in any reliable form and I hesitate to use that figure.

WHAT ARE STATES DOING?

Senator CHURCH. Well, I think that we have to find out how to do that. If we are going to monitor this program and determine its effectiveness and decide whether or not the tax money going into it is producing results, we are going to have to have a way to find out what the States are doing. We are going to have to have reliable information concerning both the number of cases and the number of convictions, the amount of money to cover it in the way of penalties, fines, and so forth.

Mr. RUFF. Senator, I think it is clear that once the section 17 units are in place there will be very accurate information about their activities. In addition, as I understand it, the Office of Program Integrity has made some strides in this direction.

Mr. NICHOLSON. We have established a system that we will use to select information on the fraud and abuse cases that are worked by various components at both the Federal and State levels so we can get feedback on a more precise nature in the whole system. The instructions have gone out and we have gotten approval on the forms. We will be in the process of implementing that over the next couple months. I feel confident as a result of the implementation of that reporting procedure that we will be able to provide more accurate information on the success rate of the fraud units that have certified

other contractors in medicare State agencies and their responsibilities in the fraud abuse area.

Senator CHURCH. Well, this committee will be requesting that kind of information as it becomes available so that we can oversee this program and try to make it as effective as possible, and that data will be essential to the committee.

"AN ANEMIC RECORD OF RESULTS"

In the matter of these 19 convictions, that really is a very unimpressive figure and I do not have information as to what was recovered in these 19 cases. I know in the past we have discovered that the courts have been extremely lenient in dealing with doctors, pharmacists, and others who have been actually convicted of fraud. It is a kind of double standard that apparently is at work here and the sentences have tended to be very light—the fines have sometimes been only token fines, very little more than that. In the civil side of our effort there has been no recovery, if this information is correct, so this is sort of an anemic record of results.

Mr. RUFF. Senator, I think first of all the vast bulk of both the investigative and the prosecutive effort in the health care area has been on the medicare side represented by the activities in the program of the Office of Integrity, now being assumed under our office. There has been substantial recovery of the funds on the medicare side. It is true that on the medicaid side neither the Justice Department nor HEW, over the years, has devoted enough resources to investigation, prosecution, and civil recovery of the funds in that area, but we trust that that is going to improve now that we have additional manpower to devote to it, as well as the new thrust that will be given to the effort by the State control units.

Let me just say, by the way, on that score that our current figure of recoveries under Project Integrity—that is the nationwide medicaid State-Federal program—now is in the area of $2.6 million, so I think that our general success in attempting to recoup funds misspent will be more evident next year at this time.

Senator CHURCH. I think it would be well for the staff to calendar another hearing about a year from now so that we can trace this along and see what progress is being made. The figures that we have been using that I have been quoting here deal with the numbers of cases that are under investigation and all relate to the medicaid side, is that correct?

Mr. RUFF. No, that is not correct, Senator. The 1,000 cases represents the entire workload of the Office of Investigation. As I indicated, the principal caseload in the health care area has always been medicare and principally carrying the load has been the Office of Program Integrity. Perhaps Mr. Beal and Mr. Nicholson can be more specific on those numbers, but we are, as I indicated, in the process of bringing that criminal caseload into the Office of Investigation so that next year our report will indicate the full scope of criminal activity by HEW within the Office of Investigation.

Senator CHURCH. Well, the number of indictments and convictions that I referred to covers both medicare and medicaid?

Mr. RUFF. That is correct.

Senator CHURCH. Well, to get back to my earlier conclusion, it is pretty anemic.

Mr. RUFF. I grant you that, Senator, and I think there is considerably more success on that side, both civil and criminal.

Mr. NICHOLSON. We have had, Senator, over the period of our existence as the Office of Public Integrity, approximately 300 convictions for medicare fraud. That is based on the referral of around 800 cases that have been done by the U.S. attorneys. We have had overpayments established in the neighborhood of $31 million over the last several years since we have been actively involved in areas of fraud and program integrity. Of that amount, we recovered about $20 million, so there is still about $10 million outstanding.

Senator CHURCH. I wanted to be sure we have the accurate figures in the record. I thought that the ones I quoted seemed very trivial.

Have you any information as to what this enforcement effect has cost over this period of time as compared to the amount collected?

Mr. NICHOLSON. I could try to provide that information to the committee if you like, Senator.

COST-BENEFITS DATA REQUESTED

Senator CHURCH. I wish you would, and I wish you would include the whole cost involved so that we get some idea of what it is costing us to try and clean up and police this program, compared to the results. It may very well prove to be that we will have to take a different approach in the criminal law enforcement, which is totally inadequate even with State participation. That may be what will happen: I don't know. We may have to cut this whole system and set it up a different way and attempt to find whether there are some structural changes that can be made that will eliminate the incentive to cheat.

Your own estimates of the amount of fraud that exists within the program I have no reason to question, and they are staggering. The attempt to get at these cases and to eliminate this problem is frightening, apparently, because of the size of the profit. Inform us of the public money that is being wasted, that is being skimmed off this whole medical effort by crooked people. I wish you would furnish us with the cost figures and do so in a way that will enable us to identify just what those figures represent so that we can check those figures against the congressional appropriations and try to make some sense out of them.

Mr. NICHOLSON. Yes, sir.

[The following letter was received by the committee:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
HEALTH CARE FINANCING ADMINISTRATION,
Baltimore, Md., August 17, 1978.

Hon. FRANK CHURCH,
Senate Special Committee on Aging,
Washington, D.C.

DEAR SENATOR CHURCH: You may recall during the July 25, 1978, hearings on the DHEW progress in implementing the section 17 medicaid fraud control unit provision, the cost benefit of the Office of Program Integrity's (OPI) fraud and abuse control programs was questioned. The table below demonstrates the cost benefits derived.

	Cumulative Federal dollars identified for recovery through March	Cumulative Federal costs through March 1978—Central office and regional offices
Medicare	[1] $31,770,000	[2] $35,000,000
Medicaid	[3] 9,000,000	[4] 5,700,000
Total	40,770,000	40,700,000

[1] For period January 1970 to March 1978.
[2] Approximate administrative costs for the medicare program integrity effort for period January 1970 to March 1978.
[3] Approximate figure for period January 1976 to March 1978; information reported from the States incomplete. The new fraud and abuse reporting system developed by OPI will correct this situation.
[4] Approximate administrative costs for Medicaid Fraud and Abuse Control Division (Social and Rehabilitation Services) for period January 1976 through March 1978.

It should be noted that prevention and deterrence of fraud and abuse is a primary goal of the HCFA OPI programs. The above table does not reflect any valuation of that deterrence factor.

If you require additional information, please call me.

Sincerely yours,

DON NICHOLSON,
Director, Office of Program Integrity.

"WHO OWNS WHAT"

Senator CHURCH. As I mentioned earlier, there appears to be an escalation and a growing sophistication of the kinds of fraud being practiced. It is no longer a matter of owners buying boats or vacation homes with medicare or medicaid money; we now have instances of multiple ownerships, related businesses, and the contracting for services with a variety of businesses in ways that open the door to complex and hidden manipulations. In fact, one of our committee staff members who specializes in reimbursement in ownership issues feels that it is increasingly difficult to know who owns what, and the first annual report of the Office of Program Integrity to the Inspector General of HEW seems to acknowledge this point when it says, and I quote from the report:

> The new breed of financial manipulators who have invaded the health care industry, particularly the chain organizations, have devised new methods for maximizing program funds which are exceedingly complex, difficult and, in many cases, their action is illegal.

Now I know that you are in the process of drafting regulations to comply with section 3 of the law to require medicare and medicaid providers to supply full and complete information as to the identity of each person with an ownership or control interest in the entity or any subcontractor in which the provider directly or indirectly has a 5-percent or more ownership interest. We have been looking at these draft regulations and some questions have arisen on the basis of our review having to do with this requirement for more complete information with respect to ownership.

I am advised that on the basis of this staff review, the proposed regulations apparently provide no means for validating the information to be supplied by the owners of the contractor providers. Does this mean that the submitted material is to be taken at face value and in no way checked out?

Mr. BEAL. The draft regulations do not specifically provide for validation to the best of my recollection, Senator. However, I am

sure that they will be the basis for monitoring, for checking out, if there is any indication of fraud in the operation.

Mr. RUFF. I think it is fair to say, Senator, that that part of their compliance will be audited by the Office of the Inspector General as we go into the health care providers to check on the accuracy and the validity of their disclosure information. I think it would be unusual to have that kind of provision in a regulation. I don't really believe that the absence of a specific validation function in the regulation really bears directly on the issue. It is something that we are very concerned with because we intend, in the Office of the Inspector General, working with the Office of Program Integrity and HCFA, to make use of that information for criminal investigative as well as auditing purposes, and obviously it is crucial to us as well as to other States and others. We would see both, I suppose, the Office of Program Integrity as well as our auditors spot checking this information as appropriate, Mr. Chairman, to determine whether or not the information was provided accurately.

Senator CHURCH. Well, in looking at these regulations, we were left to wonder whether they were drafted in such a way as to enable you to identify interrelationships and ownership networks that seemed to be the norm. An owner of a nursing home, for example, may own an interest in a pharmacy and possibly a piece of a laundry, a hospital, what have you, construction business, and instead of charging competitive prices at the nursing home, the auxiliary service charges as high a price as possible because of this interconnecting, interlocking ownership network.

Now unless a systematic means of discovering and identifying such patterns is established, hidden ownership may go undetected and the disadvantage for abuse will go unrecognized. Given the fact that we know that the methods for milking the system keep getting more ingenious and less evident, how do you propose to cope with this developing problem?

Mr. NICHOLSON. Senator Church, I think the regulations as they are drafted will give us an opportunity to be able to examine those kinds of interrelationships. The regulations require that if there is a 5-percent or more ownership interest in a particular facility, that information be furnished. That would include not only individual interests, but corporate interests of, let's say, a holding company over a particular group of facilities. I believe it will be able, on the basis of those requirements, to examine to a level of detail and to be able to detect where there is an interlocking arrangement that might suggest a potential for abuse in the program.

Senator CHURCH. Well, you are aware of the problem.

Mr. NICHOLSON. Yes, sir.

Senator CHURCH. And you try to deal with it in devising these regulations.

Mr. NICHOLSON. Yes, sir. Very shortly, as these regulations are proposed, we will be releasing instructions and information to medicare contractors, medicaid State agencies, and to the private community to make sure they understand what these disclosure requirements entail.

Mr. RUFF. I think on that score, Senator, the key is what we do with the information after we get it and we hope we will get it in the course of the next year so that we can, in fact, determine that an

owner of a facility in one State also has an interest in a facility in another State. That really is a matter of how the information is treated once it is gathered.

Criticism: Slow Implementation

Senator Church. We have a letter [1] addressed to me, as the chairman of the committee, from one State attorney general to get its operation approved for participation in its program, and the attorney general has reported to us, to summarize:

> I believe that the general posture in HEW in the substantive areas of how to tackle fraud and what is the appropriate role of a single State agency, vis-a-vis fraud control, is lacking in vision and lacking in aggressiveness. I get the impression that HEW is more concerned with setting up a structure for evaluating grants than in implementing the purposes of the law which, as I understand it, was to encourage aggressive and innovative approaches on the part of States to protect and vigorously prosecute medicaid fraud.

He also says in his letter:

> I can only conclude that HEW is implementing H.R. 3 with people whose sole knowledge of fraud stems from medicare experience and who are trying to force the single State agency and medicaid fraud control unit into a Federal medicare investigative and prosecutorial role. This amounts to the Federal agency substituting its own definition of fraud with a far more encompassing State definition.

Now what about these criticisms?

Mr. Beal. I think there are two, Senator. The latter one, in terms of any effort by us to force a particular pattern or definition of fraud or method for its investigative and detection, I don't think is correct. I think the law very wisely left to the States the responsibility for establishing these units and for operating them under their laws with the Federal involvement limited to the funding of them, the establishment of standards, and the maintenance of records of their performance, which I think we have an obligation to do for the Congress. So I do not think that is a valid criticism. The States are operating these programs and they will continue to do that.

On the other, in terms of aggressiveness, I think we have come a long ways in recent years and in recent months in the efforts by this Department in the whole area of fraud and abuse. I think that is particularly so in the area of establishing these units. We have worked with States and we have encouraged the development of these units. We have, as I say, applications in hand, or States certified, which would cover 72 percent of the medicaid expenditures. It is our objective to get those units into opertation to the extent that it is in the Federal power to do so, and we mean to keep at it.

Mr. Ruff. Senator, I think I just have to comment, without knowing what State that attorney general comes from, but I think he is just dead wrong. I think that first of all we have to begin with a congressional determination that the kind of structure evidenced by the provisions of section 17 is the optimal structure for the investigation of provider fraud—not beneficiary fraud, but provider fraud. This program is modeled directly on the office of the man who will testify later, Deputy Attorney General Hynes. The statute calls for what I think is an appropriate mixture of investigative and auditing functions;

[1] See appendix, item 2, page 37.

indeed we have forced that structure on the States because that is what Congress called for and that is what I believe to be the most effective prosecutive and investigative device. Some States have, in fact, been reluctant to put that kind of an effort together; others have welcomed it.

"No Claim of Perfection"

I think that, yes, there have been delays. We have made no claim of perfection here, but I think by and large we have attempted to work both formally and informally with States to try to meet their special concerns. We look to a State like Colorado, for example, where the attorney general may not have had statewide prosecutive authority and where there was a district attorney's office in Denver which had been active in the medicaid fraud field. I think that State represents a really shining example of their willingness to work with us.

Our flexibility and their willingness to work together helped create a system in which the attorney general and the district attorneys got together and said, "Let's work out a way of addressing this problem and not worry about our special jurisdictional concerns," and I think that is an example of the best of this system. We have had problems and we are working on them, but I think that that characterization of HEW's approach to this issue, as I said, is just dead wrong.

Senator Church. Can you give me an idea of what the average time has been for the certification process? We have one case here—I think it is Wisconsin—where the application has been pending since March 27. I am just wondering how long it takes, once a State formally applies to participate in this program, for it to be certified and for its agency to be set up.

Mr. Nicholson. It normally takes a couple months, Mr. Chairman.

Senator Church. A couple of months?

Mr. Nicholson. Normally it takes a couple months, but it would be around 2 months from the time the application is filed.

Mr. Ruff. I think it is worth pointing out though, Senator, that funding is retroactive to the date of application, so it is not a matter of losing that funding through the period between the filing of the application and actual certification.

Senator Church. How do you determine the amount or what formula has been adopted for determining the amount of the Federal Government's role for making available in a given State? I know it is 90 percent, but does that depend upon how large the local contribution is or does it depend on other factors?

Mr. Beal. The limit, Senator, is spelled out in the legislation, which is $125,000 per quarter or one-quarter of 1 percent of the State's previous quarter's medicaid expenditures, whichever is higher.

Senator Church. I see. Now have you found that that quarterly determination has been unsatisfactory?

Mr. Beal. In some respects it has, Senator, because the medicaid expenditures in the State can fluctuate rather significantly from quarter to quarter and it has not, I think, been the ideal basis on which to do budgeting and planning of expenditures. I think fixing the participation ceiling at, say, some percentage of the previous year's expenditures or something like that would give you a more level Federal participation in the program.

Senator Church. Do you have any other recommendations to make to this committee as to how the present law can be improved?

Mr. NICHOLSON. We do have the item that Mr. Beal mentioned. We are putting together a technical amendment to change it to an annual computation. Aside from that, there is nothing at this point to really come forward with. There have been some problems. One concern, for example, is whether or not the staffing problem that is currently envisioned as being necessary for a fraud unit to function is appropriate for some of the smaller States. We have interpreted the intent of Congress to suggest that we need to have at least full-time individuals as auditors, investigators, and attorneys in order for any unit to be certified, and this is creating a problem as far as some of the smaller States are concerned. That may be an appropriate thing to come forward with.

NEED FOR FLEXIBILITY

Senator CHURCH. Well, I would hope that we can administer the program, at least within permissible boundaries into the law, in such a way as to accommodate the smaller States, and that means showing such flexibility as you can. There are certain standards that are definite that you have to provide and certainly I would not criticize you for doing that; that is your obligation. If that proves to be the case, I wish you would furnish this committee with the recommendations as to what changes in the law would help to facilitate the program and give the flexibility that it needs to accommodate very differing needs of small States as compared to large States. So often in these Federal programs we don't have that flexibility.

I know that in connection with medicare, for example, and nursing homes and little country hospitals in my State we have a dreadful time of trying to get Federal administrators to understand that they are not dealing with Washington Central Hospital or Georgetown Hospital, but with small units that have very limited resources.

All right. I want to thank you for your time. I would hope that as you get additional experience you would feel free to volunteer to this committee whatever recommendations you may have for changes in the law and the views you have to make it more effective.

Mr. BEAL. We will be pleased to do that, Senator.

Mr. RUFF. Thank you, Senator.

Senator CHURCH. Our second panel this morning consists of Charles J. Hynes who is deputy attorney general of the State of New York and special prosecutor for nursing homes, and Stephen Press who is the chief medical officer of the State of Connecticut.

STATEMENT OF CHARLES J. HYNES, DEPUTY ATTORNEY GENERAL, STATE OF NEW YORK, AND SPECIAL PROSECUTOR FOR NURSING HOMES

Mr. HYNES. Good morning, Mr. Chairman.

Senator CHURCH. I am glad to welcome you back. It has been your perseverance and your effort that had so much to do with our coming to establishing a national enforcement program.

Mr. HYNES. Thank you.

Senator CHURCH. We are indebted to you for showing us the way.

Mr. HYNES. If I may, Mr. Chairman, I would like to summarize my statement and offer it for the record.

Mr. Chairman, I believe that Public Law 95–142, particularly section 17, provides a significant tool to the States to properly contain health care fraud. I further believe that the Department of Health, Education, and Welfare has a fundamental obligation to the taxpayers of this country to encourage States to apply for certification, I am distressed, as you are, at the slow pace of certification, particularly since New York State today has not been certified. I think it is going to lead to a 2-year project rather than the 3-year project which is the congressional intent. I earnestly hope that Congress will amend Public Law 95–142 to permit the 3-year period to begin from the date of certification. That makes more sense.

The New York Experience

Now if I may, I would like to briefly discuss some of the changes that have occurred in New York State in the last 3 years. When we began in 1975 we had a medicaid system that was literally riddled with fraud and abuse, a system regulated by an understaffed, underfinanced State health department which, incredible as it seems now, assigned but a dozen auditors to check the books and records of more than 2,700 facilities with medicaid expenditures of $2.5 billion. Today I am happy to report that between our office and the State department of health, there are more than 300 auditors in New York State.

Before 1975, not one single nursing home owner had been prosecuted anywhere in the State of New York, nor was there any serious attempt to recover fraudulent overpayments to providers. Quite simply, health care providers and other similar white collar criminals—the real profiteers in the system—were pushing us toward fiscal and moral bankruptcy in the nursing home industry.

Today 138 institutional providers, and vendors of services to those institutions, have been indicted by our office. Of the 90 cases completed, 7 have had their cases dismissed, 5 have been acquitted and 78 have been convicted. Jail sentences ranging from 6 months to 10 years have been handed down by an increasingly concerned judiciary. We have received, in cash or by assignment of assets, over $6 million in restitution from convicted providers. Moreover, we have discovered overstated expenditures of $64 million, and of this amount our auditors have turned over to the State department of health and to our own in-house civil recovery division audit reports identifying more than $43.5 million in overpayments.

Our civil recovery division, which was established only last September, has brought 23 lawsuits to date which total over $12 million in claims and has recovered three-quarters of $1 million. And finally, in cooperation with the New York State Tax Department, liens of over $4 million have been assessed against providers.

New York's fraud problem, as this committee and the House of Representatives' committee concluded, was not unique. I think that Public Law 95–142 offers the hope so desperately needed to contain health fraud in this country. Yet the elimination of fraud, however critical in the effort to control costs, must not be viewed as a panacea. It is, to be sure, medicaid's most apparent and controversial problem but, in terms of our entire health care system, it is not the only problem.

This Nation has been talking about national health care for many years. Based on present predictions, total annual health expenditures

will go up $85 billion by 1980, reaching a total of $244 billion. By then experts calculate the cost of hospital care will average well over $200 a day and at some major medical centers the rate will probably reach $500 a day. At this very moment it is estimated that 12 cents of every tax dollar goes to health care.

Fraud, Waste Endanger National Health Insurance

With such figures staring us in the face, universal health insurance plans for people of all ages will never be economically feasible and, thus, can never become a reality unless the economics of health care are carefully analyzed with an eye to evaluating and stopping the waste brought about by fraud and mismanagement.

Today, Mr. Chairman, no one knows how much good patient care really costs and I submit that the first priority of all of us concerned with this issue should be to provide that answer for each of our States.

With the passage of Public Law 95–142, we have the opportunity at last to gather essential information as to the cost, the quality, and the distribution of patient care in this country. It is for these reasons that I have proposed that such offices be made permanent.

Thank you.

[The prepared statement of Mr. Hynes follows:]

Prepared Statement of Charles J. Hynes

Senator Church, members of the committee, ladies and gentlemen, for nearly 4 years my office has struggled with the problems of medicaid fraud and mismanagement in New York State. While we have been reasonably successful in identifying fraud and abuse and in beginning the process of administrative reform, it is clear that lasting improvement will require a major overhaul of the ways we deliver and pay for health care in this country. Until we design and implement long-term reforms in our current medicaid system, the crisis in medicaid and in the rest of the health care system will continue to grow.

When we last met in late 1976, I testified that I would have liked nothing more than to tell you that the forces of evil in the health care industry in my State and elsewhere had been vanquished, and that order and justice had returned to the benefit of our elderly people. I also stated that I feared there still existed a climate in this country where the exploitation of old people was a respectable and risk-free profession and that our Nation was in danger of losing far more than Federal and State tax dollars—it was in danger of losing a cornerstone of the American way of life itself.

I now believe that the tide has begun to reverse itself through the efforts of your committee, Representatives Jim Scheuer of New York and John Moss of California, and others, in passing a bill Public Law 95–142, commonly referred to as H.R. 3. This bill, signed into law in October 1977, gives each State, perhaps for the first time since the advent of medicaid and medicare, an opportunity to properly contain health care fraud.

The basic purpose of section 17 of this law is to improve the capacity of State and Federal governments to detect, prosecute, punish, and discourage fraud and abuse by providers participating in the medicare and medicaid programs. Proposals merely to make existing single State agency fraud programs eligible for special Federal funding were rejected, and I believe correctly so, as only providing additional Federal dollars to the status quo.

Congress has wisely concluded, I believe, that without meaningful and independent State programs of criminal prosecution, medicaid fraud could not—and would not—be brought under control. New York State's experience has demonstrated clearly that programs and prosecutions would not mix. The agency responsible for dispersing medicaid and medicare dollars could not be expected to look for criminality in the system.

Further, the average local prosecutor, weighed down with street crimes, muggings, murders, and rapes, could not be expected to prosecute massive white-collar criminal conspiracies. They simply have enough on their hands without the additional burdens imposed by these highly complex and sophisticated schemes.

In its wisdom, Congress provided funding incentives for States to establish medicaid fraud units in their attorney general's offices with statewide investigative and prosecutorial powers over the entire medicaid system.

If they meet the Federal standards, these units will receive Federal reimbursement of 90 percent of their costs for a period of 3 years. Although it is 9 months to the day since this bill was signed into law, only a handful of states—Alabama, Louisiana, Michigan, and New Mexico—have applied and received H.E.W. approval for the Federal funds. A number of other States have submitted applications for the funds and are awaiting similar approval.

With respect to my own State's application, after the promulgation of the regulations and the clarifying of various jurisdictional concerns, New York submitted its application to the Department of Health, Education, and Welfare almost 3 months ago. Having been cited by Congress as the "model agency" for these units, we had hoped for a rapid and affirmative response. This response has not been forthcoming.

Many States that we have contacted are experiencing similar difficulties which can only be blamed on a kind of bureaucratic delay. For example, a "new" unit being set up in a Midwestern State received the following reply in response to its application: "Accompanying your budget by quarters, we will need to know in which quarter each staff member will be hired, the established caseload by quarter, including the delineation by type of case and level of investigation, and a time estimate for case processing by type of case and level of investigation."

What possible answer could be given to such a request by a unit that has yet to undertake the investigation of medicaid fraud within its State? I suggest to you, Mr. Chairman, that had New York been asked for this type of information at the outset of its investigations, the office of the special prosecutor would today be reporting a more moderate story.

Further, the quarterly restrictions and reporting imposed by Public Law 95-142 create a second type of problem. Because the medicaid budget of each State varies from quarter to quarter, there seems to be little, if any, redemption in requesting quarterly reports. The same objectives could as easily be accomplished by annual reports and would, indeed, assist the States in their planning function as well as reduce both Federal and State paperwork and staff time and, hence, dollars expended.

Given the difficulties in establishing or maintaining medicaid fraud control units, it appears that the investigations will actually be funded, then, for a period of 2 years, and not the three as was the original intent. This is not satisfactory in my opinion, Mr. Chairman, when one considers the kind of investigations to which I have been referring.

They are long, they are tedious, and they are difficult. In our office, such an operation is generally begun by sending a team of auditors into a facility or by bringing the books and records of a nursing home or other institutional provider into our office. Usually these particular facilities have been carefully targeted in advance for investigation. Some of the targeting factors we use are as follows:

(1) Operators previously known or believed to be engaged in fraudulent activities;

(2) Affiliation with consultants, vendors, contractors, etc., known or believed to be engaged in fraudulent activites;

(3) Improprieties identified by review of audits conducted by or for other government agencies, referrals from agencies, civic groups, informants, anonymous tips, ect.;

(4) Geographic considerations—certain investigative techniques are more successful in one area than others; certain schemes are more prevalent in certain areas;

(5) Type of facility (voluntary, public, proprietary);

(6) Size of facility;

(7) Medicare/medicaid percentage;

(8) Cost analysis;

(9) Multiple ownership (interlocking ownership in separate free standing hospitals, nursing homes, health-related facilities, etc.);

(10) Multiple facilities—hospitals, nursing homes, health-related facilities, etc.—combined in one facility.

Once the subjects of investigation have been selected, our auditors, using a variety of techniques developed, tested and refined from the inception of our office over 3 years ago, make preliminary judgments as to the validity of the expense claims submitted by the facility to the State. This initial audit work generates leads which are handed over to investigators who operate under the

direction of an experienced prosecuting attorney assigned to the case from the beginning.

All manner of books and records must be obtained by subpena, search warrant, or consent and carefully examined. And I refer not only to the books and records, but also to the myriad of public and quasipublic documents that can often yield substantial investigative leads, such as the following:

(1) Corporate papers;

(2) Title searches, mortgages, etc.;

(3) Professional licenses and applications to the State education department can prove pertinent background data;

(4) Records of credit card companies (D & B); and

(5) Bank records.

These crimes are "paper crimes," and there is rarely an eyewitness. The only "smoking gun" we are likely to find is a set of phony books and records. We must often rely on circumstantial evidence, but evidence that must be more than sufficient to prove criminal knowledge and to rebut the all-too-common defense that "My accountant did it," or "I had nothing to do with the daily financial operation of the home," or "I'm a doctor; I only care about patient care—not books and records." All of these defenses must be anticipated and negated from the outset.

Our investigations to date make it clear that medicaid fraud in New York State prior to 1975 existed on a massive scale. What kind of frauds have we found? We have found everything from the most obvious to the most highly sophisticated criminal scheme. Among the less sophisticated, we have uncovered:

(1) The outright theft of funds by an owner or employee;

(2) The intermingling of patient funds with the proprietor's accounts;

(3) Double billing for items included in the medicaid rate;

(4) Requiring donations from patients and families as condition of admission to the home. In one of the more heinous cases yet uncovered, a Buffalo nursing home operator named Trippi was extorting under-the-table cash payments from family members on the threat of lodging their relatives in the antiquated and ill-kept wings of his facility. The owner, Frank Trippi, was convicted and was himself lodged in the State correctional facility at Attica for nearly 2 years.

(5) The retention of interest on patient accounts; and

(6) The retention of deceased patients' funds. Only slightly more sophisticated are the following schemes:

(1) Billing the State for patients who have died or moved; and

(2) "No-show" or "phantom" employees who are usually relatives of the operator, and who are often carefully disguised as "consultants."

More significantly, we have found vendor frauds that are equally pervasive and even more difficult to detect. My previous testimony before this committee details the types of schemes which, generally, result in cash kickbacks ranging from 5 percent to 33⅓ percent of a facility's gross monthly billing with a particular vendor. In addition to these vendor frauds, which to date have yielded some 50 indictments, we have also seen a dozen more subtle schemes, including phony construction costs, hundreds of thousands of dollars in falsely inflated accruals, and concealed ownership of related companies.

To develop these cases, I have selected and trained a staff of capable lawyers who are, for the most part, former prosecutors. This group works closely with our auditors and our special investigators, who are generally former police detectives, ex-FBI agents, and the like. We conduct frequent in-house seminars. We have invited prominent members of the legal profession, in and out of law enforcement, who have lectured to the staff and kept them current on the latest developments in the law, strategy, and techniques. All this in the pursuit of a standard of excellence which is necessary to cross swords with the best lawyers that white-collar criminals can buy.

From the beginning, our office has proceeded from the principle that there is no pride in authorship—that cooperation among agencies in and outside of New York must be the cornerstone of any hoped-for success.

Our office and the State health department—the State agency responsible for monitoring and setting nursing home rates and standards—have entered into a memorandum of agreement designed to insure that our work dovetails with and complements the programmatic and monitoring work of the department of health. We provide the State health department with technical assistance and up-to-date training in the art of fraud auditing.

We have provided information and expertise beyond New York State, as well. We have encouraged and will continue to encourage law enforcement agencies throughout the country to avail themselves of our experience and intelligence

information—and they have done so on a regular basis. Certainly, no arm of government has a right to think that it can achieve success in an arena of these dimensions without such regular candid exchanges.

In addition to these efforts, we also initiate and support legislative recommendations which will help to eliminate the problems which infect the medicaid program. Similarly, we have an active community liaison program which reaches out to citizen groups in the communities to aid us in enacting remedial changes in the law and in gathering critical intelligence information.

Now let me tell you briefly about some of the changes that have occurred in New York in the last 3 years.

When we began in 1975, we met a medicaid system that was literally riddled with fraud and abuse. A system regulated by an understaffed, underfinanced State health department which, incredible as it now seems, assigned but a dozen (between 11 and 26) auditors to check the books and records of more than 2,700 facilities with medicaid expenditures of $2 billion.

Today I am happy to report that between our office and the State health department there are more than 300 auditors in New York State—a formidable army to contain health fraud.

Before 1975, not a single nursing home owner had been prosecuted anywhere in the State of New York. Nor was there any serious attempt to recover fraudulent overpayments to providers. Quite simply, health care providers and other similar white-collar criminals—the real profiteers in the system—were pushing us toward fiscal and moral bankruptcy in the nursing home industry.

And where are we today? Today 138 institutional providers, and vendors of services to those institutions, have been indicted by our office. Of the 90 cases completed, 7 have had their cases dismissed, 5 have been acquitted, and 78 have been convicted. Jail sentences ranging from 6 months to 10 years have been handed down by an increasingly concerned judiciary, to whom our attorneys have advocated the need for strong deterrent sentencing. We have received in cash or by assignment of assets over $6 million in restitution from convicted providers.

We have discovered overstated expenditures of $64 million and of this amount our auditors have turned over to the State department of health, and to our own in-house civil recovery division, audit reports identifying more than $43.5 million in overpayments.

Our civil recovery division, which we established only last September, has brought 23 lawsuits to date which total over $12 million in claims and has recovered more than three-fourths of a million dollars.

Finally, in cooperation with the New York State Tax Department, liens of over $4 million have been assessed against providers. Twelve defendants have been indicted specifically on tax charges. To date, six have been convicted. There have been no dismissals or acquittals. I might add, parenthetically, that before we began our investigations, there had hardly been a single prosecution anywhere in New York State for violation of the State, as opposed to Federal, tax laws. This extremely valuable weapon against the white-collar criminal had become a dusty relic on the statute books.

Today in New York—at least in the nursing home industry—I believe that we have made fraud a very precarious activity. We have done this, not with mirrors or any other magic, it has been accomplished with resources—the same resources that will now be available to all States under Public Law 95–142.

The medicaid system in this country has been a hostage to fraud and so, too, has been our entire health care system. Yet the elimination of fraud, however critical in the effort to control costs, must not be viewed as a panacea. It is, to be sure, medicaid's most apparent and controversial problem. But in terms of our entire health care system, it is not the only problem.

This Nation has been talking about national health care for many years. Based upon present predictions, total annual health expenditures will go up $85 billion by 1980, reaching a total of $244 billion. By then, experts calculate, the cost of hospital care will average well over $200 a day, and at some major medical centers the rate will probably reach $500. Physicians, already higher paid than members of any other profession, will probably be earning a median income of over $80,000 a year. At this very moment, it is estimated that 12 cents of every tax dollar goes to health care.

With such figures staring us in the face, universal health insurance plans for people of all ages will never be economically feasible and, thus, can never become a reality, unless the economics of health care are carefully analyzed with an eye to evaluating and stopping the waste brought about by fraud and mismanagement.

For the past 3 years, our office has immersed itself in the economics of medicaid and, in turn, the health care system. We have learned that State and Federal

laws which require reimbursement based upon so-called reasonable costs of doing business and prudent buyer concepts are meaningless in practice. The fact is that reimbursement is based upon costs submitted by individual providers who are given little, if any, incentive to economize. Cost ceilings, where they exist, are generally based upon operator versus operator comparisons, often fraudulent operator versus fraudulent operator comparisons, and nothing more. As a result, today no one knows how much good patient care really costs. I submit that the first priority of all of us concerned with this issue should be to provide that answer for each of our States.

With the passage of H.R. 3, we have the opportunity, at last, to gather essential information as to the cost, the quality, and the distribution of patient care in this country. And, it is for these reasons that I have proposed that such offices be made permanent. Among reasonable men and women, the deterrent nature of the operation, as well as its cost-effectiveness, could lead to no less a conclusion.

In closing, Mr. Chairman, I would like to quote something to you: "Beyond the specific instances of fraud and deceit as they may be revealed and must be dealt with, we are bending every effort to produce constructive results that will prevent recurrence of cheating and misrepresentation: Results that will strengthen the administration of regulatory and medical care programs of city departments, and above all, results that will upgrade proprietary nursing homes in respect to operational effectiveness and quality of patient care—all in the public interest."

These words were spoken some 18 years ago by Louis J. Kaplan, then New York City's investigation commissioner and author of the celebrated "Kaplan Report." Those same fraudulent providers found by Kaplan 18 years ago, who were not prosecuted and were allowed to repay their ill-gotten gains at 10 and 20 cents on the dollar, have in the last 3 years been prosecuted and convicted by my office.

New York is committed to seeing to it that our elderly and our poor receive that to which they are entitled and that the scandal of the 1960's, and the scandal of the 1970's, does not become the scandal of the 1980's. And New York stands ready to assist anyone who shares this same concern.

I thank you and will welcome any questions you might have.

Senator CHURCH. Thank you very much for your statement.

STATEMENT OF STEPHEN H. PRESS, HARTFORD, CONN., CHAIRMAN, PROGRAM INTEGRITY SUBCOMMITTEE, NATIONAL COUNCIL OF STATE PUBLIC WELFARE ADMINISTRATORS

Mr. PRESS. Mr. Chairman, as you indicated, I am the head of the Connecticut program. I am also the chairman of the Program Integrity Subcommittee of the National Council of State Public Welfare Administrators. I hold one more distinction which is probably quite unique and has something to do with the statement that I would like to make here today. That is contained in the fact that my medicaid program has within it a successful program integrity unit. Funding for the unit was recently terminated by the Connecticut State Legislature in the current session.

While this action may not have been meaningfully carried out by the legislature and has already been partially revised, it points out one of the problems of operating the medicaid program on the State level. That is that the Federal Government may set its mandates, but Governors and State legislatures will determine how those mandates will be carried out.

In the case of Public Law 95–142, the fact that Congress voted 90 percent financial participation for State fraud units was very effective in putting weight in our State and other States behind prosecutorial functions. However, it ignores the basic function of the single State agency in investigating basic fraud, and particularly in the area of abuse.

In our own State I would say that 90 percent of the collectible cases are in the area of abuse and I would say that this figure is effective throughout the country. The program integrity units or surveillaince and utilization review units are funded with Federal participation from 50 to 75 percent, depending upon whether the State involved has a certified medicaid management information system or not.

Now my State legislature and several others took 95–142 to mean that they no longer had to continue surveillance and utilization review efforts or program integrity units because the State fraud units would do the job. Well, the State fraud units are supposed to do the job of investigating fraud and, as I indicated before, a major part of the collectible dollars in States like my own are in the abuse area.

Senator CHURCH. Could you distinguish between fraud and abuse for purposes of the record?

Mr. PRESS. Well, really what it comes down to is, in many cases, abuse is where intent cannot be proved, where fraud cannot be proven, and in a great extent of the cases this is the fact. Where there is no intent to defraud, with built-in errors of any type, a fraud case cannot be made. In fact, the original program integrity action by HEW—Project 500—is a situation where the bulk of the cases are involving civil recovery and nonindictment because they are not provable fraud cases.

In fact, in my testimony I wanted to mention the fact that Secretary Califano issued a statement a year ago indicating that he has stopped the program integrity computer program because it already had spit out the names of some 47,000 potentially fraudulent providers. The fact is I think that there has been possibly 10 indictments out of the computer list and I think all the situation did is face the State people against angry providers who seemed to be feeling the statement as one which blanket indicted large numbers of physicians. I would have to say that indictments and convictions are much more effective tools for fighting fraud than public relations.

RECOMMENDATIONS

In terms of this situation I would recommend that the State fraud units be continued beyond its 3 years in general because I feel that they are and can be an effective deterrent against fraud. I do not personally believe that they will pay for themselves, particularly in States where a 50–50 match is involved, and I have spoken to attorney generals in other States than New York who agree with that position, such as New Jersey. I have gotten a feeling that they themselves feel that abuse is the more effective area for collection of dollars than fraud.

Beyond that, I heard mentioned earlier the fact that the reimbursement under 95–142 may be retroactive. This is not necessarily helpful because we have a variety of States, unlike New York, which do not have fraud units and will not be given the State go-ahead to start up until they get Federal approval of their programs because their proposals contain staffing requirements. Therefore, they are going to be waiting for approval before they start.

Connecticut did not start its hiring process until it got approval of its grant. Even though it is one of the nine States with certification, it has not yet put its people on board and has not gotten underway, and

I would say that effectively would even shorten the program from what Mr. Hynes just stated earlier. So if we are going to have 26 more States certified at the end of this year, well, then maybe it will be a 1½-year program rather than a 3-year program.

In addition, I would like to recommend that the SUR function within the single State agency be funded at least at the 75-percent level as opposed to its 50-percent level. In terms of this unit, this unit in my State and in most other States is a major source of referral for cases to the State fraud agency. Now if you don't have that unit operating, it essentially would cut down the effectiveness of the State fraud unit and, as I will indicate, they provide the principal preliminary investigative source for the State fraud unit. In my own State this unit operates at a cost-benefit ratio of about $7 to every $1 spent. The unit has only been functioning since last October. It has collected about $100,000 a month and operates at a cost of about $150,000 a year.

Senator CHURCH. Can you explain just how that program operates? Is that a computer operation?

Mr. PRESS. Yes. I was going to get into that.

Senator CHURCH. Good.

Mr. PRESS. We operate on everything from a variety of sources, everything from tips to medicare referring the cases to us. We also have in being right now a system called Amoeba, which essentially is a table-driven system which ranks deviated providers by the amount of deviation. In other words, if they perform more than one first office visit, if they perform too many lab tests, give too many prescriptions, whatever particular example we use in the system, they will be ranked by the system in the order that they perform these deviations.

This essentially is nothing more than additional tips for investigations. It provides us a place to start investigations along with a number of dollars that the provider has received. This is equivalent to, but probably not as effective as, the MMIS systems. We expect this to be in operation next year in Connecticut. I would mention in terms of the MMIS system that there are some States that have certified systems which do not necessarily get the maximum benefit from them.

One of the problems in one big Western State is that they have a system which reports all the deviations by providers from that State in a single month but it does not rank them. In other words, it has 10,000 pages of reports indicating what doctors have deviated, but it does not say which are the worst and which are the best. Essentially you have to go through the 10,000 pages to determine who the worst offenders are. The fraud and abuse unit in that State is not using the system except as backup. In other States they have got the same extensive reporting system, but no staff.

Without staff at the surveillance and utilization review level, the reports pile up in the corners of rooms and again the system is not effective. I point this out because it is important within the State agencies themselves that they have staffing to do the job of preliminary investigation. Out of those preliminary investigations frequently come the fraud referrals to the State fraud units. Now without the 90 percent funding incentive, the States have not worked as well, and I say they may not do their job in the future. Again I would urge that some thought be given to raising the funding level of these units which operate within the single State agency.

Senator CHURCH. In these civil recoveries that the surveillance program assists in the endorsement, how is the recovery treated as between the States and the Federal Government?

Mr. PRESS. It is essentially the same as under the State fraud unit. The recovery is divided by the percentage to which the State participates in the program, so it is essentially 50–50 recovery. I should add that in most cases the recovery is done fairly simple. In some cases we have to exercise State regulation which allows us to withhold the provider's payments and potentially remove him from the program on civil grounds for violating the regulations of the State agency so that we do have those powers.

I know that HEW has drafted regulations which would force those States to carry out that kind of methodology, but it is in effect in a good number of the States of the country, this civil process which allows the suspending of payments and potentially the suspending of the provider itself for the abuse rather than just for fraud.

"TIGHTROPE" BETWEEN SERVICE, DETECTION

I wanted to point out another factor that we suffer from in the medicaid program. The goal of the medicaid program is to provide services to recipients, not just to catch fraudulent providers, and we sort of walk a tightrope between providing the services and trying to eliminate from the program those providers who are treated poorly. Developing claims processing systems to capture fraudulent providers and abusers may be a good thing, but if paperwork drives frustrated providers from the program, its goals will not be met, especially if bill payment is slow as well. We want to keep those providers in the program and we want to make sure that we throw out the bad apples, but we want to retain the rest of the providers in the program as well as we can.

That is why I mentioned that statement before about the 47,000 providers in terms of project integrity who are potential fraud cases. I think we have to be a little bit more careful about what we say. Many of the statements made in terms of fraud, including inspector general reports, were large guesstimates and not necessarily accurate at all. I know that on the floors of Congress there is a great feeling of horror when those figures are announced, but they are just guesstimates.

I know there is a great deal of fraud and I feel there is a great deal of fraud, but I don't feel it is necessarily within the kinds of figures that have been spoken about nationally. I think that what it should be called, even the collectibles that have been mentioned to you this morning, is frequently really what I call abuse, because these are cases which they started investigating on the fraud basis and are kicked back to other State agencies for collection because there are no indictments possible in a particular case.

I guess I have gone through a good deal of what I was going to say. One other area that you did mention was the area of exposure of ownership interests in nursing homes and I did want to indicate that I felt that this was not an area where computer systems would be particularly effective. On the other hand, I think this is an area where it is the major answer and that essentially State and Federal investiga-

tors, as mentioned before, will still need to research facility and land records to come up with the vital information.

Again I would like to stress the importance of keeping providers in the program in terms of providing recipients the proper care. With that I would be happy to answer any other questions you might have.

Thank you.

[The prepared statement of Mr. Press follows:]

PREPARED STATEMENT OF STEPHEN H. PRESS

I am an attorney, a medicaid director of a program with a successful program integrity unit, and the chairman of the Program Integrity Subcommittee for the National Council of State Public Welfare Administrators. I hold one more distinction which is probably quite unique. That is contained in the fact that the Connecticut State Legislature recently voted to eliminate funds from the program integrity or fraud and abuse unit which I oversee. While this action may not have been meaningfully carried out by the majority of our legislature and has already been partially revised, it points out just one of the problems of operating a medicaid program on the State level.

First of all the direction of State medicaid programs is dependent upon Governors and State legislatures. Regardless of the direction of the Federal Government and its mandates, if the State government is of a different mind, that mandate will not be carried out. This is certainly the case in the area of fraud and abuse where many States have ignored the function at lower levels of Federal financial participation—FFP. The fact that Congress voted 90 percent FFP for independent State medicaid fraud units essentially strengthened the case for prosecutorial units, but did little to assist the basic investigatorial units within, State agencies.

The new State fraud units will be a major deterrent against future fraud, and I see this as their major benefit. While collections through them may be considerable, I don't believe they will be able to be self-supporting operations. The reason is the difficult task they face, plus the fact that the bulk of potentially recoverable dollars in the medicaid program are in the abuse area which is still the province of the single State agencies. The abuse function is generally handled by surveillance and utilization review units who received Federal financial participation of from 50 to 75 percent. This was perhaps overlooked by the drafters of Public Law 95–142 who spoke only of 90 percent FFP for the fraud units. This encouraged States to develop the new units but did nothing to encourage the strengthening of the fight against abuse, which is where the dollars are. In addition, State legislators, like my own, viewed the units as a reason for eliminating their ongoing surveillance and utilization review operations. If that would have occurred in Connecticut, the State fraud unit would have been seriously hindered because the S/UR unit will be its major referral source and does much of the basic investigation prior to a determination that fraud may exist.

HEW has since recognized the importance of the SUR units and has asked States to continue to maintain this function. I would recommend, however, that the S/UR function be funded at a minimum of 75 percent FFP if not at the same level as the State fund units. In addition, I would recommend that 90 percent FFP continue to be provided to State for their fraud units after the 3-year period, provided under 95–142, expires. The benefit of these functions is just as important to the Federal Government as the States and in these days of restrictive State budgets, the States must be encouraged to maintain their vigilance against fraud and abuse.

It should be noted that in Connecticut an excellent relationship exists between the single State agency and the new State fraud unit. We expect to work very closely together. Perhaps this is because the relationship is between attorneys. I do know that in some States the relationship is less satisfactory. That possibility may be caused by the fact that the fraud unit is taking over a function previously handled by the single State agency. In Connecticut, referrals for prosecution were always made to an outside agency.

Beyond the problem of interacting with State government is the problem of maintaining sufficient provider participation to insure that medicaid recipients are receiving the services they require. Developing claims processing systems to capture fraudulent providers and abusers may be a good thing, but if the paperwork drives frustrated providers from the program, program goals will not be met. The fact that boycotts of services have arisen in several States gives evidence of this kind of problem. But even more important for the States are the thousands

of providers who silently leave the program and refuse to service recipients because of too much paperwork or they see as harassment. We must walk a tightrope with these providers while trying to eliminate the bad apples and retaining the good ones. Thus, most medicaid directors shuddered when Secretary Califano indicated that HEW had discovered thousands of fraudulent physicians as part of Project 500. First, because we did not believe there were that many provable cases and, second, because of the problems it would cause the States in trying to maintain the level of provider participation in our medicaid program. Fighting fraud via public relations is not as effective as indictments and convictions.

The relationship between provider groups and the State medicaid agency frequently mandates the approach the State takes toward the question of fraud and abuse. In Utah a dental organization reviews and authorizes all dental services, a medical foundation carries out review of physician services, and there is a strong feeling at the State level that strong provider participation in the program, as well as a more-than-adequate fee schedule, mitigates against fraud and abuse by the professional provider. In Connecticut we do refer questionable cases to our State medical society's medical liaison committee, but make fraud referrals based on our medical staff's recommendations. There are a variety of other approaches that States have utilized to ferret out and deal with fraud and abuse. I would like to touch on some of them.

In my own State, several of these approaches are being utilized or are in the planning stage. As mentioned earlier, we do have a surveillance and utilization review or program integrity unit. This unit has been identifying fraud or abuse dollars at the rate of about $7 to every $1 spent on its operation. This unit of nine staff carries out basic investigations based on complaints from a variety of sources from a complaint hotline to medical consultants to medicare. They work with recipient and physician profiles which are provided by our data processing system.

When their investigations are completed, they may recommend the case be referred to the State prosecutor's office for a fraud investigation or sent to our agency's audit unit for collections. We collect almost all of these claims without further problem, but we can use State law and regulations to collect or withhold payment from providers, or to suspend them for violation of our regulations. We also continually use the findings of this unit to tighten and improve our medical policy.

We have recently had Amoeba installed by the Control Analysis Corp. under a Federal grant. This is a table-driven surveillance and utilization review system which provides us with a ranked listing of providers who deviate from the norm in the way they provide services. Such a listing will tell us what doctors are providing more than the average number of lab tests per office visit, or initial office visits, etc. While these factors are not proof of fraud, just like the tips we may receive over our hotline, they pvovide us with a likely place to begin investigations, particularly where the derviating provider bills the State heavily.

Like many other States, we are developing a medicaid management information system. This sophisticated computer system is aimed at providing a quality preaudit on all claims submitted to the State. It also provides a postaudit on claims, similar to the Amoeba system mentioned above, through its surveillance and utilization review subsystem. Many States already have federally approved MMIS systems in operation but some do not use the surveillance and utilization review system effectively. In some cases it is because they are not sufficiently staffed to be able to review the reports turned out by the system. It should be obvious that the computer makes the job of locating deviating providers mush easier, but human beings must investigate to determine whether the deviation is improper or not. In the case of one State, highly staffed in the area of fraud and abuse, their MMIS surveillance and utilization review system provides little assistance. The State staff continues to use other sources of information to begin investigations. This is because their computer system reports all deviations but does not rank providers in the order in which they deviate from the norm. An investigator would have to read thousands of pages in reports to determine who the worse offender is.

Many of the States have contracted their MMIS systems or like systems out to private contractors who operate the system, pay claims, but refer questionable cases to State agencies for prosecution and investigation.

In addition to the kinds of approaches I have already mentioned, several States, like my own, have recently developed medicaid fraud units in their attorney general or States attorney's office. Some States, such as New York, New Jersey, and Massachusetts, had such units prior to Public Law 95–142 which offered major Federal funding for such units. These units have organized significant

resources to bear against fraudulent practices. Some States, such as New Jersey, have enacted legislation which has authorized the collection of treble damages, interest, and other penalities against abusing practitioners.

Public Law 95–142 called for the disclosure of provider ownership as a condition of medicare or medicaid provider certification. This is an important element of the fight against fraud and abuse in the nursing home area. It is something that several States required prior to 95–142. However, by itself it will not be a significant factor in dealing with the nursing home fraud. An effective audit system, both desk and field, coupled with effective regulation plays a much more important role in this area. Once again the Federal penalties may be a major deterrent in preventing hidden ownership in nursing homes. It is unlikely MMIS or equivalent systems will be of any help in uncovering this information. State and Federal investigators will still need to research facility and lend records to come up with the proper information.

Senator CHURCH. Thank you very much, Mr. Press.

CHAIN OWNERSHIP

Mr. Hynes, what kind of ownership disclosure of regulations are we going to have to deal with the chain operations in connection with fraud investigations? We are attempting, as you know, to determine ownership of nursing homes and other facilities. We are beginning now on this committee to look at the chain operations in the nursing home and we find that some of these chains are huge—many thousands of beds. The largest number is nearly 21,000 beds. Some of these are owned, some are leased, some are owned by others but managed by the chain, and finding out who owns that becomes exceedingly difficult. Have you any ideas based upon your own experience that might be helpful?

Mr. HYNES. I don't think that there is any particular evil attached to a chain. It is obvious what we are all concerned about is the non-arm's-length problems that deal with application for reimbursement. We have had a number of cases. I know one case in particular that comes to mind which may interest my friend from Connecticut—a New York operator who was supporting our Connecticut home on New York rates. I think the disclosure provisions in Public Law 95–142 will be an investigative tool. I hope we are certified so that we can get that information into the office.

I don't really know what you are getting at, Senator. I cannot be helpful except to state that we are always concerned in our investigation to insure that the owners of the facilities don't have ancillary services, that they are charging as arm's-length transactions.

AMENDMENT FOR 3-YEAR TEST PERIOD?

Senator CHURCH. I think you testified that because of the time delays in starting up these State units it would be advisable to change the law in the 3-year test period as of a date of certification. I think that is a very good suggestion and it will then give each State fully 3 years of testing and experience. I think that that 3 years is about the minimum time to get some notion of what will be accomplished.

Mr. HYNES. It really depends on the kind of staff that is on board and, in some instances, the type of the investigation. New York, of course, has a history of nursing home fraud dating back to 1960 and 1961 with the New York City commission investigation finding the wholesale fraudulent patterns but, unfortunately, no one had the resources in New York from 1961 to 1975 to do anything about it.

I think 3 years is a good time period. We thought that was the time frame when I first began coming to Washington to suggest these kinds of programs, but it is critical and certainly makes more sense. I believe it falls within the congressional intent that it runs from the date of certification.

Senator CHURCH: I am going to ask the staff to select from these hearings this morning certain statistics that have been made with regard to possible amendments to the law so that this committee can take those suggestions up with the Finance Committee that has the legislative power and see if we cannot work these amendments into the law. I think your recommendation is a very good one.

HOSPITAL FRAUD UNDER REVIEW

Mr. Hynes, you have an HEW grant for investigative fraud and abuse serving New York medicaid and medicare patients. It is my understanding that this investigation is oriented toward a termination of how much growing hospital costs are due to mismanagement and criminal fraud. What are you discovering in this particular area?

Mr. HYNES. I am afraid at this point, Senator, I cannot respond. We have active grand jury investigations in a number of institutions in New York State and it has been our constant policy not to comment while those investigations are on. I will be leaving my current assignment shortly, but I will be happy to pass on to my successor as soon as we have significant developments and assist you in any way I can.

Senator CHURCH. I wish you would do that because we wondered, having looked thoroughly into nursing home abuses, as to what extent these abuses may affect actual hospital operations.

Mr. HYNES. Senator, I share the concern that Mr. Press has that we have to be very careful in this area lest there be an inference that we have the same kinds of problems that we apparently had in nursing homes in New York State, but it was never contemplated by either HEW or the New York office that we would necessarily find fraud in hospitals. It was a concern of both of our agencies that in view of the rising health cost that there will be a survey for a 2-year period to determine whether it is fraud, mismanagement, or waste. I hope to have a report for HEW when the Congress convenes at the first of the year.

Senator CHURCH. Well, I think those categories are, of course, the ones we know about—fraud, mismanagement, and waste—but it would also be helpful to know if there is any noticeable difference between privately owned hospitals that are operated for a profit and nonprofit hospitals that are either publicly owned or are church connected.

Mr. HYNES. Mr. Chairman, we investigated a proprietary hospital, and the indictment alleged kickbacks of a substantial amount of money approaching $2 million, but I have not drawn any inference that is necessarily a pattern in New York. That is the point of the project in HEW, in my office, to determine.

Senator CHURCH. Well, we will look forward to your report and to your successor. Are you moving out of government entirely, or are you——

Mr. HYNES. No, I have been nominated for another position.

Senator CHURCH. You have been nominated for another position.

Mr. HYNES. Yes.

Senator CHURCH. Well, we wish you well.

Mr. HYNES. Thank you.

Senator CHURCH. I appreciate very much your coming down and testifying. Both of your contributions have been very helpful.

Mr. HYNES. It is always a pleasure, Senator. I think the record should disclose that you and your committee have made a tremendous contribution together with, of course, the House of Representatives, and the taxpayers are in your debt.

Senator CHURCH. Thank you very much. I hope that our efforts prove to be successful. We will have to wait and see.

Thank you.

Actually we finished on time this morning which is unprecedented.

The hearing is adjourned.

[Whereupon, at 11:55 a.m., the hearing adjourned.]

APPENDIX

Correspondence Relating to Hearing

Item 1. Letter and Enclosure From Senator Frank Church, Chairman, Senate Special Committee on Aging, To Frank S. Beal, Deputy Administrator For Operations, Health Care Financing Administration, Department of Health, Education, and Welfare, Dated August 9, 1978

Dear Mr. Beal: Thank you very much for your testimony at our recent hearing on medicaid fraud and the role of the State fraud control units. I am glad that you could participate and I look forward to a close working relationship with personnel from the Health Care Financing Administration as the committee pursues its agenda on medicaid fraud and related issues.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by August 25 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

Frank Church.

Enclosure.

Questions For Frank S. Beal, Deputy Administrator For Operations, Health Care Financing Administration

At the present rate of certification it would appear that, for the bulk of the States, this will be a 2-year program. Does this give sufficient time for evaluation of the performance of the program and for recommendations to be made to the Congress regarding the proper level of Federal support after 1980?

Given this rate of certification, would any significant problems be posed if Public Law 95–142 were amended to permit a 3-year period of Federal funding from the date of certification rather than the date of enactment?

What recommendations can you make with regard to congressional action on this matter?

I have suggested that we provide by law for State retention of either all or some additional part of the recoveries made by these units as a means of assuring adequate levels of funding after the expiration of the Federal share. It would be helpful if you would indicate appropriate initiatives in this area.

Item 2. Letter and Enclosure from Senator Frank Church to Frank S. Beal, Deputy Administrator for Operations, HCFA, HEW, Dated August 10, 1978

Dear Mr. Beal: During the course of your testimony at the July 25 hearing of this committee on medicaid fraud, I asked for your comments on issues concerning the State fraud control unit certification process raised in a letter from Wisconsin Attorney General Bronson La Follette.

Because you did not have an opportunity to review the full text of the letter during the hearing, I have enclosed a copy for your reference. This letter will be made a part of the hearing record.

If you wish to have your comments on the issues raised by Attorney General La Follette made a part of the hearing record, I would be pleased to have them by the August 25 record closing date.

With best wishes,

Sincerely,

Frank Church.

Enclosure.

STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
Madison, Wis., July 24, 1978.

Hon. FRANK CHURCH,
Chairman, Senate Special Committee on Aging,
Washington, D.C.

DEAR SENATOR CHURCH: I understand that you are chairing a hearing that will soon be held by the Senate Special Committee on Aging for the purposes of evaluating HEW's implementation of H.R. 3.

Wisconsin is an applicant for H.R. 3 medicaid funds and expects to receive HEW's approval for funding in the very near future. As you can imagine, the process of securing such funds was not fraught without the trials and tribulations associated with a large bureaucracy, and while I am tempted to fully elaborate on those problems, I believe it may be more productive to comment on the substantive areas of H.R. 3.

We have received several indications of changes in policy on the part of HEW that are of real concern. First, HEW seems to have substantially confused the appropriate role of the single State agency, vis-a-vis the medicaid fraud control unit. It was my clear understanding that section 17 of H.R. 3 contemplated the fraud control unit would have a substantial role to play in the detection and investigation as well as prosecution of suspected fraud. Specifically section 17(q)(3)'s provision for the "conducting [of] a statewide program for the investigation and prosecution of violation of applicable State laws * * *" seemed to authorize, if not mandate, substantial investigative capabilities within the unit. We contemplated that the unit could solicit complaints, and once received could exercise discretion on whether to follow through with more detailed investigations. We contemplated further that if these investigations revealed the potential for prosecution of criminal fraud, or an action for damages of civil fraud theories, the prosecution unit's attorneys would pursue the matter to fruition.

We further contemplated that the unit's attorneys would in many cases be involved at the initial stages in the investigation, in order to direct the investigators to appropriate leads, and advise as to legal ramifications of the investigation at various stages. In any event, we anticipated that the "statewide * * * investigation" capability would permit our unit to do a substantial amount of detection of fraud on the basis of complaints received from district attorneys, social service agencies, etc., with referrals being made to the single State agency for administrative action only after the potential for suspented fraud had been excluded. We further contemplated that the definition of fraud, both civil and criminal, would be as provided by State law.

Such an integration of investigation and prosecution in the fraud control unit seemed sensible. While our single State agency functions well, it lacks the necessary resources, having a limited staff, no statutory authority to prosecute and substantial program administration responsibilities that have nothing to do with fraud. In addition, the single State agency's investigative unit does not have the independence from medicaid administration that is required by H.R. 3. Furthermore, since our relationships with the single State agency have been excellent, we thought an appropriate working relationship could evolve without any difficulties.

What Office of Program Integrity seems to say, however, is something vastly different. The Office of Program Integrity officials have, on many occasions and in many different contexts, sought assurances that the principal investigative role would remain within the single State agency. While not excluding the possibility that our "fraud control unit could follow through with independent investigations of complaints received directly, the suggestion has been made very strongly and vociferously by Region V representatives that Congress intended the single State agency to have the principal statewide investigative powers, whereas by contrast the fraud control unit was supposed to operate in a secondary fashion upon referrals from the single State agency. We have received strong suggestions, and have been requested to provide assurances to the effect, that complaints of suspected fraud received by the fraud control unit would be forwarded for further evaluation to the single State agency, a concept which seems totally foreign to H.R. 3 and also unworkable in view of the limited resources and statutory powers held by the single State agency.

I assure you that if the fraud control unit must take second chair to the single state agency (or to any other agency having multiple responsibilities and obligations) for the initial detection and workup of initial complaints, H.R. 3 is doomed to failure. True, obvious frauds by small providers may be detected by such a reduced effort. But the more sophisticated patterns of frauds, especially those in

the institutional areas such as nursing homes and large provider groups, requiring evaluation of massive amounts of documents, and extensive time in John Does or before Grand Juries, will be totally beyond the reach of such single State agencies or any groups. When you deprive the fraud control units of that initial investigative capability, you deprive the States of the ability to work an investigation up to the level of suspected fraud.

In discussing with our staff, the HEW representatives have indicated their concern that permitting the fraud control unit to follow up on investigations directly may enocurage States to strip investigation resources from the single State agency which receives 50 percent Federal funding. While this may be true, there are better ways to deal with such incentives than closing the door to aggressive fraud control investigations where, as in Wisconsin, the unit and the single State agency coordinate their efforts.

HEW personnel also convey the belief that a substantial portion of the complaints received will be with respect to something called "program abuse", which, they say, is not fraud, and should not be within the jurisdiction of the fraud control unit. The term "program abuse" is foreign to the Wisconsin law of fraud. As best as can determine "program abuse" has meaning primarily in the medicare program, where it is defined as an instance of overutilization of medical services, or of billings for more services than were actually provided, and where the Medicare investigators have concluded that they cannot prove the specific intent necessary to prosecute for criminal fraud. Almost every example that HEW has provided of HEW has provided of program abuse is something that would probably be prosecutable as fraud in Wisconsin, either criminally or civilly. Thus, while program abuse may have relevance in other States for defining the proper allocation of investigative resources between the single State agency and the fraud control unit, it has no such relevance in Wisconsin.

I can only conclude that HEW is implementing H.R. 3 with people whose sole knowledge of fraud stems from the medicare experience, and who are trying to force the single State agency and medicaid fraud and control unit into a Federal medicare investigative and prosecutorial role. This amounts to the Federal agency's substituting its own definition of "fraud" for the far more encompassing Wisconsin state definition.

I fear that HEW's disinterest in strong initial investigation by the fraud control unit will function to create an insurmountable bureaucratic barrier against Wisconsin's unit even being able to investigate such potential areas of fraudulent activities as what the medicare people call program abuse, and those patterns of sophisticated institutional-related fraud which greatly exceed the capacities of the single State agency to detect or investigate even at the preliminary stages.

I urge you to consider drafting amendments to section 17(g)3 of H.R. 3 which further define the meaning of the "statewide * * * investigation," with respect to the role that the Congress contemplates for the single State agency. I propose that you make it plain that the medicaid fraud control unit has initial jurisdiction to undertake whatever investigations are necessary to evaluate fraud, and that it in no way takes second chair to the single State agency in investigating fraud complaints.

I would further commend to your attention the need for further refinements in the definition of fraud to make it plain that State definitions govern and that "program abuse" has no role in implementation of H.R. 3.

I understand that you are also considering the question of whether the expiration date of H.R. 3 will come too early for any meaningful development of a vigorous fraud and control unit in States such as Wisconsin, which has only recently developed a medicaid fraud program. We anticipate a minimum elapsed time of 9 months to a year from the date of receipt of an initial complaint of any kind of. sophisticated fraud to commencement of appropriate prosecution, civil or criminal Depending on the number and nature of motions and appeals which may occur after commencement of prosecution, the elapsed time from commencement to verdict may take up to an additional year or two. As a result, it seems reasonable to conclude that the time period for assessing the effectiveness of fraud units created under H.R. 3 should be extended for another 2 to 3 years beyond 1980.

We also anticipate that significant time may be consumed at the investigative level in processing the substantial volumes of records that can be accumulated in a fraud investigation, to identify patterns of conduct. For example, if initial investigation reveals that a provider has billed for services not provided, we would ordinarily ask our investigators to obtain and evaluate as many of the provider's records as possible for the purpose of determining whether and to what extent the pattern is systematic and repeated. This evaluative process is now done manually by our investigators and auditors, a process that has consumed

in several cases months of painstaking investigative man-hours. This time could have been reduced to days if the material had been placed initially in a computerized data bank and then evaluated with the assistance of an analyst. In addition, once the materials obtained from an investigation are placed in the data bank, the materials are readily available for retrieval in many different relevant formats (e.g., all claims filed by that provider for one recipient, all claims filed in a specific category by chronological dates, etc.), a procedure which lends itself to far more exhaustive and sophisticated analysis than can be done manually. We believe, therefore, that the fraud control unit must have access to computer time, system analysts, and programers.

While this need for investigation—specific computer assistance should seem obvious, our informal requests have fallen on deaf ears in HEW's Office of Program Integrity. HEW apparently believes that this is the sort of function that the single State agency is supposed to be conducting, and that Congress did not intend the fraud control units to get into the areas of computer assisted investigations.

While I hope to eventually convince HEW that we stand a much better chance of accomplishing Congress' objectives if we have substantial computer oriented investigative capabilities. I sense that the agency's reluctance to willingly accept this concept derives from the same apparent lack of understanding on HEW's part that the agency having statewide prosecutorial capability must also be the lead investigative agency, and that some States such as Wisconsin are willing to prosecute as fraud matters which HEW prefers to consider as something less than fraud.

To summarize, I believe that the general posture of HEW in the substantive areas of how to tackle fraud and what is the appropriate role of the single state agency vis-a-vis fraud control unit is lacking in vision and lacking in aggressiveness. I get the impression that HEW is more concerned with setting up a structure for evaluating grants than in implementing the purpose of H.R. 3 which, as I understand it, was to encourage aggressive and innovative approaches on the part of states to detect and vigorously prosecute medicaid fraud.

I want to close this letter with a caution. We hope that fraud is not out there. We make no promises on numbers of prosecutions or dollars to be recovered. We will be delighted to prove the absence, and not just the presence of medicaid fraud in Wisconsin. At the same time, unless we are given sufficient authority and encouragement to structure an aggressive and innovative unit, I am afraid that we will reach 1980 having come to no conclusions, because we were deprived of sufficient resources to make the necessary investigations to determine whether or not the alleged fraud had taken place.

For these reasons, I strongly encourage you to consider amendments which would provide the medicaid units with sufficient resources from the onset to conduct the kinds of thorough and comprehensive investigations necessary to determine whether or not there is fraud and, if so, vigorously pursue it from that point onward. This will require, at the very minimum, a change in attitude on HEW's part, if not further legislative revisions.

Sincerely yours,

BRONSON C. LA FOLLETTE,
Attorney General.

ITEM 3. LETTER FROM FRANK S. BEAL,[1] DEPUTY ADMINISTRATOR FOR OPERATIONS, HCFA, HEW, TO SENATOR FRANK CHURCH, DATED SEPTEMBER 21, 1978

DEAR SENATOR CHURCH: This is in response to the list of questions regarding medicaid fraud control units you submitted to the Health Care Financing Administration in your letters of August 9 and 10. We have also incorporated our response to the issues raised by Wisconsin Attorney General Bronson La Follette in his July 24 letter to the committee. The Health Care Financing Administration appreciates the opportunity to aid the committee in improving legislation to control fraud and abuse in the medicaid program.

Our responses to your specific questions are as follows:

Question. At the present rate of certification it would appear that, for the bulk of the States, this will be a 2-year program. Does this give sufficient time for evaluation of the performance of the program and for recommendations to be made to the Congress regarding the proper level of Federal support after 1980?

Response. Since the date of the hearings, fraud control units have been certified in six additional States (Hawaii, New York, Wisconsin, Massachusetts, Cali-

[1] See statement, page 3.

fornia, and Pennsylvania). This makes 15 units now certified and we expect a total of approximately 35 units to be certified by the end of the year. Thus, we anticipate that a majority of States will have operating fraud control units for at least a period of approximately 2 years even if the law is not amended to extend the funding period. We believe that this period of time and the number of units certified should provide ample evidence on which to evaluate the value of such units. The time limit on Federal funding also provides an additional incentive to the fraud units to make an effort to demonstrate effective performance.

The Health Care Financing Administration recently implemented new forms and procedures for reporting cases of medicaid and medicare fraud and abuse. These reporting procedures will provide accurate data on the number of fraud and abuse cases being investigated, the number of indictments, the number of convictions obtained, and the extent of overpayments established. These reporting requirements, together with the various reports required from the fraud control units, should provide an accurate and sufficient data base to evaluate the unit's effectiveness. Thus, we feel sufficient time will exist to evaluate the performance of the units and to recommend appropriate Federal levels of support to the program after 1980.

Question. Given this rate of certification, would any significant problems be posed if Public Law 95–142 were amended to permit a 3-year period of Federal funding from the date of certification rather than the date of enactment?

Response. Amending the legislation to provide for 90-percent funding from the date of certification would result in significant Federal outlays. It appears somewhat premature to recommend additional funding at this time.

Question. What recommendations can you make with regard to congressional action on this matter?

Response. We do not recommend congressional action at this time.

Question. I have suggested that we provide by law for State retention of either all or some additional part of the recoveries made by these units as a means of assuring adequate levels of funding after the expiration of the Federal share. It would be helpful if you would indicate appropriate initiatives in this area.

Response. States now retain the portion of recovered overpayments that reflect the State share of medicaid expenditures. In effect, States recover 100 percent of the moneys they spend for the medical assistance program. In addition, any criminal or civil fines and/or penalties imposed by the State courts are retained by the States. The Health Care Financing Administration feels that the present method of distributing recovered overpayments is sufficient incentive for the States to engage in an active program to identify and investigate and prosecute cases of medicaid fraud or abuse.

The letter addressed to you from Attorney General La Follette of Wisconsin raises several issues upon which the Health Care Financing Administration would like to comment for the record, as follows:

First, we believe there will be enough States certified during 1978 to make an adequate evaluation of the concept at the conclusion of the funding period.

He also expressed concern that HEW's suggested definitions of "fraud" and "abuse" will limit the jurisdiction of the fraud control unit in Wisconsin. The HEW operating definitions of "fraud" and "abuse" are certainly not intended to and do not restrict State authorities in investigating and prosecuting possible criminal acts of medicaid fraud or abuse. Rather, these definitions are simply an effort to generally provide for consistent and understandable application throughout the country. If practices labeled "abusive" by HEW are prosecutable as fraud under Wisconsin's or any other State's law, either civilly or criminally, the State is certainly free to investigate and prosecute these practices as fraud. The section 17 statute explicitly states that the unit's function is to ". . . prosecute violations of all applicable State laws regarding any and all aspects of fraud . . ." in the medicaid program.

Attorney General La Follette seems very concerned over the Department's interpretation of the unit's functions in the "investigation" and "prosecution" vis-a-vis the State agency function in the "detection" of medicaid fraud. Our interpretation in this matter has been solely based on the statute and existing regulations and is not meant to impede, infringe, or undercut in any manner the effectiveness of the State fraud control unit. However, it should be noted that whether or not a State establishes a fraud control unit, the State medicaid agency has, and should continue to have, certain responsibilities for the prevention, detection, and control of fraud and abuse. The current HEW medicaid regulations (42 CFR 450.80) require that a State agency must establish methods to identify situations of fraud in the medicaid program. The realization that to simply identify

situations of fraud and then do nothing to curtail this fraud is unproductive and led directly to the creation of section 17 of Public Law 95–142. The units established under this section would investigate these indentified fraudulent situations, prosecute those engaged in them, and generally act as a deterrent to future attempts to defraud the system.

Attorney General La Follette also contends that the Health Care Financing Administration intended that the "principal investigative" role would be the responsibility of the State agency. This is not correct. Again, it was the realization that the State agencies were doing too little in investigating incidences of potential fraud that created the section 17 units. The units' primary function, as required by statute, is to investigate and prosecute incidents of medicaid fraud. As attorney General La Follette has pointed out, the State units are certainly allowed to engage in independent investigation of complaints received directly by them. The regulations have been amended to require that the State agency "refer all cases of suspected (provider) fraud to the unit." This does not preclude a unit from independent investigation based on leads from other sources. The relationship between the State agency and the fraud control unit should be one of cooperation in an effort to eliminate medicaid fraud or abuse. Moreover, we do not believe that the statute of our regulations preclude exchange of information from the fraud unit to the medicaid agency or that a unit may not request the cooperation of the agency on a particular case.

Finally, Attorney General La Follettee feels that the fraud units should have their own computer capability. Our interpretation of the statute does not prohibit the units from utilizing programers or computers to aid in their investigatory efforts. Many, if not all, of the State agencies already have the hardware and the data resources that the fraud units may require, when appropriate. It is our position that a State fraud unit development of an independent computer system and data bank would be a duplication of valuable resources. The State fraud unit may utilize a programer to devise programs that utilize the data and systems maintained by the State agency. Additionally, the Health Care Financing Administration believes that computer screening, to detect possible cases of fraud or abuse, remains the responsibility of the State agency, State fraud units, however, are encouraged to work with the State agencies to point out how such systems can be improved or expanded.

We appreciate this opportunity to present recommendations and comment for inclusion in the committee's hearing record. We will certainly be available for any additional information or comments you may require.

Sincerely yours,

FRANK S. BEAL.

ITEM 4. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH TO CHARLES F. C. RUFF, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, DATED AUGUST 7, 1978

DEAR MR. RUFF: Thank you very much for your testimony at our recent hearing on medicaid fraud and the role of the state fraud control units. I look forward to a close working relationship with personnel from the Office of the Inspector General as our study of medicaid fraud and related issues continues.

I have compiled a list of questions and requests either made at the hearing or added since. The hearing record remains open for 30 days, and we would like to have the additional material by August 25, If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

FRANK CHURCH.

Enclosure.

QUESTIONS FOR CHARLES F. C. RUFF, DEPUTY INSPECTOR GENERAL, HEW

Public Law 95–142 calls for the Federal share to expire on the first of October, 1980, This leaves a very short time for the evaluation of this program. What benchmarks are you proposing for the evaluation of these units' continued eligibility for Federal funding during that period, and will this evaluation provide recommendations to Congress with regard to the status of this program after the scheduled expiration data of Federal funding?

In his testimony, New York Deputy Attorney General Charles J. Hynes called for an amendment to Public Law 95–142 to permit the 3-year period to begin from the date of certification. Mr. Frank Beal testified that it is hoped that some 35 States comprising 85 percent of medicaid expenditures will be certified by the end of this year. In light of Mr. Beal's statement, what is your opinion of Mr. Hynes' suggestion? What recommendations can you make with regard to congressional action on this matter?

In your full statement for the record, you state that your office is confident that these units will prove themselves to be so cost-effective a law enforcement device that the States will elect, without any hesitation, to continue them even without Federal funding. What evidence does your office now have to indicate this cost effectiveness?

I have suggested that we provide by law for State retention either all or some part of the recoveries made by these units. You have indicated that this is an appropriate suggestion. It would be helpful if you would indicate appropriate initiatives in this area.

It would be helpful to the work of this committee if you would update the information contained in the annual report of the Office of the Inspector General regarding the number of medicaid cases, the number of convictions, and the amount of money recovered in the way of penalties and fines, particularly with regard to the cost of this enforcement effort as compared to the amount collected.

ITEM 5. LETTER FROM CHARLES F. C. RUFF,[1] DEPUTY INSPECTOR GENERAL, HEW, TO SENATOR FRANK CHURCH, DATED AUGUST 25, 1978

DEAR MR. CHAIRMAN: In reply to your letter of August 7, I have set out in the following paragraphs my responses to the additional questions you posed concerning the State medicaid fraud control units.

Question. Public Law 95–142 calls for the Federal share to expire on the first of October, 1980. This leaves a very short time for the evaluation of this program. What benchmarks are you proposing for the evaluation of these units' continued eligibility for Federal funding during that period, and will this evaluation provide recommendations to Congress with regard to the status of this program after the scheduled expiration date of Federal funding?

Response. Neither the Office of Program Integrity, HFCA, nor the Office of Inspector General has as yet set any firm guidelines for evaluation of the "success" of the State fraud control units, nor will such a judgment really be feasible after only 1 year of operation. Eligibility for continued funding, on the other hand, will be the subject of periodic review by both our offices. Recommendations for annual recertification will be based less on the number of investigations conducted, indictments returned and convictions obtained, than on a showing that the unit has performed the statutorily required functions in compliance with the law and regulations.

We will, of course, inquire into the manner in which the unit has pursued the investigation of medicaid fraud, the relationship between the unit and the State medicaid agency, the use of budgeted funds, and other key indicia of effective administration. We will also be compiling, on a regular basis, statistical information concerning the work of the unit, including the amounts of Federal and State funds saved or recovered as the result of the unit's work, and these figures will provide the Congress with some basis for its judgment as to the need for an extended funding period. We would expect to be able, by early 1980, to make recommendations to the Congress on this question with some greater assurance as to the effectiveness of the States' efforts.

Question. In his testimony, New York Deputy Attorney General Charles J. Hynes called for an amendment to Public Law 95–142 to permit the 3-year period to begin from the date of certification. Mr. Frank Beal testified that it is hoped that some 35 States comprising 85 percent of medicaid expenditures will be certified by the end of this year. In light of Mr. Beal's statement, what is your opinion of Mr. Hynes' suggestion? What recommendations can you make with regard to congressional action on this matter.

Response. I do not agree with Deputy Attorney General Hynes that it would be appropriate to provide for funding for 3 years after certification, for I believe that the States should be given some incentive to make their applications at an early date. I do agree, however, that some flexibility in the existing limitation is necessary in order to afford this Department and the Congress a realistic oppor-

[1] See statement, page 8.

tunity to evaluate the success of the program. I would recommend, therefore, that the Congress consider a 1-year extension of the funding period up to October 1, 1981, which would provide 2 full years of experience for the bulk of the States involved and still leave a full session of the Congress in which any appropriate action could be taken.

Question. In your full statement for the record, you state that your office is confident that these units will prove themselves to be so cost-effective a law enforcement device that the States will elect, without any hesitation, to continue them even without Federal funding. What evidence does your office now have to indicate this cost effectiveness?

Response. My judgment that the State units will prove sufficiently cost-effective to convince the States to continue them without Federal funding is not founded on a firm statistical base but does represent my evaluation of the problem that now exists in the medicaid program and the impact that a coordinated enforcement effort, supplementing effective management, can have on reduction of program losses. In our annual report we estimated that $653 million in Federal medicaid funds were lost through fraud and abuse in 1977. This represents a parallel loss of approximately $534 million in State funds. If the maximum statutory allotment is spent by all the States, the cost of the fraud control units will be approximately $20 million and if that investment results in a reduction of only 4 percent in State program losses, the units will have paid for themselves.

The test, however, will be not only whether the units' work results in the actual recovery of fines or overpayments sufficient to meet their budgets. Their impact will include the removal of defrauding practitioners from the program and the deterrence of fraud by others—an effect that is not quantifiable but is nonetheless real. Beyond this, the very presence of the units bespeaks the willingness of government to take action to insure the integrity of public benefit programs, and without evidence of that willingness there can be no continued public support for those programs.

Question. I have suggested that we provide by law for State retention either all or some part of the recoveries made by these units. You have indicated that this is an appropriate suggestion. It would be hlepful if you would indicate appropriate initiatives in this area.

Response. Deputy Administrator Beal has commented on your suggestion that the States be permitted to retain the Federal share of recovered overpayments, expressing his belief that the recovery of the State's share of medicaid expenditures, in addition to any criminal or civil fines that may be imposed, is sufficient to encourage an active fraud control program. HCFA is, of course, the agency responsible for the administration of the medicaid program and has the greatest expertise in dealing with the States in this area, but my personal view remains that a plan of the type you suggest represents a feasible solution to the problem of continued funding of the State units.

To the extent that there may be some concern about the amount of overpayments that would accrue to the States, much of the problem could be dealt with by placing a ceiling on the recoveries that could be held by the State similar to the existing ceiling on section 17 funds.

In any event, no judgment can be made on the need for alternative forms of funding nor on the manner in which such funding would be implemented until we have had sufficient experience with the operation of the units under section 17 to determine the level of their success and the program savings they may create.

Question. It would be helpful to the work of this committee if you would update the information contained in the annual report of the Office of the Inspector General regarding the number of medicaid cases, the number of convictions, and the amount of money recovered in the way of penalites and fines, particularly with regard to the cost of this enforcement effort as compared to the amount collected.

Response. The statistics in our annual report cover calendar year 1977 and, unhappily, very little information is available on State activity during 1978. The Office of Program Integrity has implemented, effective on July 1, 1978, a new statistical system which should provide more rapid and accurate information on both State and Federal activitiy in the medicare and medicaid areas, but as of this date the only data available to us on State medicaid prosecutions covers the first quarter of the year. During that period the States reported only that they had 1,076 medicaid cases under criminal investigation, that they had recovered $3,318,000, and that there had been no convictions.

We do have separate statistics for cases developed under Project Integrity, and there, as of August 11, 1978, 539 cases have been designated for full criminal investigation; 759 cases have been designated for recovery or other administra-

tive action; and recommendations for recovery now total $2,900,000. In addition, 13 indictments have been returned in Project Integrity cases, resulting in 5 contions and 1 acquittal, with 7 cases pending trial. Although the Office of Investigations does not maintain records which are formally divided into medicare and medicaid prosecutions, our files indicate that during 1978, of the 26 individuals convicted of medicare or medicaid fraud in cases handled by the Office of Investigations, working alone or in cooperation with other Federal or State agencies, five were charged with medicaid violations.

You also asked in your letter of August 10 for my thoughts on Attorney General LaFollette's letter to the committee. Although the bulk of the attorney general's letter is directed toward positions taken by the Office of Program Integrity, and Deputy Administrator Beal has, I believe, adequately responded to the issues raised, I would like to make a few comments for the record.

There may simply have been a misunderstanding between representatives of Program Integrity and of the State of Wisconsin, but it is clear in the regulations issued by HEW and in the guidelines provided to the States that responsibility for the criminal investigation of medicaid fraud is vested in the section 17 unit. It is equally clear, however, that the State medicaid agency must continue to bear the responsibility for claims screening and other detection methods designed to uncover illegitimate billings and aberrant practices indicative of fraudulent or abusive conduct. The section 17 unit cannot undertake the agency's administrative and review duties, although it can, and should, offer guidance on more efficient methods for the detection of fraud and is specifically empowered to obtain from the agency provider profiles and other claims data in both computerized and manual form. Similarly, the State agency cannot assume the criminal investigative functions of the unit, but it must, if the system is to work efficiently, scrutinize billing practices and be able to identify those cases where the potential for fraud is sufficient to warrant the attention of the unit and its limited investigative resources.

The attorney general also suggests that HEW is attempting to impose its own definitions of fraudulent conduct on the State. As Mr. Beal has noted in his response, this is not the case; those acts encompassed by any State's criminal code may, of course, be prosecuted as such. It is important to note, however, that the distinction between fraudulent and abusive conduct is not, as the attorney general suggests, unique to the medicare program. There are practices in both medicare and medicaid that fall on the borderline between the legal but unreasonable and the clearly illegal, and both State and Federal prosecutors have regularly encountered difficulty in prosecuting practices which seem illegitimate but which are not so clearly prohibited by the law or regulations as to support criminal charges. We continue to believe that, although a vigorous criminal enforcement effort will deter much conduct that is "abusive" as well as that which is criminal, the primary vehicle for attacking abuse must be strong and effective management, adequate screening procedures, and, most importantly, rapid administrative or civil action to recover overpayments and to remove abusive providers from the program.

In sum, let me assure you that both the Office of Inspector General and the Health Care Financing Administration are committed to the development of "aggressive and innovative approaches" to the detection and prevention of medicaid fraud, and we look forward to a close and productive working relationship with all the State fraud control units.

Thank you for the opportunity to testify before the committee and for the opportunity to respond to these additional questions. If there is anything further that this Office can do to be of assistance to you or the committee, please let me know.

Sincerely,

CHARLES F. C. RUFF.

ITEM 6. LETTER FROM SENATOR FRANK CHURCH TO STEPHEN H. PRESS, DIRECTOR, MEDICAL CARE ADMINISTRATION, STATE DEPARTMENT OF SOCIAL SERVICES, HARTFORD, CONN., DATED AUGUST 9, 1978

DEAR MR. PRESS: Thank you very much for your testimony at our recent hearing on medicaid fraud and the role of the State fraud control units. I am glad that you could participate, and I have asked that the staff of this committee work closely with you and the National Council of State Public Welfare Administrators as the committee pursues its agenda on medicaid fraud and related matters.

I appreciate the points you raise concerning the role of the single State medicaid agency and its relations with the State fraud control unit. I would be very interested to know if the decision made by Connecticut reflects the wider view of other States.

Your comments concerning program abuse are also well taken. In your remarks before the committee and your written statement you comment that program abuse is the more effective area for collection of dollars than fraud. I am intrigued by this point and I would appreciate a more complete explanation.

I would like to have this additional material by August 25 for inclusion in our hearing record.

With best wishes,

Sincerely,

FRANK CHURCH.

ITEM 7. LETTER FROM STEPHEN H. PRESS,[1] DIRECTOR, MEDICAL CARE ADMINISTRATION, HARTFORD, CONN., TO SENATOR FRANK CHURCH, DATED AUGUST 23, 1978

DEAR SENATOR CHURCH: This letter is in response to your letter of August 9. Pardon my delay in responding as I just returned from vacation.

My response and testimony is derived from more than my experience in Connecticut. It includes the feelings of my colleagues from New Jersey, Texas, and other States who participate on the National Medicaid Directors' Program Integrity Committee which I chair. In my testimony I indicated that the investigation of medicaid abuse involves a far larger amount of dollars nationally than that of medicaid fraud. The simple reason for this is that the vast number of investigations of wrongful medicaid provider acts do not bring about indictments because they do not involve provable cases of fraud. The bulk of the cases investigated, outside of nursing homes, are where physicians or other providers bill for procedures which are more expensive than the ones they have actually performed. The bulk of indictments are obtained where the provider has billed for a service he has not performed. The former situation rarely leads to an indictment unless the provider has been previously notified by the State that his practices were improper and the State can prove an absolute pattern. Even where an indictment is brought, it frequently involves only the most obviously wrongful practices leaving the rest for civil recoveries. It is likely, nationally, that more than 90 percent of the cases of wrongful provider cases investigated involve only abuse with a like percentage of the potentially collectible dollars.

Since State medicaid fraud units are designated under Public Law 95–142 only to investigate medicaid provider fraud the single State agency's program integrity unit, if there is one, is still left the responsibility of investigating abuse and recipient fraud as well as the original workups on most fraud cases. In fact, without referrals from the program integrity units most of the State fraud units would have very little work to do. As I stated at the hearing, the program integrity unit is funded by HEW at a far lower level of Federal reimbursement (50–75 percent) than the State Fraud Unit (90 percent). It appears to me, therefore, that the Congress has continued to ignore a far more lucrative area than fraud in its funding of the medicaid program. The lack of parity in funding has already caused disruptions in operations in the fraud and abuse area. In New Jersey funding for their existing State fraud unit has doubled while the program integrity unit has stayed the same size. In Connecticut funding for the program integrity unit has lessened while a 19-member fraud unit has been established.

This letter in no way is aimed at denigrating the value of the State fraud unit which is an important deterrent against fraud. I support its continued funding. If, however, Congress was aiming at stopping the flow of errant dollars from the program it should have provided the States with greater financial incentives to develop their program integrity units because that is where more than 90 percent of the errant dollars can be stopped.

Very truly yours,

STEPHEN H. PRESS.

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[1] See statement, page 28.

ITEM 8. LETTER AND ENCLOSURE FROM WILLIAM M. HERMELIN, ACTING ADMINISTRATOR, GOVERNMENT SERVICES DIVISION, AMERICAN HEALTH CARE ASSOCIATION, WASHINGTON, D.C., TO SENATOR FRANK CHURCH, DATED JULY 24, 1978

DEAR SENATOR CHURCH: The American Health Care Association (AHCA) would like to call to your attention several issues for consideration at the hearings of the Senate Committee on Aging on implementation of section 21 of Public Law 95–142. This section provides that States will be eligible for 90 percent Federal funding for the creation of medicaid fraud control units to investigate and prosecute fraud in their medicaid programs.

AHCA, a national federation of providers of nursing home services, with more than 7,500 facility members, supports State and Federal efforts to detect and eliminate fraudulent and abusive practices in medicaid. We believe the attention the Aging Committee has given to fraud and abuse in Federal health programs has contributed to the development of effective programs to control this serious problem. We also believe that the hearings on State fraud control units will provide an opportunity to more clearly define the objectives and improve the operation of this Federal grant program.

We urge the committee to address three issues in these hearings and have enclosed documents relating to State fraud control units which AHCA prepared several months ago. The issues are as follows:

(1) Whether the establishment of a separate and independent State fraud control unit is cost-effective. It is our contention that fraud is not so widespread as the media and self-appointed reformers would have the public believe and that, except in a limited number of instances, the moneys recovered under a system of special medicaid fraud control units would not justify the costs of operation. We believe this would be particularly true where a State established a prosecuting agency but failed to provide an administrative mechanism for the recovery of overpayment.

(2) Whether the conditions imposed by departmental regulations are so restrictive in certain areas and so ambiguous in others that States fail to see the advantages of participating in the program. It is our view that the regulations should emphasize Federal responsibilities to oversee fraud control unit operations (see (3) below) rather than impose conditions on the structure and functions of these agencies. Enclosed is an AHCA memorandum prepared several months ago citing deficiencies in the implementing regulations.

(3) Whether the statute should be modified so as (a) to impose minimum standards on the operation of these units, and (b) to permit the States flexibility in establishing the structure of fraud control units.

AHCA believes that the statute and regulations should address due process implications by requiring that fraud control units adopt certain criteria for the conduct of their investigations. These criteria, which would be set forth in regulations, should be designed to assure that audits and investigations are conducted fairly and objectively with due recognition of the rights of the public, the recipient and the provider of services.

Enclosed is a copy of a manual prepared by AHCA entitled "Procedures for Handling Medicare/Medicaid Fraud and Abuse Audits and Investigation." This document suggests areas which should be addressed by regulations governing investigative techniques. For example, the procedures cover notice as to the nature, scope, and estimated duration of the investigation, rights of recipients, providers, employees and vendors, findings required upon completion of an investigation and other due process considerations.

We hope this information has been helpful and request this letter and the enclosed memorandum and procedures manual [1] be included as part of the hearing record.

Sincerely,

WILLIAM M. HERMELIN.

Enclosures.

[1] Manual retained in committee files.

MEMORANDUM

To: State Association Presidents and Executives.
From: William Hermelin, acting Administrator, Governmental and Legislative Services.
Subject: State medicaid fraud control units.

INTRODUCTION

This memorandum is designed to bring to your attention certain aspects of the recently adopted Federal regulations of the Department of Health, Education, and Welfare (HEW) governing Federal funding of a State medicaid fraud control unit.[1] These regulations set the terms and conditions upon which a State may receive 90 percent Federal funding for the investigation and prosecution of fraud in the State administered medicaid program.

AHCA supports State and Federal efforts to investigate and prosecute those who defraud the medicaid program. AHCA believes, however, that State officials and legislators should be advised of certain conditions and limitations of the regulations which bear on the advisibility of establishing such a unit. In this regard, the following comments of AHCA, as well as the comments of State officials relating to these conditions and limitations, will assist you in acquainting your State officials with the regulatory requirements.

SUMMARY OF THE REGULATIONS

The duties of a State fraud control unit are to (1) conduct a statewide program for investigation and prosecution of suspected criminal violations pertaining to fraud in all aspects of administration of the medicaid program and the provision of medical assistance, and (2) review complaints alleging abuse and neglect of medicaid patients in health care facilities. The latter includes investigating any complaint which indicates substantial potential for criminal prosecution.

The regulations require:

(1) Establishment of a unit which is separate and independent from the State medicaid agency;

(2) Execution of an agreement between the unit and the agency; and

(3) Employment of a minimum staff.

The regulations require that the unit be located in either the office of the State attorney general or other State department having statewide prosecutorial authority. When located outside the office of the State attorney general, the unit must have an agreement with that office which establishes formal procedures for referring suspected criminal violations. That office must agree to assume responsibility for prosecuting such referrals, or, where appropriate, forward such referrals to the appropriate authority for prosecution while maintaining oversight responsibility for such prosecution.

The regulations prohibit any official of the State medicaid agency from either reviewing or monitoring the investigations or referrals of the unit. The unit must, however, have a formal working agreement with the State medicaid agency. This agreement requires the State medicaid agency to:

(1) Refer all cases of suspected fraud to the unit.

(2) Comply promptly with any request for access to, and free copies of, any records or information in the possession of either agency or its contractors.

(3) Comply promptly, and without charge, with any requests for computerized data stored by the agency or its contractors.

(4) Initiate any appropriate administrative or judicial actions available to recover sums identified by the unit as having been improperly paid to a provider.

(5) Arrange for access to any information or record kept by a provider of services to which the agency is authorized access.

The unit must employ at least one person in the following categories:

(1) An attorney experienced in the investigation or prosecution of civil fraud or criminal cases.

(2) An experienced auditor capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud.

(3) A senior investigator with substantial experience in commercial or financial investigation, capable of supervising and directing the investigative activities of the unit.

Once such conditions are met and the unit is certified by HEW, it may be reimbursed by an amount equal to 90 percent of the costs incurred, except those

[1] 42 C.F.R. 450.80(a)(8), 450.310. A copy of the regulations is included as appendix A.

costs attributable to (1) investigation of nonfraudulent abuse, failure to comply with applicable laws and regulations, or (2) programmatic screening and early detection activities required of the agency. The maximum amount of Federal financial funding will be the greater of $500,000 per fiscal year, or 1 percent of all the sums expended by Federal, State, and local governments during the previous fiscal year in administration of the medicaid programs of that State. The certification of the unit must be renewed annually by HEW and the unit must submit annual reports to HEW delineating its actions.

1. Establishment of a fraud control unit separate from the office of the State attorney general.

One consideration involving the establishment of a unit separate from the prosecutorial arm of State government, which in most states is the office of the State attorney general, relates to the ability of your State to delegate criminal investigative functions to the unit. Under the regulations, a unit which is separate from the office of the State attorney general is required to embark on statewide criminal investigations and establish a formal procedure for referral of criminal cases it has developed to that office. Such a delegation of criminal investigative functions may run afoul of your State constitution, or other State statute, establishing that prosecutorial arm of State government. Usually, such laws require that the prosecutorial and investigative functions be lodged solely in one arm of State government.[2]

Another consideration involves the absence of accountability of the State fraud control unit for its investigative activities. Under the regulations, a unit which is separate from the office of the State attorney general is apparently not accountable to anyone in State government for its investigative activities. The only check by State authorities upon the investigations of such a unit is for the Governor not to approve the request for annual certification of the unit, or the office of the State attorney general not not prosecut certain cases referred for prosecution by that unit. AHCA believes that the unit should be accountable to the office of the State attorney general for its investigative activities. AHCA is not alone in this belief. Several States have formally expressed concern over the lack of accountability of the unit, and the lack of coordination among the unit and other State agencies and officials, in comments submitted to HEW on these regulations.

Another area of concern is that your state medicaid agency must provide the fraud control unit with computer records and other data, in such amounts and in such form as the unit deems necessary, without cost.[3] AHCA believes that because no provision is made under either the statute of the regulations for reimbursement for such services of the agency,[4] the operations of a unit could significantly affect the budget of the State medicaid agency as well as its administration of health care to the residents of your State. Indeed, many States, in comments on these regulations submitted to HEW, have expressly noted that this condition will, in all probability, adversely affect the medicaid budget.[5]

2. Lack of coordination

HEW maintains that the requirement in the statute that such unit be "separate and distinct" from the State medicaid agency proscribes any official of that agency from reviewing or monitoring the activities of the fraud control unit. AHCA believes that neither the legislative history, nor the language of the statute, necessarily require such a stringent separation from the agency. All the statute requires is the establishment of a separate and distinct unit.

Again, AHCA is not alone in this belief. Several States have expressly noted the potential problems inherent in the requirement that the unit be "separate and distinct" from the State medicaid agency in comments submitted to HEW.[6] In general, these comments make it clear that many States believe there should be cooperation between the unit and the agency in order to coordinate the administration of the State's medicaid program. Some States have expressed the opinion that the overall administration of the medicaid program would be much more effective if the regulations required the agency and the unit to operate as partners not adversaries.

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[2] Many States have voiced this concern in comments submitted to HEW.
[3] 42 C.F.R. 450.80(a)(8) (ii) and (iii).
[4] 42 C.F.R. 450.310.
[5] One State noted that the cost of a computer printout of only payments made to a medium scale pharmacy provider exceeds $1,000.
[6] Some States have noted that this condition will reduce the effectiveness of preexisting fraud control units. Because of this condition, these States have indicated that they may not establish such a unit.

The lack of coordination inherent in these regulatory requirements involves more, however, than a conflict with the State medicaid agency. Some States have preexisting mechanisms for investigating alleged incidents of patient abuse. By making the duty to investigate possible criminal patient abuse a condition of certification, the functioning of the unit will duplicate the functioning of such separate preexisting units. Some States have suggested that the unit should be required to refer such complaints to other such agencies. These States have noted that nothing in the statute or legislative history expressly precludes such referrals.

Another instance of lack of coordination involves the relationship of the unit to the Bureau of Surveillence and Utilization Review, Provider Standards Review Organization, the State survey agency, or any other agency in your State charged with similar responsibilities. Because the function of your State's agency may be very similar to that of the fraud unit, AHCA believes that such agency and unit may have redundant duties. Some States have expressed concern over whether establishing such a fraud control unit will usurp the function of such other agencies. AHCA believes that such concern is legitimate because this issue is not resolved by the regulations. Therefore, your State officials and legislators should give careful consideration to the effect of establishing such a unit on the other State agencies.

3. Fraud in recipient applications

HEW states that not all criminal investigations of the unit relating to the "provision of medical assistance" qualify for Federal funding. HEW believes that investigations into possible criminal conduct relating to a recipient's application for medicaid does not qualify because such conduct "cannot properly be construed as fraud 'in the provision of medical assistance,' since only providers may thus defraud the medicaid program." [7] In HEW's view, only investigations into instances of possible criminal conspiracy between a provider and recipient to defraud the medicaid program qualify for Federal funding.

AHCA believes this position is erroneous. The legislative history states: "The entity must also conduct a statewide program for the investigation and prosecution of violations of all applicable State laws relating to fraud in connection with the provision of medical assistance and the activities of medicaid providers. Such unit is not however required to examine potential instances of recipient fraud; this function may continue to be the responsibility of the State medicaid agency. H.R. Rept. 393, 95th Cong., 2d sess. 81 (1977)."

ACHA believes that it is clear that nothing in the statute or legislative history precludes such a unit from investigating recipient fraud and qualifying for Federal funding for such investigations.

4. Access to records

As a mandatory condition of certification, the fraud control unit is to have access to any records in the possession, custody, or control of the State medicaid agency, any of its contractors, and providers. No consent is required. The regulations contain no guidelines governing the use or disclosure of such records by the fraud control unit, except with reference to patient records.[8] Confidentiality of business records is a necessary adjunct to any privately owned and operated business. In the area of medicaid providers, unauthorized use or disclosure of such records could have serious business repercussions particularly when the investigators are not accountable to the people they investigate. You should advise your State officials to consider instituting controls on the use and disclosure of all records available to the unit to insure only the legitimate use and disclosure of the records, and to preclude breaches of confidence.[9]

5. Recovery of overpayments

The regulations are unclear regarding the recovery of alleged overpayments made to providers of health care. In one section, the fraud control unit is to initiate such action or refer the matter to the appropriate State agency.[10] In yet another section, the agreement between the unit and the State medicaid agency indicates that the agency is required to initiate such action after appropriate referral.[11] In

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[7] 43 Fed. Reg. 3118, 3120 (Jan. 23, 1978).

[8] The regulations provide that the privacy rights of patients must be protected. *See* 42 C.F.R. 450.80(a)(8)(v).

[9] Some suggested controls are found in "Procedures for Handling Medicare and Medicaid Fraud and Abuse Audits and Investigations," prepared by AHCA's legal counsel. Pierson, Ball, and Dowd. AHCA has distributed copies of this handbook to State association executives.

[10] 42 C.F.R. 450.310(f)(3).

[11] 42 C.F.R. 450.89(a)(8)(iv).

still another section, the State fraud control unit must report to HEW how many actions were referred, and how much was collected, by the unit and the agency.[12] In comments previously submitted to HEW, many States have noted that such provisions are not only apparently internally inconsistent, but also are inconsistent, with certain previously enacted State recovery mechanisms.

In addition to such ambiguity, AHCA notes that many States do not have any recovery procedures. The Health Care Financing Administration of HEW has published suggested procedures for States to adopt for recovering overpayments.[13] AHCA believes these suggested procedures are deficient in a number of respects, especially in the area of the provider's due process rights and has submitted formal comments to HEW requesting that such deficiencies be corrected.[14]

6. Staffing requirements

Some States have questioned the staffing conditions of the regulations by pointing out that the minimum requirements relating to the full-time employment of attorneys, investigators, and auditors cannot be justified in their States because of limitations on the number of State employees or the increased costs and wasted manpower to the State stemming from such full-time employment. AHCA agrees with these States. AHCA believes that such decisions relating to staffing should be left to the discretion of individual States. To require otherwise not only erodes States' rights but also infringes the ability of a State to tailor a fraud control unit to its specific needs.

7. Fraud unit participation in administrative procedures

One State has suggested in comments submitted to HEW that an attorney of the fraud control unit should participate in any administrative hearing against a provider for sanctions or termination for alleged abusive practices. The rationale for this suggested participation is that such an attorney would be in a better position to develop the requisite evidence of intent necessary for a subsequent criminal prosecution for fraud against the provider and its personnel.

AHCA believes that such tactics are unwarranted because of their elemental unfairness. Without being given advance notice of basic constitutional rights, a provider and its personnel may unknowingly make statements which could be the basis for a subsequent indictment for alleged fraud. Although such an indictment may subsequently be quashed, the case dismissed, or the provider and its personnel acquitted at trial, the harm to the provider and its personnel will have already occurred.

AHCA believes that because of the inherent potential for abuse in such tactics,[15] you should urge your State officials and legislators to prohibit their use. In lieu of such formal prohibition, you should acquaint members of your association with the possible use of such tactics and advise them to obtain competent legal advice before testifying at an administrative hearing or voluntarily producing documents for such a hearing. AHCA believes that the use of such tactics will erode the confidence of providers and their personnel in all State officials.

8. Federal financial participation

The statute and regulations declare that 90 percent Federal funding for State fraud control units will only be available through fiscal year 1980. Due to the lead time that may be necessary to establish such a unit in your State, including the time required for legislative action, the prospect of certifying such a unit in fiscal year 1978 may be remote. By that time, the amount and duration of Federal financial participation available may not be cost-effective to establish such a unit in your State.

Another consideration involves the budget of the unit. Potentially, its budget may be very large: the greater of either $500,000 per fiscal year, or 1 percent of all the amounts expended on medicaid by the Federal, State, and local governments in the State. Conceivably, this could run in the millions of dollars. After fiscal year 1980, however, the State would have to provide greater fiscal support for the actions of such a unit.

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[12] 42 C.F.R. 450.310(1)(1) (i), (iii), and (iv).
[13] HFCA Action Transmittal No. 77–105.
[14] A copy of AHCA's comments has been distributed to you.
[15] AHCA notes that such tactics may not be confined to administrative hearings, but may also be used in audits or investigations. In this regard, AHCA's handbook, "Procedures for Handling Medicare and Medicaid Fraud and Abuse Audits and Investigations," should be consulted. The recommendations contained in that handbook may be adapted to situations involving administrative hearings.

A third consideration involving the budget of the unit relates to the precise scope of Federal funding. In one section of the regulations, the fraud control unit is charged with the duty to investigate all cases of suspected fraud.[16] In another part of the regulations, however, it is stated that: "[Federal financial participation] * * * is not available * * * for expenditures attributable to: (i) Investigation of nonfraudulent abuse or of failure to comply with applicable laws and regulations; or (ii) programmatic screening and early detection activities required of the medicaid agency * * *." [17]

In comments submitted to HEW, several States have voiced concern over these apparently contradictory regulatory provisions. These comments indicate that such conflicting requirements make it unclear whether the unit will be reimbursed for its activities relating to collection of overpayments when the State gives the unit authority to initiate such nonfraudulent activities. Yet other States have expressed concern whether any reimbursement will be available for any efforts of the unit which fall short of criminal prosecution, regardless of whether the unit is authorized to collect such overpayments. AHCA notes that these concerns are legitimate because the regulations leave unresolved the question of whether, or in what amounts, a unit will be reimbursed for its nonfraudulent efforts.

A number of States, in comments addressed to HEW, have rejected the argument that the savings engendered by the operations of such a State fraud control unit will enable the unit to become self-sufficient by 1980. AHCA agrees. AHCA believes that the addition of yet another layer of bureacracy to a States' medicaid program cannot be justified on the basis of cost-effectiveness. AHCA concurs with the concern of some States that the budget of a unit could exceed the costs of administrative recovery of alledged overpayments.

9. Scope of authority of a fraud control unit

AHCA notes that there are other conditions in the regulations which leave unresolved certain issues relating to the authority of a fraud control unit. These unresolved issues concern the functioning of the unit. The first unresolved issue relates to the scope of its authority. Such a unit is authorized to investigate suspected criminal violations relating to provider fraud and patient abuse. It is unclear, however, of the extent of such authority. For example, it is unclear if such a unit has the authority to require the State medicaid agency to submit any or all program materials, such as provider contracts, policy statements, manuals, bulletins and regulations, to the unit for prior approval. Several States have voiced concern over such a possibility. AHCA believes that your State should carefully delineate the exact scope of the authority of a fraud control unit sought to be established in order to preclude such a possibility.

10. Proposed guidelines for conducting audits or investigations by State medicaid fraud control units

If your State establishes a fraud control unit, the potential for misunderstandings between providers and State auditors and investigators is great. There is also the possibility of violations of provider and patient constitutional rights if there are no specific guidelines for State fraud control unit auditors and investigators to follow when conducting such audits or investigations. In this regard, AHCA urges you to review the material contained in a handbook, entitled "Procedures for Handling Medicare and Medicaid Fraud and Abuse Audits and Investigations," which will be published by AHCA shortly. AHCA suggests that you attempt to have the recommendations contained in the handbook adopted as a manual for the personnel of any State fraud control unit. In lieu of official adoption of such guidelines, AHCA advises you to acquaint all members of your State association with these materials to preclude any misunderstandings between providers and State officials.

[16] 42 C.F.R. 450.310(f).
[17] Id. at 450.310(j)(5).

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RETIREMENT, WORK, AND LIFELONG LEARNING

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 3—WASHINGTON, D.C.

JULY 19, 1978

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Retirement, Work, and Lifelong Learning:
Part 1. Washington, D.C., July 17, 1978.
Part 2. Washington, D.C., July 18, 1978.
Part 3. Washington, D.C., July 19, 1978.
Part 4. Washington, D.C., September 8, 1978.

CONTENTS

Page

Campbell, Hon. Alan K., Chairman, Civil Service Commission, accompanied by Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health 177

Babson, Stanley M., Jr., New Canaan, Conn., management consultant, and former vice president of finance, Technicon Corp 186

APPENDIX

Correspondence relating to hearing:

Item 1. Letter and enclosure from Senator Frank Church, to Hon. Alan K. Campbell, Chairman, Civil Service Commission, dated July 31, 1978 207

Item 2. Letter from Hon. Alan K. Campbell, Chairman, Civil Service Commission, to Senator Frank Church, dated September 6, 1978 .. 208

Item 3. Letter and enclosure from Senator Frank Church, to Stanley M. Babson, Jr., New Canaan, Conn., management consultant, and former president of finance, Technicon Corp., dated July 31, 1978 .. 212

Item 4. Letter from Stanley M. Babson, Jr., New Canaan, Conn., management consultant, and former president of finance, Technicon Corp., to Senator Frank Church, dated August 28, 1978 213

Item 5. Letter from Senator Frank Church, to Alfred B. Kirshner, director, New York Teachers Pension Association, Inc., New York, N.Y., dated August 4, 1978 216

Item 6. Letter and statement from William Withers, Ph. D., president, New York Teachers Pension Association, Inc., New York, N.Y., to Senator Frank Church, dated August 18, 1978 216

RETIREMENT, WORK, AND LIFELONG LEARNING

WEDNESDAY, JULY 19, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to recess, at 10:55 a.m., in room 6226, Dirksen Senate Office Building, Hon. Frank Church (chairman) presiding.

Present: Senators Church and Percy.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; David A. Rust, minority professional staff member; Alison Case, operations assistant; Theresa M. Forster, fiscal assistant; and Madonna S. Pettit, research assistant.

Senator PERCY [presiding]. I would like to announce that Senator Church is still at the White House, but because of the time schedule of Chairman Campbell, we will proceed immediately and hope that Senator Church will arrive shortly.

Chairman Campbell, we appreciate your appearance today. We have had outstanding testimony in these hearings. As you well know, an increasing portion of our population falls in the 65 and over category. This is a matter of concern to the country and certainly ought to be developed, analyzed, and reflected in our policies. Your expertise and counsel in this area are very valuable to the committee and we welcome it.

STATEMENT OF HON. ALAN K. CAMPBELL, CHAIRMAN, CIVIL SERVICE COMMISSION; ACCOMPANIED BY THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH

Mr. CAMPBELL. Thank you very much, Senator Percy. With you sitting there and me here, I will occasionally lapse into some statements on civil service employment.

I am accompanied today by Thomas A. Tinsley who is Director of our Bureau of Retirement, Insurance, and Occupational Health. We are pleased at this opportunity to discuss implementation of the provisions in the Age Discrimination in Employment Act Amendments of 1978, which abolish the mandatory retirement age for Federal employees, which previously had been at age 70.

Although we are not certain, we do not believe that eliminating the mandatory age of 70 for retirement will have much impact on the Federal service. Statistics show that there has been a gradual but discernible trend toward early retirement among Federal employees, not unlike the private sector.

Over the past few years, for example, while the Federal work force has remained relatively static at about 2.7 million persons, the number of employees remaining in service long enough to be mandatorily retired has steadily declined. In 1956, of a total of 33,090 retirees, 2,391, or 7 percent, were separated under the mandatory retirement provision of the law. In 1977, this dropped to 1,773 of 85,568, or 2 percent mandatorily retired.

The retirement trend for employees in general has followed essentially the same pattern. The average age of employees retiring has, for example, declined from 63.2 years in fiscal year 1970 to 58.3 years in fiscal year 1977. This data would seem to indicate that eliminating the requirement for mandatory retirement at age 70 would not create an obstacle to the employment of younger people in the Federal service.

Although we do not expect any major impact from this law, we are currently studying its effects as mandated by Congress. The study report, due January 1, 1980, will only encompass 1 year of experience and thus will permit us to draw only tentative conclusions. The report will make before-and-after comparisons in selected agencies, by age groups, in such categories as retirement, other separations, hiring, promotions, and discrimination complaints.

Since mandatory separation in the past has affected few Federal employees, we expect no serious increase in the number of older employees which might adversely affect the efficiency of the Federal service.

Measuring Job Skills

Concerning the development within Federal agencies of objective means of determining job skills obsolescence, the removal of mandatory retirement can be expected to impact performance evaluation programs in at least two ways. The first impact is upon the manager who, seeing his staff growing older, begins to interpret the performance evaluation guidelines more strictly in evaluating middle-aged and elderly employees to provide an alternative to mandatory retirement. The second impact is upon the employees themselves, whose job skills become outdated over time and must be renewed or changed.

Senator Church [presiding]. Aren't you saying, in a rather opaque way, that the alternative to mandatory retirement is firing people who don't perform outstandingly?

Mr. Campbell. Well, what we are saying is——

Senator Church. If that is possible in the Federal service.

Mr. Campbell. What we are saying is that we will need to evaluate the performance of older people carefully because retirement will not be mandatory, and that will put a new burden on performance evaluation that it has not had before.

Senator Percy. Could the charge be made the older workers are subject to unfair evaluations and standards?

Mr. CAMPBELL. I don't think we have any evidence to suggest that that is the case. I would guess, as I am sure you would, that if a person was relatively near retirement, the tendency would be to relax the application of performance evaluation standards in anticipation of any problem solving itself in a short time through retirement.

Senator PERCY. Do you, in your testimony, expand on the phenomena of why so many are retiring earlier, and the underlying reasons for it?

Mr. CAMPBELL. No.

Senator PERCY. Briefly then, in your judgment, what are those reasons? When you consider the popularity of mandatory retirement at age 70 rather than 65, and the support for this change by retirement groups representing senior citizens. Why this phenomena of people leaving? The inflationary pressures and the high cost of living would seem to encourage retiring at a later age, yet the Federal Government, which is the largest employer in the country, seems to be encouraging early retirement of their employees.

Mr. CAMPBELL. I don't believe we have systematically questioned people who are leaving to determine why. Our impression is that the Federal retirement system does indeed make it economically feasible to retire. The possibility of a job after retirement outside the Federal sector, and the automatic cost-of-living increases for Federal retirees, make retirement quite feasible.

Second, I would think that organizations want to bring in new talent, new energy, particularly in middle and upper management. From what I know of the private sector, I believe it also applies in corporations. So corporate executives were very much concerned about the change in the mandatory retirement law. There probably is some encouragement of people to retire once they are eligible.

Senator CHURCH. Please continue.

Mr. CAMPBELL. Basic to all our considerations, however, is the need for more effective performance evaluation for all employees. May I add that adequate performance evaluation is critical to the entire civil service reform effort, as well as to what we are discussing today. A performance evaluation program should include positions described by skills and abilities required. Staffing and performance standards must be reasonable and job-related, and not arbitrarily exclude or discriminate against older workers. The needed skills, abilities, knowledges, and aptitudes necessary for satisfactory performance must be specified and justified. Neither chronological age nor other nonmerit requirements are legal except for isolated positions having bona fide exceptions.

Each employee should receive an impartial evaluation to determine the adequacy of current performance and capacity to continue performing on an assignment. The performance should be measured against established performance standards or against specific performance goals.

Appraisers should be trained and coached, and the appraisals should be monitored to insure that the system is understood and applied without bias.

Provision should be made for additional assessments of individual skills and abilities through interviewing, testing, or other methods to determine training needs and/or qualifications for alternate job assignments and responsibilities.

Components of Evaluation

Other systems would supplement the basic performance evaluation system to provide corrective solutions to performance problems and to assure the absence of age or other discrimination in the process. These include:

Counseling and guidance would be provided under this program to help each employee evaluate personal abilities, limitations, interests, goals, and plans. For employees whose performance is found to be unsatisfactory, additional assessments of individual skills and abilities would be provided through interviewing, testing, or other methods to determine training needs or qualifications for alternate assignments and responsibilities. The program will also assist employees in individual retirement planning and aid in solving alcoholism, drug, financial, and other life adjustment problems.

Modified work arrangements, where appropriate, may also be provided for employees who want to continue to work but at a reduced activity level. Included among such arrangements may be: Part-time work; special work assignments; voluntary reassignment to lower position and pay; and other flexible work arrangements.

To retire or terminate an older employee would require evidence that would stand up in court that the employee was not performing properly—the employer must demonstrate that the separation was not based on age alone. To obtain this evidence, agencies would have to make their programs for evaluating employees more objective. All ages must be evaluated on the same basis. Evaluating an older employee under more severe standards is age discrimination.

Alternative work schedules are a way to continue to utilize advantageously the skills of older workers as well as all workers. Over the years, the Commission has provided encouragement to agencies with needs for part-time workers. Several Commission publications have highlighted the benefits derived from part-timers, for example, "Part-Time Employment," in Women in Action, [Federal Women's Program, CSC], January–February 1978; "A New Look at Part-time Employment," in Civil Service Journal, July–September 1977; and "Flexibility Through Part-Time Employment of Career Workers in the Public Service" [Personnel Research and Development Center, CSC], June 1975.

Part-Time Work and "Flextime"

The Commission is also working with the Office of Management and Budget to make the personnel ceiling system more conducive to the use of part-time workers. Under current definitions, a part-time employee consumes one ceiling space whether that employee works 2 hours or 39 hours per week. Because of the limited number of ceiling spaces, managers have no incentive to use their allocations to hire employees for less than the number of full-time staff hours.

I wish to emphasize that we favor the expansion of part-time opportunities in the Federal service and, as you know, flextime has proved to be a very satisfactory way of organizing the workday.

Flextime has been adopted in more than 150 Federal Government installations covering more than 141,000 employees. Additionally, the Commission is strongly supportive of the Federal Employees Flexible and Compressed Work Schedules Act—S. 517 and H.R.

7814—which recently passed in the House by a wide margin and is presently under consideration by the Senate Governmental Affairs and Human Resources Committees.

In addition to the favorable impact on Government operations, and the extension of hours of public service which we believe will result from use of alternative work schedules, we foresee a number of social benefits flowing from widespread use of these systems. Rush hour traffic, for example, can be dispersed over more hours in the morning and evening with a commensurate increase in the operating efficiency of public transit systems.

More important to this committee is the favorable impact flexible working hours can have on older workers. Testimony from representatives of organizations of older persons on the Federal Employees Flexible and Compressed Work Schedules Act mentioned that many older workers would find it easier to commute by public transportation outside rush hours when sets were more available. Some older persons wake up very early in the morning and would like to start work during their own most productive hours. Others find that they need a little longer time at home in the morning and prefer to work later schedules. All of these personal needs can be easily accommodated under a flexible working hours program.

Preretirement Training

You asked in your letter for a status report on preretirement training. Chapter supplements 831–1, 780–1, and 890–1 of the Federal Personnel Manual require that counseling be available to employees about benefits to which they are entitled by right of their employment. Thus, employees must be offered, and if they wish, be provided counseling in addition to the general information made available to them on retirement, health benefits, and life insurance.

In fact, a new employee is provided a certificate of membership in the civil service retirement system. It contains much of the basic information about the retirement system—eligibility requirements, creditable service, annuity computation formula, and more. They are also furnished information concerning other benefits.

Formal retirement counseling seminars are usually aimed at employees within 5 years of eligibility for retirement; that is, generally age 50 and up. Preretirement seminars use technical experts from the Social Security Administration, local banks, and hospitals or clinics, covering such subjects as estate planning, taxes, nutrition, and housing. Other speakers may include retired employees and members of retiree organizations. In addition to informational materials produced and provided by the Commission, many agencies supplement this effort with other information, such as commercially prepared booklets which are mailed to the residences of employees nearing retirement eligibility.

Aside from the Commission's role in encouraging and assisting agencies to make preretirement planning services available to Federal employees, the Commission has recently become more active by responding to requests to participate in agency programs. During 1978, we participated in 29 preretirement seminars. These seminars have been well received and most agencies are planning to reschedule preretirement counseling sessions later this year.

36–152—79——2

Our view is that preretirement counseling is a continuing learning process—starting with the initial orientation about the benefits provided by an employer, progressing to periodic reminders—via informational issuances or group meetings—throughout one's career, and culminating in formal seminars or individual counseling sessions in the years immediately preceding retirement. We will, however, continue to review existing policy in this area and make any changes which will assist employees in making decisions concerning retirement, and make the transition from the work-a-day world into retirement smooth and satisfying.

I wish to thank you for the opportunity to discuss these matters with you this morning. I will be pleased to do my best to respond to any additional questions or requests you or the members of the committee may have.

Senator CHURCH. I know your time is constrained this morning.

Senator Percy, you had the opportunity to hear the whole testimony and I would like to defer to you for some questions.

Senator PERCY. First, I would like to ask about the preretirement training you mentioned in your testimony. Several other witnesses addressed this issue and spoke on various topics—nutrition, housing, relationships, and so forth—and their relation to retirement. Poor retirement planning causes problems, such as selecting a favorable climate and then finding out they have the sunshine but they don't have friends, and then becoming disillusioned.

Have you found that counseling seminars are valuable for the prospective retirees?

Mr. CAMPBELL. Mr. Tinsley certainly has more experience in this area than I have and I ask him to respond to that.

Mr. TINSLEY. The programs, Senator Percy, are usually tailored to the audiences. We have no standard programs. In many instances, we discuss relocations to another geographic area unfamiliar to the retiree except for a previous vacation. We believe it has been very productive to discuss economics, geography, and things of that nature.

Senator PERCY. The civil service is quite unique when compared with the private sector, because moving the retirement age from 65 to 70 is expected to have little impact. A civil service employee may retire at the end of 30 years of service with approximately 56 percent of his three highest years of earnings as his retirement income. Is that a more generous kind of benefit than most individuals have available to them in the private sector?

Mr. CAMPBELL. I ask Mr. Tinsley to comment.

Mr. TINSLEY. You can retire at age 55 and 30 years service with full annuity. In most private systems, if you retire under age 60, there is usually a substantial reduction, which tends to discourage earlier retirement. So the earlier age permitted by the Federal Retirement Act is a liberal provision and it does encourage early retirement.

Senator PERCY. Even though individuals may only be in their late fifties or early sixties, the benefits they accrue from staying on after 30 years, staying on to age 65 or 70, is not commensurate with the benefits they could get if they just stopped their Federal service and maybe got a part-time job some place else. Their retirement from civil service is not at all affected then by outside income.

Mr. CAMPBELL. As long as that is not in the Federal Government, it is not affected.

Senator PERCY. So, in a sense, it is possible that most of these people are not retiring, rather they are just leaving the Federal Government and seeking employment in other places. Do you have any studies, Chairman Campbell, which indicate this to be true?

RETIREMENT OR NEW CAREERS?

Mr. TINSLEY. We have no detailed study, Senator, but one study several years ago, when we had the problem of frozen salaries for a considerable period of time, indicated that people were leaving and going into second careers. In fact, more and more of this is occurring, even in the private sector, where people leave and engage in a second career. Very few people who retire at age 55 or even at 60 today, really retire in the strict sense of the word, they usually find other gainful employment, if possible.

Mr. CAMPBELL. I would like to make one further comment if I might. It is important to keep in mind that with Federal pay for executives, operating the way it does, that is, long periods of frozen pay, frequently retiring and receiving cost-of-living allowances which would in the long run, produce more income for the retiree than staying in service.

Senator PERCY. Those are all things that ought to be brought up under civil service reform, I suppose. As to how long this policy can be continued, especially in view of the fact that people are living longer. I don't know. Social security will go bankrupt if we continue the current retirement policy of eligibility for retirement benefits after 20 years service. If those people are not going to retire from the work force, then they are going to spend the last 5 years of that 20 years of service lining up another job. They are going to be working while collecting retirement pay. Is there some concern in your mind, Chairman Campbell, as to whether or not we are going to be able to sustain and afford this policy in the light of increasing longevity, and in the light of the number of people who are seeking early retirement, leaving the service at a prime time in their life, but taking their talent some place else?

Mr. CAMPBELL. I think it is a serious problem. It is a problem, particularly in the Federal sector, because of the relatively early retirement age. I would suggest, however, that it is a total societal problem, as more and more people have valuable time left in their careers following their retirement.

I would make only one point; that we are under legislative mandate to produce a study, along with HEW, the Treasury Department, and OMB, to report to Congress by 1980 on the combination of the Federal retirement annuity system with the social security system, and that study will look extensively into the kinds of problems you just raised.

Senator PERCY. I think, Chairman Campbell, you could be excused. We appreciate, very much, your appearance here today. I have two other questions but your colleague could answer them for you if you must leave. I am not sure whether Senator Church wanted to question you personally.

Mr. CAMPBELL. I just would like to add that these are matters of tremendous concern to those of us having responsibility to the Federal work force, and we look forward to working with this committee in this area.

Senator PERCY. Thank you very much.

Mr. Tinsley, one question on social security. There is a provision in that bill which reduced the amount for the surviving spouse. Would the 5-year grandfather clause in this protect employees who are close to retirement and include social security benefits in their retirement plan? Could you briefly explain the rationale for this provision and could you tell us what effect this will have on Federal employees, particularly in terms of retirement income which will be available to them?

Mr. TINSLEY. Although I was not privy to the development of that provision, I think the rationale grew out of a sense that individuals were beginning to be able to multiply their retirement income by virtue of acquiring eligibility for retirement benefits under various systems. There was a particular political sensitivity, and a sensitivity on the part of the public, to the fact that some civil service retirees, particularly those who retire early, go out and obtain eligibility under social security, and, therefore, they are getting two benefits from the Federal Government.

There were a number of proposals to try to correct that problem, some of which were benefit offsets. One proposal contained in the fill involved the problem you mentioned; that is, the impact of combining the two systems. It will undoubtedly result in a reduction of benefits for some individuals. Beyond that, I would have to do much more analysis and study to be able to give you additional information.

Senator PERCY. We would appreciate that.

The difficulty of expanding part-time opportunities within the Federal service has previously been described. The way OMB counts job slots increases pressure within each agency to hire part-time employees who will work almost a full-time schedule, 30 hours a week or more. What can be done administratively to correct the situation? Is there a need for any legislative action on our part and, if so, would you recommend any such changes?

Mr. TINSLEY. There is part-time legislation currently in Congress. The Civil Service Commission and OMB, however, are already acting at President's Carter's direction to expand part-time opportunities under existing rules and regulations. Regardless of the legislative outcome, this effort will continue.

Senator PERCY. Finally, we have heard testimony on part-time modified work arrangements such as part-time work and flextime for older workers. How prevalent are such arrangements in the Federal Government, and can you cite examples where these arrangements have been used successfully? To what extent do we need to expand the provisions of these to have a timetable or have such arrangements available?

Mr. TINSLEY. I don't think the practice has been very widespread to date, Senator. It is part of both the planning of the Civil Service Commission and the agencies to expand these efforts. The impetus here came from the President's interest and direction to all agencies to expand permanent part-time opportunities for employees of all types. Although the effort has been underway only since last fall, the results thus far are encouraging. Part-time permanent employment is up by almost 20 percent over last year. We hope this progress continues, and as I mentioned earlier, are taking a number of administrative actions to ensure that it does.

As far as flextime is concerned, Federal agencies have initiated programs with the limited forms of flextime permissible under current law. Legislation to expand the types of flextime schedules available for use in Federal agencies has passed the House and is presently awaiting action in the Senate. Passage of that bill would undoubtedly spur increased use of flextime in Federal agencies.

Senator PERCY. Thank you very much. I appreciate the information you have provided us with.

Senator CHURCH. Thank you, Senator Percy.

I appreciate your testimony. Thank you very much.

Mr. TINSLEY. Thank you.

Senator CHURCH. Senator Pete V. Domenici, the ranking minority member of our committee, cannot be with us today. He has, however, submitted a statement for the record, which I will insert at this time.

[The statement of Senator Domenici follows:]

STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, during the past 2 days of hearings on "Retirement, Work, and Lifelong Learning," we have garnered a great deal of information on various topics related to changing work retirement patterns. The hearings, to date, have been informative and I have been most impressed with the testimony presented. We are beginning to bring these issues into clearer focus, which I hope will lead to the formulation of plans and policies consistent with our changing demographic situation. Today, we will hear from our last two experts, Chairman Alan Campbell of the Civil Service Commission, and Stanley Babson, an industrial financial consultant.

Chairman Campbell's testimony and his comments on Civil Service Commission efforts in the area of innovative work arrangements should be helpful and informative. As older Americans choose to remain in the work force for longer periods of time, they will need a more flexible work structure so that they can cope with changes in their needs and capabilities. Preretirement counseling, trial retirement, gradual retirement, and part-time employment will help our citizens adjust to longer work spans. As the largest single employer in the country, the Federal Government has an opportunity to serve as a laboratory in the search for viable alternative work modes. Those approaches which prove successful in the Federal civil service can then be adapted for use by State and local governments, as well as the private sector.

Senator Chiles and I recently introduced legislation, S. 2805, the 1978 amendments to the Comprehensive Education and Training Act, which includes a provision designed to expand job opportunities for older workers. I am pleased that the portion of our bill entitled "services for older workers" was incorporated into S. 2570, the CETA reauthorization bill which will soon be considered by the Senate. Our provision encourages older worker participation in work sharing and flextime arrangements. The latter of these two innovations is, in my opinion, a most interesting work style alternative. It has worked well in some Federal agencies, and implementation of the flextime concept on a broader scale is worthy of full exploration. I am interested to hear from Commissioner Campbell about the extent and effectiveness of flextime among Federal employees.

Needless to say, both private industry and the Federal Government must adjust to the changing demographics which accompany the imminent "senior boom." While it is appropriate for the Federal Government to take the lead in the development of flexible work arrangements, experiments in alternative work styles should also be pursued in the private sector. In this regard, I look forward to hearing from Mr. Babson about industry attitudes toward, and implementation of, various nontraditional work arrangements.

I also hope that Mr. Babson's testimony will concentrate on the costs associated with changing work retirement trends. As a member of the Senate Budget Committee, this subject is of tremendous interest to me. I have reviewed Mr. Babson's testimony and found it to be a very thoughtful analysis of the economic ramifications of changing work retirement styles. I believe today's witnesses will contribute significantly to our efforts to explore, in depth, the evolving roles of employment and retirement in our dynamic society.

Senator CHURCH. Our next witness is Stanley M. Babson, Jr., who is a management consultant and former vice president of finance for the Technicon Corp., and the author of a book called "Fringe Benefits, the Depreciation, Obsolescence and Transience of Man." Interesting title.

Your statement is nearly as think as your book, Mr. Babson, but I am confident that you will submit it for the record and highlight it for the committee.

STATEMENT OF STANLEY M. BABSON, JR., NEW CANAAN, CONN., MANAGEMENT CONSULTANT, AND FORMER VICE PRESIDENT OF FINANCE, TECHNICON CORP.

Mr. BABSON. Senator Church, Senator Percy, I am deeply honored to be permitted this opportunity to be a speaker before your committee. As I pointed out in the text of my statement submitted to you, I am really surprised to be here because I don't consider that I am any expert on pension planning. I have been the chief financial officer of a variety of companies over the last 25 years ranging from $2 million in size up to over $200 million in size, and therefore I have been interested, from a private sector standpoint, in this whole matter of the economics of "people cost," and not just retirement alone.

Many of the comments that I have put in my statement, which has been distributed here, come from my book, and I have to advise you that my material may be somewhat dated. Some of the thoughts and provocative arguments that I may have raised 5 years ago are rather like yesterday's mashed potatoes these days, because every newspaper you pick up has similar comments from a variety of experts. I do appreciate the opportunity to be here and I hope that I can contribute something to this committee's very worthwhile project.

There is no way in the time that you have allotted to me that I can go over the 46-page statement that I have submitted.[1] Therefore, I urge you to read it, because I have tried to be provocative and thoughtful in some of my comments, and deliberately so.

As I understand the purpose of this hearing, it is to bring into focus what is happening currently in the United States regarding the trends of aging, retirement, and employment opportunities for the aging, together with the economic consequences of such trends, whether funded privately, publicly, or both. Therefore, really, the only thing I could accomplish here—and I think that perhaps this is all you wish me to accomplish—is merely to try to pose to you some fundamental questions or issues as I see them as a financial observer from the private sector.

First of all, I think that it is important to review the background of our ideas and philosophies of people and the importance of people as a resource to our society. Therefore, I have developed the first section of my material on the question of whether we should see man—when I say man, I mean women here, too, that is, the working person—as an asset to our society and to the industrial enterprise, or whether man is just merely an expense and not an investment.

Being a financial man, I have come from the public accounting community, the financial community, and the industrial community,

[1] See page 196.

and it is rather interesting to me that the historic perspective of man in this environment is as an expense. We charge him off to the profit and loss, and the earnings per share of the corporation, and we really don't consider that he is an asset or an investment to any large degree. This is very startling to me because other resources, such as capital, such as facilities, and such as equipment, we don't treat that way at all. We consider they are assets. Yet, they are passive assets and they don't "do" anything of themselves. It is man that is the dynamic catalyst in this whole equation.

You take, in public accounting philosophy, a building or a piece of equipment and you elect an arbitrary life such as 10 years for a piece of machinery, or 30 years for a building, and then you charge off that investment to your operating expenses and your costs over that period of time. But there is nothing that says that when that period of time is over that you immediately discard that asset, that you say that that investment is no longer of any value to you, or to the corporation, or to society at large. Actually, fully depreciated assets are frequently in use. I think that you could go to any plant in the United States and you would find something that has outlived this defined chronological timeframe.

Senator CHURCH. My two automobiles would qualify.

Mr. BABSON. Right, but why shouldn't we consider that a working person is really the same kind of a thing? Why do we have to say that when he reaches a chronological point of time that he has no further contribution either to his company or to society? I personally reject that philosphy, and as you will see in the latter part of my statement, I am arguing that we should abandon the concept of mandatory retirement. I don't think it has a place in our society. I think the concept of people as a resource in our society is a fundamental philosophy that we should reexamine currently and establish positively.

INDIRECT PEOPLE COSTS

The second point that I wish to make in my text is that indirect people costs are kind of sneaky and they have been rising quite rapidly over the past generation. By indirect people costs, I mean other than direct salary and wages. It is interesting to note that from 1930 to the current day, they have increased over 10 times, that is a tenfold increase, and that is because they started from the very low base. But even when I wrote my book, 5 years ago, they were 30 cents on the payroll dollar at that time, and when you consider that the payroll dollar itself over the last generation, and even currently, is rising very rapidly, you can see that an indirect people cost increase of tenfold on a rising payroll base is an enormous geometric progression. Pensions and retirement cost are, of course, a fundamental cornerstone of that increase. There are other indirect people costs that I think are just as alarming and should be examined.

Senator CHURCH. Would you mention them?

Mr. BABSON. Well, certainly the trend toward more vacations, the trend toward more holidays, the trend toward a shorter workweek. Even within the last week, since I submitted my statement, there was a major article in the Wall Street Journal on some study that has been done by a Mid Western consulting firm that indicates that within 10 years the 32-hour workweek will be the norm. Whether that is true or not remains to be seen, but there is all of this trend for giving people more time off with pay, in other words, paying for more nonproduction.

I think this is a very worrisome thing, and something that we should be alarmed about as a society, becaues there seems to be a need and a pressure for what I call "the onward and upward society"—more time off with the same pay, higher retirement pay, early retirement, etcetera, and I think that one study that this committee should undertake is to understand why this need psychologically arises.

Is there some inequity? Is there a real need for people to work less time and get paid for nonwork? I don't know the answer to that, but I think it is a fundamental psychological study which should be made made so that we understand the motivation for people working and nonworking.

The third point that I think is important and really fundamental——

Senator CHURCH. May I just say that as the burden of cost connected with nonproductivity increases, it could reach a poing where the economy itself is no longer competitive, then living standards for everyone begin to decline. Isn't that true?

Mr. BABSON. Yes, sir; I believe that is true.

Senator CHURCH. Prior to that point in time, I cannot tell you when that point of time will be reached, or if it will be reached, but from an industrial standpoint, what would industry do toward this problem?

Mr. BABSON. Well, one thing you do of course, is to go toward increased automation. To replace man, who has become too expensive an asset or a cost to the company, so that to protect your earnings per share, you go toward increased automation and reduced labor intensive activity. You try to reduce the labor intensive nature of your business to get away from this high pressure and this onward pressure. That is one thing you do.

Another thing you do is go to other countries. That is one thing that multinationals have done. It is not the only reason they go across, however. For the last 2½ years I have been involved in international operations and there are some major advantages in doing just that. That opportunity will be closed in due course of time because all wages worldwide will be leveled up eventually, I am sure. So that is a short-term opportunity at best.

COSTS OF RISING LONGEVITY

The third point that I think is fundamental is that people are living longer. There is no question about this. Mr. Califano spoke the other day about this in his opening remarks. It has been well known from many sources that longevity is definitely increasing. Even in my own lifetime, the increase in longevity of males is 10 years at least. I believe this trend will continue. I don't believe that we have just reached the point where people will now stop increasing longevity. I am sure that the biomedical community can advise you on this more professionally.

A 10-year increase in longevity, as I attempted to show in my statement, in a very simple illustration, could triple your planned pension costs. One of the things, of course, historically, is that people generally were not expected to live past 65. Now that they are living in increasing numbers to 70, 75, 80, and 85—my own father is 88 and I hope he goes to 100—one of the things that is inherent in this is that this is escalating enormously the cost of retirement. It is rather odd

that there is a trend toward early retirement because this even further increases costs.

In my book 5 years ago, I calculated that, for certain planned assumptions which were realistic at the time, that a 5-year earlier retirement would increase your pension cost by 69 percent. Deferring the time by 5 years from 65 to 70 reduces your retirement cost by 45 percent, because your only have 55 percent as much to pay out. Now those figures obviously should be recalculated for the current variables now, but I am sure that the relationship would be similar, the same result would be presented to you. There is no question but that there is an enormous difference between having people try to retire at 60 or even 55, than retire at 70 or 75.

Senator CHURCH. This fact we know arises from the economic consequences of the needs of our society and the greater emphasis on increasing employment opportunities. The Government has long engaged in the practice of encouraging employees to retire early in order to reduce personnel on the payroll and to increase job opportunities, as a savings in unemployment costs, whereas in proof, such actions in reality, increase the total overall cost to the Government.

Mr. BABSON. Yes, I can understand why the Government, from a public policy standpoint, would be interested in encouraging earlier retirement, because you are concerned about overall unemployment in the United States. That is not the same motivation that private industry has. As a company executive, I have no interest in how long a line is standing outside the door, I don't feel I have any mission to just create jobs for people that are unemployed.

Senator CHURCH. If that line gets too long, will they break down the door?

Mr. BABSON. That may be true. But nonetheless, as a corporate executive, I'm more concerned with doing a good job with those that are already inside the door. I think this is a fundamental difference.

THE INFLATION FACTOR

Also, the effect of inflation after retirement is an additional factor. It is not surprising to realize that in the private pension plan sector it is not a very popular or widespread feature to see cost-of-living clauses in post-retirement benefits for retirees because the cost represents a significant increase. Further, just as a rule of thumb, the information that I have is that a 1-percent average annual inflation rate will create about an 8-percent increase in pension plan costs, given everything else is the same. If you translated this to a 5-percent average inflation factor, assuming that you could control inflation to 5 percent, this would further increase your pension retirement cost by about 40 percent, probably.

Senator CHURCH. Now 40 percent over the entire period of retirement?

Mr. BABSON. Right.

Senator CHURCH. On the other hand, if you don't have such provisions in a retirement benefit and inflation continues——

Mr. BABSON. Well, you erode the effective purchasing power of retirement benefits.

Senator CHURCH. Then you pauperize those that are retired over a period of time.

Mr. BABSON. Yes. But to build in a cost-of-living escalator, this could translate itself into probably something like 4 cents additional indirect cost per payroll dollar of working persons, just as a quick simple rule of thumb. This should be calculated out, but that would be my guess.

Well, what is a proper balance? I think one of the fundamental questions for the committee is, What is the proper balance between working life and nonworking life? If it is to start into the workstream at age 25 and work to 65, that is 40 years, but if it is to work until maybe 60 or 55, and then live in retirement for 5, 10, 15, 20, 25 years, would it not get kind of silly if we spent more time in a retirement mode than in a productive work mode? That does not make sense to me at all.

Senator CHURCH. Do you know what the average retirement age of the Federal employee is today?

Mr. BABSON. I don't know.

Senator CHURCH. It is 58.3 years.

Mr. BABSON. If they are really in retirement. But as we heard in our earlier dialog, this is not often the case.

Senator CHURCH. Many of them are not.

Mr. BABSON. Many of them are not, so they are going on to other forms of production of income, which should be considered in your overall retirement philosophy, in my opinion.

So I think we have a fundamental question of just how much "nonwork" can a society support. I like to refer to the concept of "a drone society," which is likened to the hive of bees, where you have a group of workers and a group of drones—drones don't do any work, they don't bring in any honey, they just "consume" and have "fun and games" with the queen. That may be the sort of society we are building in the United States.

Senator CHURCH. You mean the drones are sort of the queen's court?

Mr. BABSON. Yes.

Senator CHURCH. How do bees work this out?

Mr. BABSON. I think when they get too many drones in the hive they get rid of them. The hive can't support them.

Senator CHURCH. Do you know what the proportion is?

Mr. BABSON. No, I don't.

Senator CHURCH. We might get some informtion on this.

Mr. BABSON. Yes, but I don't know this.

Going on to the next idea, what is a proper retirement benefit? I am sure you are aware of the fact that there is a big difference, even in the private sector, of what different companies have. Bankers Trust puts out a survey of corporate pension plans, which shows you when you look at it, that there is a wide disparity in features between corporations. By feature, I mean, what is popular in industry today. So there is no norm for any such thing as a standard set of features.

There is an even bigger difference between the private and public sector, a startling difference to me. I don't know much about the private sector, but in the public sector, from what I have read and heard, I think that it is not uncommon to find in the Federal sector, and a lot of State and municipal sectors, that you could work for full retirement pay in maybe 30 years. I had thought that it was full retirement pay,

not 56 percent that I heard from Mr. Campbell and his associate earlier today. I don't know what the facts are, but in industry, if I had to say what could be termed as the norm—and again I have a caveat on that, there is no such thing as a norm—but this could mean probably 1½ percent of final compensation, or final average compensation, per year of service, which means that if you have 40 years of service, that you have 60 percent of final average pay for a retirement income.

Senator CHURCH. In the Federal retirement, I believe that is 2½ percent a year. So it varies.

Mr. BABSON. There is a difference.

Senator CHURCH. A big difference.

Mr. BABSON. It is a significant difference. Now one of the things I feel, as a taxpayer, one that really bothers me, is to realize that there are some sectors like the armed services, where you can work only 20 years and get full retirement pay, and then shortly before you retire, I understand you can "take care of Joe" who is a nice guy, boost him up to lieutenant colonel, and have his retirement pay based on this late promotion to a job which he never earned. That is an abuse of our retirement funds, but I am sure there are many such abuses, both in the private sector and in the public sector.

WHAT IS PURPOSE OF PENSION BENEFIT?

One of the things that I urge this committee to do, and I think that there is a serious need for, is define the logic of a pension benefit. What are we trying to accomplish? What is our social philosophy? What do we expect a working man or woman to do for society, and what do we expect society to do for them, in terms of retirement compensation? What can our society afford?

I think that for a government that is committed to removing discrimination in all areas of our society, that you should address yourself to understanding the forms of discrimination in our own retirement system. To me, it is discriminatory for one man to work 20 years and another man to work 40 years for his retirement benefit.

It is discriminatory for a man to get at retirement 100 percent of his final pay to retire on and another to get only 60 percent of his pay. Then, of course, it is discriminatory to have one man have a protection against future inflation and another not to. So I think that there is a wide area of discrimination that I suggest that this committee look at and consider as part of its investigation.

The importance of cost controls. As a financial executive, I am well aware of the fact that there must be an incentive to control costs and abuses and there must also be productivity of the funds that you are using for retirement. In industry, the chief financial officer most likely is the man who is worried about this because he is trying to control and protect earnings-per-share performance. That is the code that the corporation in the industrial area lives by, and when retirement costs go up, the monkey is on his back to do something about it, and he will analyze different alternatives and options and ways of reducing that cost.

Senator CHURCH. May I just insert here, in order to correct the record, that under the Federal system there is a difference between the executive branch and the congressional branch. The congressional branch accrues a pension at 2½, percent a year, perhaps on the theory

that life is very chancy for a Congressman. In the executive branch, where there is greater security, the percentage is different. For the first 5 years, the retirement is computed on the basis of 1½ percent a year; for the second 5 years, on the basis of 1¾ percent per year; and from the 11th year and beyond, on the basis of 2 percent a year.

Mr. BABSON. I think that there needs to be a serious incentive to control costs. I am not sure how this is accomplished in the public sector. I am sure how it is done in the private sector, because I have been engaged in this in a variety of companies over the last 25 years.

I also worry, as an individual, about Government distributions, because I have a feeling that they are psychologically perceived to be "free money." Somehow the Government is considered to be a money tree to be pruned by the opportunistic. I see cases of this in my own experience, and I am sure that you have many, many illustrations brought to your attention of the same thing. I feel that this is a very difficult problem, not just from an economic standpoint and a cost-containment standpoint, but from a moral and psychological standpoint as well, because I think that to the extent that the Government is in the "dole business" and is perceived to be in the "dole business" as opposed to redressing grievances and abuses, why you may run a serious risk of eroding the national morality and work ethic.

Should retirement be mandatory? There is no question that we are healthier and younger at age 65 today than we were 50 years ago. This has been amply documented. It has been referred to in the dialog surrounding your recent legislation, and there is no point of my dwelling on this discussion. I have covered it in my prepared statement.

If people wish to work, I think that, in my view, it is better to pay them for work than to pay them for nonwork if you adopt a social philosophy that you are going to support a certain level of income for members of your society. I also feel that there is an important psychological and moral aspect to having a person work for his or her retirement and for his or her pay, rather than receiving it for not working. I would not overlook this aspect of the problem.

Many retirees, even now, I am sure, seek postretirement employment. I don't know what studies have been made of just how extensive this is, but I think that it is worth studying. I think we should study the purpose of retirement and what are we trying to accomplish, and why do people want to retire. Are they tired? Are they bored? Do they want to go off and have merely enjoyment of leisure? What do they want to do? I don't know the answer to that, but I think it is a fundamental question for this group to study the motivation of retirement itself.

WHY "ALL OR NOTHING"?

I think that it is important that we define a more variable alternative to an "all or nothing," "jump off the cliff," or "dump him on a trashpile" approach to when a man or woman reaches a chronical age in time. I don't think there is any purpose to be served by mandatory retirement. I reject the concept that there is no economic contribution to society or to a company that can be made by such a person on some basis. Therefore, my personal view is that we should totally eliminate the mandatory feature in any consideration of retirement philosophy, public or private.

The role of the Federal Government in retirement. I think the Federal Government is in the best position to understand the problem as it relates to all sectors of society, both public and private, and the need for planning and protection. I think the Government should develop the social philosophy that we want to accomplish, the strategic plans, and define the minimum specifications for retirement benefits, and perhaps even the maximum, too. I think some thought should be given to that.

I think the Government should see that all plans are adequately funded, that abuses are controlled. I think you should police implementation and reduce discrimination among the various sectors of our society. I personally believe in complete portability of pension contributions wherever sourced, from the cradle to the grave. That is not what we have in this country now. I think it is one of our key pension abuses and one that your legislation a few years back was designed to try in part, to correct.

I would go much further than that legislation. I see no reason why the people in our society should not earn their own retirement pay as they go along, and have it funded adequately and set aside for them. There are lots of techniques for doing this in both the public and private sectors. I would urge that all pension retirement contributions should be moved from company to company, for an employee, through his productive life cycle, no matter how many companies he works for.

Senator CHURCH. To what extent has this been accomplished by the legislation that is passed?

Mr. BABSON. Well, I don't think that the legislation has gone that far toward it. I think you have gotten a minimum. For instance, if I were a 27-year-old worker now, I could work for 9 years under your legislation, if I am correct, and still have earned no pension benefit at all right now, under your present legislation. This should be verified, but I believe that is true.

Senator CHURCH. And in a private plan?

Mr. BABSON. In a private plan, I believe that it is still an area of abuse and that pension contributions in industry that are being set aside for an employee should follow him throughout his entire working career. Therefore, if you do that and an employee works for 40 or 50 years, he, together with his various companies, through mutual contributions of varying degrees, will have paid for his retirement benefit, and then you won't have the bind that you have now. I really urge that we move in that direction, both in the private sector and in the public sector, on a going forward basis and figure it out separately, as far as past service funding is concerned.

Senator CHURCH. Of course, with the social security coverage today extending to nearly all of our workers, that problem is mitigated to some degree. Practically everybody is covered by social security as they move from one job to another. So this really is a problem that is within the private pension system.

Mr. BABSON. Well, I partially agree, but I think that you should reflect on the redundancy I suggest in my statement. Actually, since I wrote the statement, it occurred to me since then that really, when you originally set up social security, there were no defined retirement goals, objectives, or philosophies, and there was no regulation or control of the private sector at all, such as you have now taken great steps to move into recently.

Public and Private Redundancy

Having gone now into the private sector in defining what they must do and the minimum specifications, et cetera, to the extent that you have, it seems to me that administratively you have a partial redundancy between social security and private pension plans and that it may be more efficient to give corporations the option of merging these funding vehicles into one scheme so that you don't have two plans for the same employee. You have one, that is, either all private or all public, and then roll over that pension plan to the next corporation or to a centralized Federal pool of retirement funds.

There are a lot of choices that you could elect there, but I think some consideration of this redundancy should be examined from an efficiency standpoint.

Skipping on, because I realize we are running short of time, I have said something in my prepared presentation about the philosophy of setting aside, through a worker's productive life, a pension contribution for him which is really a mechanism for letting his company and he himself earn the pension benefit as he goes along through life. To me, I favor that philosophy. However you fund it, I still favor the philosophy of having an employee earn his level of pension benefit by work and by the attainment of the degree of skill that he has achieved. But I think that there should be minimum benefit, and one prescribed by Federal legislation.

I favor that approach as opposed to the public approach of what I call the "giant kiting operation," where currently you are taking from Peter to pay Paul, because there has been an inadequate sum set aside in the social security pool. But some day Joe Zilch, whom you are going to have to take money from 20, 30, 40, 50 years from now to pay for Peter's retirement, Joe Zilch may not be around or resist paying, and you will get stuck. I don't think that the Peters in this country realize this currently to a very widespread degree, and I don't think it is as sound a device as the earlier suggestion that I have made, which is used fundamentally in the private sector.

I realize it is an enormous task of getting over to that kind of a program in the public sector, and in some cases even in the private sector. I suggest, however, that we could do this over the next generation or so to cover the past sins and to consider the immediate possibility of starting this.

Dependency ratio, I don't think there is any need to discuss this here, I have covered it in the prepared statement. If you want to go into it, we can.

I have already discussed the elimination of the impact of mandatory retirement on private pension plans. Well, as Mr. Campbell, said I really don't see the problem. It has been my experience that the people who are reaching 65, when mandatory retirement was 65, who did not want to retire and who had a critical problem, there was usually a provision in the pension plans of private companies that if such an employee had a hardship case, that the board of directors of the corporation would consent to a relaxation of the rules for that employee. That has been my experience in the companies that I have worked with. Whether that is widespread or not, I cannot tell you, but I really don't think it is going to be a significant problem eliminating the mandatory feature entirely.

Senator CHURCH. All of the testimony we have had so far seems to agree that the legislation to increase the mandatory retirement age from 65 to 70 will not make much difference immediately in terms of employment decisions by workers. It appears that you approve of this legislation. We would like to see mandatory retirement eliminated entirely. In fact, it has been for most of the Federal employees. But do you think raising the mandatory retirement age is going to make much difference?

Mr. BABSON. I don't think so.

Senator CHURCH. With respect to the trend toward earlier retirement, and so forth, the impact of the law may be very minor in actuality.

Mr. BABSON. That is not the fundamental problem. Eliminating mandatory retirement really is de minimis, it really does not affect that many people. Certainly, if a person wants to work after 65 or even 70, I don't see how in good conscience we cannot let them work providing they can do so safely, and pay them a fair wage for whatever task they perform. But that is not really the fundamental problem. The problem is that people are not staying to 65, and they are not staying to 70, and I think it is important to understand why not, because if the reason why not is that we are creating too liberal a pension benefit and making it too attractive for them to retire, than I think we may be building a real problem for ourselves and our people down the road.

Senator CHURCH. Although we have seen some cases where people have managed to add one pension onto another and retire under even more favorable circumstances than when they were still working, those are exceptional cases. They certainly don't represent the typical case by any means. Typically, I think we were told on Monday that social security replaces, on the average, about 47 percent of a worker's prior wage.

REASONS FOR RETIREMENT

If 47 percent is typical of the average of retirement income, as compared to working, then I would not think that it is because we are overpaying retired people on the whole, which leads them to want to retire early. My guess is that they don't find their work sufficiently compelling. Look at professional people and some people who find their work sufficiently rewarding. They frequently will work to advanced ages without retiring at all. We have many, many people who will do that, and I think it has more to do with the nature of the work and the sense of fulfillment. If people have engaged in work that they like, this is an incentive to continue working or, in the opposite case, to retire early.

Mr. BABSON. Well, I think it is a very important point. I don't know how you reassess retirement—social philosophy, economically or otherwise—in the United States without having some kind of a study and understanding why people are retiring earlier. What are they doing and why are they doing it? I think to the extent there are no serious studies, it should be studied.

Senator CHURCH. We should look into that, I agree with you.

I am sorry to say there is a rollcall vote, and I must go soon. I wonder if you could sum up in a minute or two, because you are close to the end of your paper.

Mr. BABSON. All right. There are a few suggested possible approaches to the economic use of an aging working population, as I have suggested here in my report, to give more flexibility and more options to them after they reach, let's say, a trigger date, that could be whatever date is reasonable. They could either take earlier retirement at reduced benefits, continue working full time as long as they wished to, and can do so safely and productively, or to go into a manpower pool of part-time semiretirees, because they could serve a very useful function to the corporation that has a need for sporadic help outside and can use the help of its own retirees for that, and also eliminate lots of temporary overtime which is expensive, so there must be some usefulness in that.

Preretirement counseling. I believe this is going to become a substantial increased activity of industrial relations departments in the future.

I see no reason why we cannot develop the psychology and philosophy of downgrading an employee after he has reached a certain period of time, just like a product has a life cycle that rises and later declines. I don't see any reason why a person cannot do the same. It is surely an emotional problem. If you eliminate the personal stigma of John Jones taking a lesser job in the organization, then you can accomplish a useful and productive value to the corporation, to the society, and to the individual. We have got to get away from the personal stigma, and I think this can be achieved through a psychological campaign that begins when he joins the company, knowing that this is one of the options that will be available to him upon retirement at a certain age.

DANISH "DECRUITMENT"

There is no question in my mind but that this should be considered. There are people in Denmark that are doing this. In my prepared statement, I didn't refer to an illustration of a big company in Denmark where 70 percent of the executives and managers over the age of 50 indicated that they would prefer downgrading to retirement, and that some of them expected to even work past the age of 80. This is referred to as "decruitment," and it is working in Denmark. I think it is an interesting experiment. Certainly there ought to be encouragement for a lot of experimentation of this kind here in the United States, and I am sure it will happen.

[The prepared statement of Mr. Babson follows:]

PREPARED STATEMENT OF STANLEY M. BABSON, JR.

Senator Church, associated senators on the Special Committee on Aging, and members of your staff, I would like to thank you for the honor allowed me in being invited to present before you my ideas and thoughts on the subject of retirement trends and related costs thereof.

I must advise you, however, that I cannot claim to represent any particular group, industry, association, or even company and that my presence here is merely as an interested citizen, a financial executive who has been chief financial officer of small, medium, and large corporations over the past 25 years and, hence, exposed to the topic under consideration by this committee in a number of different circumstances, but always from the perspective of a financial officer of an industrial enterprise. I, therefore, cannot claim to be any sort of expert in this field of your investigation only an active and mature participant whose personal experience, personal curiosity and inclination may perhaps have developed some

thoughtful reflections on this subject that are worthy of consideration. The ideas and observations that I will express in summary form herewith are largely drawn from my book, "Fringe Benefits, the Depreciation, Obsolescence and Transcience of Man," published by John Wiley and Sons in 1974. Some material from this book, together with supplementary comments I have furnished the authors in a taped discussion, were also included among the material published in 1977 by Dr. Harold L. Sheppard and Sara E. Rix, under the title of "The Graying of Working America."

THE OBJECTIVE OF THIS TESTIMONY

As I understand the purpose of this hearing, it is to bring into focus, from a variety of perspectives, what is happening currently in the United States regarding the trends of aging, retirement, and employment opportunities for the aged, together with the economic consequences of such trends, whether funded privately, or publicly or both.

This is a highly complicated subject matter, as I am sure that you are well aware, and a highly ambitious undertaking, but one I believe of overwhelming social as well as economic significance, and I certainly congratulate you on recognizing the need for such a current reassessment and starting this present dialog.

The particular objective of an initial meeting of this sort can only be to pose the issues, hopefully to identify most of the larger ones, and to begin to suggest ways to develop possible alternative solutions.

My own role in such an initial meeting can only be to present to you such issues, observations, and cost indications as would represent the perspective and interest of the financial executive of an industrial corporation.

Simplistically, the perspective of the financial executive of an industrial corporation relates to: (1) Strategies for increasing the revenues; (2) strategies for containing or reducing costs; (3) strategies for improving productivity and return on assets.

In this connection, I would try to generalize by characterizing the historic perspective of the financial executive as it relates to retirement and pensions as follows: (1) Compliance with the law; (2) reasonably equated with competitive practices in industry, particularly within a given regional area; (3) minimum cost to the company and minimum impact on current earnings per share, compatible with acceptable union/employee relations.

POSING THE ISSUES

1. Is working man an asset or a cost?

Accountants generally think of man in terms of cost, that is, an overhead expense, a charge against operations, a committed cost only relieved by "bodies out the door." This does not apply to direct factory labor, which is productive and, hence, may temporarily be deferred from the inevitable charge against income by being in the transitional stage we call "inventories."

It seems strange that we are accustomed to think of man in such terms rather than as another form of asset available to the industrial enterprise. Capital is unquestioned in its role as a necessary and fundamental resource and asset. Equipment likewise, and facilities, are readily accepted as "assets" for the benefit not merely of the present, but for a stream of future years and to be charged off to expense over such a future period of productive usefulness.

But what of man? Is he not also a valuable and necessary tool of production, as equally important to the corporation as capital and equipment?

Capital and equipment, to the industrial enterprise, are "passive assets," requiring man to translate them into effective earning power. Man, therefore, is the dynamic catalyst in the equation, but strangely enough, man in our current financial and accounting philosophies, is considered as an element of cost, either direct cost or indirect cost, ignominously assigned the demeaning term of "burden" and very rarely perceived as an asset to the corporation.

Also frequently ignored is the extent of the investment that corporations make in an employee. It costs to attract him, to recruit him, sometimes to relocate him, to train him, to maximize his productivity and momentum, and finally to terminate him.

All too often, these peripheral costs are lost sight of and superficial decisions can be made as to the temporary advantage to the corporation of an employee severance motivated by cost reduction per se.

This philosophy of man as a cost rather than an asset is particularly fundamental as it bears on the issue of retirement and early retirement.

With a piece of machinery, the proper and accepted financial strategy is to write off the cost over its estimated useful productive life. This is certainly proper in the view of the public accountants and also the IRS, the only difference being that they bicker frequently on the definition of acceptable useful life. But how often do you find in industry a piece of machinery that has been fully depreciated but still in use and still being productive to the industrial enterprise? Quite often, I think. There is no requirement that a piece of machinery is disposed of when its depreciation schedule runs out, no mandate that you vacate a building when it becomes fully depreciated per the generally accepted financial norms. So, why then push man out the door when he reaches a similar arbitrarily defined chronological point? Has his usefulness to the corporation suddenly disappeared from one day to the next? Is there nothing further that he can do? Is there no residual asset power remaining, even if of marginal benefit?

Logic would compel us to realize that this is an indefensible reasoning, I feel sure. And yet, this is perhaps one of the key issues to be considered by this committee, i.e., the concept of mandatory retirement itself. Mandatory retirement at any arbitrarily defined age, implies that the investment value of man is finished and there is no further productive contribution that is worth considering. I, personally, reject this concept.

2. Man's indirect costs are rising rapidly and are often not clearly perceived

There is no need to comment on the rise of direct wages and salaries over the past generation or so. This has been widely documented and is certainly well known. Perhaps somewhat less known, however, has been the "sleeper effect" rise of indirect costs, i.e., fringe benefits. As a percent of payroll, the more prominent and identified of such costs (as measured and reported) have risen from approximately 3 percent of payroll in 1930 to what in undoubtedly over 30 percent of payroll currently, a tenfold increase in ratio on a payroll basis that has itself had a major growth trend over the same period of time, creating in effect a geometric progression of cost increases and one that I feel is accelerating. Also, I am sure that the reported fringes fall short of what the real costs of such indirect items are, if everything were properly captured and identified.

Is this something to be alarmed about? Yes, in my opinion, surely. Firstly, because I believe the trend will continue. See now the social benefits of some of our European neighbors which are even more pronounced than ours here in the United States. Certainly, the tendency will be to continue in the "onward and upward society" that we seem to be in.

This trend, coupled with a continuation of spiraling salary and wage rates will keep raising the price tag for man as a resource. Industry, to protect itself from the impact of this spiraling cost of man, can either go elsewhere, i.e., overseas, where such costs may not as yet have reached this level (but this is at best only a temporary solution and it carries with it a great many other collateral problems as well that serve to discourage this approach). Another avenue open to industry in the face of this trend is to seek increased use of automation and, hence, less dependence upon the quantities of manpower currently in use. This could lead us towards what I choose to call "the drone society," where productivity is placed more and more in the hands of fewer poeple using highly automated resources at their disposal and the function of the rest of the population, whether aged or young, is to be "nonworking," to "consume," not to produce. This, I suspect, be where we're headed.

A second concern here is the "motivation" of why these extra fringes are needed and demanded. Is it because there is a fundamental need, or because in the gamesmanship of labor versus management negotiation, you have to "win something" in order to maintain status. This to me is an important point. Is there really a fundamental need for the extra holiday, the third week's vacation, the 32-hour work week, the dental insurance plan, etc., the provisions for early retirement, and for a higher level of retirement pay? What is the motivation that drives us in this direction? Is it some inequity that needs redressing? What is it? To the extent that these motivations have not been thoroughly studied, I believe that such a study is needed.

3. The economics of retirement, as it has been historically defined, are dramatically escalating

Retirement economics are really quite a complicated subject and there is much available literature and expertise on the matter. In order to pose the issue, however, let me be somewhat simplistic by saying that the logic, generally, is that a

man will enter the work force, let us say at age 25, work 40 years to retirement at 65 and then have, from a combination of public and private sector pension funding, an annual annuity for life equivalent to perhaps 60 percent of his final 5-year average pay—again, I repeat, this is simplistic and there are many variations of this logic, but it serves the purpose of the discussion to use one particular set of circumstances.

This implies a defined period of productivity of 40 years. If final average salary at that time is $20,000 per annum, it means that an annual annuity of $12,000 per year for life must be provided. This sum of money presumably is to be provided over the span of 40 years of productivity so the cost per year translates down to a certain annual charge against corporate earnings. If the employee retires at 65 and lives to 70, 5 years of annuity must be provided by the pension benefit, i.e., $60,000. If he lives to 80, then an additional $120,000 for a total of $180,000 must be provided, and if he lives beyond this, even more. Thus, it can be seen that a 10-year increase in longevity can, in effect, triple the expected cost of retirement. Multiply this by the aggregate working population, and it can be seen that the longevity of our working population can be a very fundamental and dynamic cost to the industrial enterprise, directly and, hence, to society indirectly.

If an employee wishes to retire at 60 instead of a 65, without sacrifice to the level of retirement pay, then all of these costs, such as they are, must be provided over the shorter period of productive life.

The economics of this simplistic illustration are, in reality, horrendous and place what could be an extraordinary burden upon the industrial enterprise, and again, indirectly on the economic society at large, because any and all costs to the individual enterprise get passed on in time to the society within which it operates.

It is already well established that life expectancy in the United States is increasing, both for males and females. I personally believe this trend will further continue, but this I'm sure will be documented from the testimony of the biomedical community to this committee. I believe that it is important for us to forecast what further longevity is probable over the next 50 years because this bears significantly upon future costs.

A further major factor affecting future retirement costs is the matter of inflation.

To build protection from future inflation into the pension benefit even further enlarges retirement cost by astronomical proportions and it is hard to doubt that future inflation will occur and perhaps even be as significant, or more significant, than it has been in the past.

And lastly, to contemplate a widespread social desire for earlier retirement and a motivation to enter the "drone society" and be a consumer rather than a producer, leads to further cost aggravation.

Can our economic society stand such costs? As a financial executive, I for one, am deeply concerned about this.

4. What is a proper retirement benefit?

The Federal Government has, for some time now, taken upon itself the role of defining "a minimum age," leaving the economic society the freedom to enlarge upon this at its own discretion, but providing, nevertheless, "a floor."

It is somewhat disturbing to me that there can exist such wide discrepancies in the United States in the "logic" of a defined pension benefit. I am sure that pension plan professionals can give you elaborate testimony on this subject, both in the public and private sector, but I do believe the wide divergence of such plans cannot be overlooked. There are elements in the municipal and Federal government sectors that define such liberal pension benefits as to make the industrial sector look sick. Dr. Harold L. Sheppard has touched on this in his book, "The Graying of Working America."

But if society at large, one way or another, really "picks up the tab" for both industrial, municipal, and Federal pension costs, then it does become pertinent to examine why such a divergence exists, and is there real justification for it. To do this, there must first be developed a philosophy on man's role in terms of a productive contribution to society, and society's role in turn in providing him with a suitable retirement benefit when he is phased out of the productive mode.

I must say, as a private citizen and taxpayer, that it is anathema to me to be "ripped off" by some elements of our society that one way or another enjoy a totally unrealistic retirement benefit, totally out of context with a reasonable correlation to their productive contribution to society. For a government that is committed to eliminating discrimination among its citizenry, how can we justify one man working 20 years for his pension benefits and another working 40 years? How can be justify one man receiving a pension of 60 percent of final pay and

another receiving over 100 percent. And one man having protection against future inflation, and another not? Or, a man being promoted just prior to retirement to a higher position and salary level so that his future stream of retirement benefits will be based on the higher level . . . a level he never really earned at all? All of this makes no sense to me at all.

In short, I think the Federal Government, and this committee, may well serve a useful purpose in attempting to define a "logic" for a norm in pension benefits. Again, freedom to enlarge upon this within reason can and should be left to any given institution, to fit any given local circumstance, but the norm should be defined as a guideline at least.

5. The importance of cost control—fringe benefits derived directly from the Government, or similar institutions, are perceived to be "free money"

While this is a somewhat provocative statement, I think, nevertheless, it has some pertinence and I personally believe it to have some validity. I think there is a corrollary that the farther removed from the source of money you are, the more you feel that it is "impersonal money"—"a free-bee," "up for grabs," and something that's "fair game to pluck" and take as much as you can get away with. Abuses of many of our social benefits are apparent and I am sure that the correction of such absues is administratively difficult and politically unpopular However, in assessing the burden of pension costs and other social benefits in a society that is aging, the problem of abuse of those benefits becomes even more critical as burden is borne by fewer productive shoulders.

The problem with social benefits management is that there must be an incentive to control costs. In industry, the incentive falls with the financial executive who is oftentimes straining to protect or improve earnings per share performance for his corporation. Benefit cost controls become of vital interest to him in this perspective. I'm afraid that no such incentive or motivation exists for government-managed programs and perhaps even for institutionally managed programs like insurance companies and health agencies, where their rates are really geared to a "cost-plus" concept and high cost basis may mean higher administration pools of money available for them, etc. To the extent that public sector institutions are involved in the direct distribution of cost benefits to our citizens, I believe the matter of how best to establish incentives for effective cost control should be seriously reexamined. Federal cash distributions, must be directed towards redressing real misfortunes and not perceived as a money tree to be harvested by opportunists.

6. Should retirement be mandatory?

At what point does a man become unproductive from a working viewpoint, and do all men reach the same point at the same time, and does this mean that there is no further economic contribution that a person can make after such a point is reached?

I would be surprised if your biomedical witnesses did not advise you that it is difficult, if not impossible, to name a chronological date, that would have general applicability, where all workers could be realistically declared to be at the end of productivity. Where the age of 65 might have been such a possible date many, many years ago, it certainly does not apply in today's health-care-oriented world. The general physical well-being of persons aged 65 as a group is certainly far superior to what it would have been for a comparable group 50 years ago. No doubt about it, persons aged 65 are, as a class, much younger than a generation or two ago.

Moreover, it should be obvious that some persons age faster than others and whereas one man at a given age may be considered physically ready for retirement, another may be full of physical and mental capability and ready to go on for some time. Should this man (and society) be penalized by the application of an arbitrary norm?

And what about persons who do retire; is there no further contribution they can make towards productivity? The answer is most certainly—"of course there is," and a great many retirees, even now, seek and find other productive occupations and turn away from the concept of vegetating in leisure activities.

All of these observations are familiar to you and were alluded to in the text of the Age Discrimination in Employment Act Amendments of 1978.

Perhaps it would be useful to extend your dialog into this question to reexamine the purpose of retirement.

What is the purpose of retirement anyway? Is it a device to get rid of someone who is in the way, or a device designed to allow someone who wishes to step aside from productivity the opportunity to do so, or to change his lifelong pursuit of livelihood without income penalty. I, personally, favor the latter purpose—and yet, even under this definition, retirement shouldn't be an "all or nothing" choice—either 100 percent work or no work at all. There is no reason why aging persons, who wish to, shouldn't be allowed to scale down their participation over a period of years, with direct compensation reduced accordingly. Perhaps as direct compensation is reduced, such supplemental pay as is needed could be withdrawn from a "semiretirement fund," short of full pension pay. This is a possible approach which could be discussed under "possible solutions."

I think it would be important to study and learn an employee's motives for retirement. Is he tired? If so, why not scale down by degrees instead of all or nothing; it is certainly a cheaper approach than full-scale retirement. Is he bored? If so, why not a new assignment after a certain number of years? Isn't it conceivable that a person could be recycled into another type of activity entirely? If wage level is a barrier, let the new wage apply and again draw down a supplemental wage from a "semiretirement fund." Is he tired of work entirely and does he just want to go off and have a good time, i.e., join "the drone society" and goodbye to the establishemnt, etc.? This is his privilege, surely, but why should the rest of society make it overly easy for him to choose this path and leave us the burden of picking up the tab for its extra costs? There is no question but that a man who puts aside extra savings, or earns extra compensation, can certainly choose this path freely and without criticism. He is in effect paying out of his own savings the extra costs associated with this course of action. But this extra cost burden should not, and in the final analysis cannot, be placed upon society generally, in my opinion.

Another query for the sociologists associated with this project is not only to study the principle of retirement motivation, but also to study how much leisure can a retiree really enjoy. For example, in a working mode a man works, let us say, 220 days per year, which is 60 percent of his time, the remaining 40 percent being available, presumably, for leisure activities, if he so chooses. After retirement, the 60 percent disappears and it's 100 percent leisure activities. And for how many years—5, 10, 15, 20, 25, perhaps even longer in tomorrow's world?

Wouldn't it be silly if we structured our society that man spends as much time in retirement, living the leisure life as he does in his working career? Not only strange, but I doubt that our society can afford such a negative burden—this would truly be the creation of "the drone society" and would probably lead to decadence of our spiritual and moral will.

And, can a man really mentally and emotionally cope with such a large dose of leisure? I would tend to doubt it and would be interested in the response of psychiatrists and sociologists on this point.

It would be an interesting study to see what use, in fact, is made of the time of retirees? I would suspect that in a fair percentage of cases, supplemental part-time or perhaps even full-time employment may be happening. The facts of such a study should surely be developed and perhaps they could guide the restructuring of a sound retirement policy in the future for the United States.

7. What is the role of the Federal Government in retirement planning and funding?

The Federal Government, in my view, is in a unique position. First to understand the problem of retirement and the need for planning and protection as it applies broadly to all walks of life, all activities and industries throughout the United States, both in the public and private sector. This places the Federal Government, in my view, in the strategic planning role of defining the minimum (and perhaps maximum) parameters of what constitutes a suitable retirement benefit and how it will be funded and made available, as well as control of abuses and policing of implementation.

One of the big abuses of private pension plans in the past has been in the matter of vesting. Even though sums of money were, in fact, calculated and set aside for a given working man, if he failed to remain to full retirement with the company, certain of the sums, and on occasion perhaps even all of them, would be forefeited and he would not receive the pension for which he worked over those years. Congress has recognized this abuse and the need for portability in its recent legislation. It is my personal view that there should be 100 percent portability of pension benefits, either transferred from employer to employer, or from employer to central pool, managed by a separate Federal agency or private financial institution set up to administer such a fund.

In a society where productivity gains will become increasingly important to the trend of future standard of living levels, productivity of the use of money set aside to fund such a retirement pool is of major importance. Even as I demonstrated in my book, "Fringe Benefits," that within private financial insitutions there is very often considerable difference in the performance of the management of earnings of investment portfolio funds, the fund earnings bear significantly on the net costs of a given pension commitment to society. Therefore, productivity, or performance of fund management cannot be overlooked in this important issue.

As to the all important question of the role of the Federal Government in controlling the pool of pension funds, this question to me revolves around the issue of who can best control costs, who has the best incentive to eliminate abuses, and who can achieve the best productivity of the pool of funds without risk of the principal? Answers to these questions determine where the reservoir of pension funds should be placed.

8. Should retirement funds be funded currently or should public sector retirement provisions be made on a "pay as you go" basis?

One way to provide for a man's pension is to set aside a sum of money, actuarily determined each year that he works, put it in a retirement fund, invest it suitably and then when he retires he draws from this fund. In a sense, he, through his FICA payroll deductions, and his company (or series of companies) through their matching FICA payroll deductions and through their own additional private pension plan contributions, are buying his specific pension benefit. It is either properly funded or improperly funded, but nevertheless, it is funded and moneys are set aside for him and for his future use. If he dies before the norm, his excess funds are used by the fund to pay for the man who lives beyond the norm, etc.

Opposing this method, is the one currently used by the social security system which was never funded from the beginning and which apparently has never attempted to be. Current FICA contributions from one man and his employer are funnelled to the social security coffers where they are not set aside for this man at all but are spent on some other man long since retired for whom no such monies were put into the fund, or for whom inadequate sums were put in. One might say that we're robbing Peter to pay Paul—In fact, we are, and it'll all presumably turn out all right if tomorrow we can rob Joe Zilch to pay Peter. But if something "blows" in this whole process (likened to a giant kiting operation) and Joe Zilch doesn't put in or doesn't put in enough, Peter isn't going to get paid and somehow I don't think the Peters of this country are really aware of this nicety just now. Needless to say, I prefer the former approach.

An interesting observation in one of the studies illustrated in my book is the amount of retirement benefit that the combined employers' and employees' FICA contributions would provide upon retirement compared with the published benefit that a current 25-year-old working man has to look forward to from social security. The amount that would be provided in the private sector from the same source of funds would be almost double that indicated as the promised social security benefit.

If I were the 25-year-old worker and was aware of this, I might be tempted to say "why do I need social security then—I'm better off putting the same moneys into a private fund and forget about social security?"

This prompts me to raise the question "Is our social security vehicle obsolete and should it be junked and replaced by an entirely different mechanism?"

9. How important is a significant change in the dependency ratio?

In my view, the only reason why dependency ratio is important at all stems from the historic method of funding social security and other public sector retirement payments, i.e., what I describe as a gigantic "kiting system." Continuing down this same funding path will surely mean that the demographics of tomorrow will catch up with us via an increasingly burdensome dependency ratio.

The same would not be true under a fairly conventional private sector pension plan where, in essence, today's worker is having his retirement benefit put aside for him throughtout his working life. His retirement payments, therefor, represent a planned disbursement of his retirement fund itself and not a burden upon the then current work force that the worker has left. Under such a funding mechanism the size of the future work force vis-a-vis the size of the ranks of retirees has no pertinence. The only difficulty might be the solvency of the retirement fund itself through improper management or through inadequacy of planned retirement benefits in the face of future inflationary erosion of effective purchasing power.

This difference in funding approaches between public sector and private sector provision for retirement benefits seems irrevocably irreconcilable, but is it? Is it totally out of the question to compute what a proper fund should be to adequately provide future commitments of public sector social security and retirement plans and is it totally inconceivable that such funds could actually be set aside, either lump sum, or progressively over a period of the next 20 years or so, to the end result that at a certain future period of time all retirement funds, both public sector and private, would be in fact on one universal "funding as you work" system. At such a point of time, dependency ratio would be a meaningless and academic terminology.

An additional point in this regard is not to overlook the psychological and moral value of the concept that each person earns his own retirement pay. Not to equate more closely persons working for retirement benefits with the level and value of retirement benefits themselves is to me an error in strategy. The concept that society in general and the government specifically "owes me a living" is a very objectionable and debilitating concept to me.

10. What impact will elimination of mandatory retirement have upon the retirement plans and other fringe benefit plans of the industrial sector?

I certainly have no credentials to speak for the industrial sector at large, and as the Bankers Trust "Study of Corporate Pension Plans" shows, there is a fairly wide divergence of pension plan specifications within the industrial sector itself. Corporate pension plans are certainly not static things; in my experience it is a rare year when there is not some change that is made in a corporate pension plan, entirely apart from adjusting to governmental legislation requirements. Employee benefit plans, including pensions, represent a never-ending and almost restless dialog with employee interests and attitudes and this will not change, in my opinion.

Many pension plans have had a mandatory retirement provision in the past. In my personal experience, such provisions seemed more as guidelines than as arbitrary rules locked in concrete. It is frequently the practice that employees of retirement age who wish to continue working and have a hardship case to plead if retired, are frequently granted a deviation of retirement policy by action of the corporate board of directors. I don't know how widespread this practice is, but it certainly has been quite common in my own experience.

It is not the natural motivation of the industrial corporation in displacing a person who has reached retirement age merely to create a job opening for another person, currently unemployed and waiting for a job opportunity.

It may sometimes be the corporate view to replace a more expensive employee, who has had a series of wage progressions to the point where he or she is overpaid for a given job, with a younger, newer recruit who can start the wage progression cycle at a lower point and, hence, provide the corporation with a temporary (and probably deceptive) cost advantage.

It may also be to the corporate interest to have some mechanism to gracefully replace an executive-level employee who has reached a certain chronological milestone with a younger executive who needs advancement and the opportunity to assume greater responsibility. Rapidly growing corporations create such opportunities in the normal course of their growth, but corporations that are not growing so rapidly often do not create sufficient advancement opportunities to fulfill the needs of its cadre of up-and-coming young hopefuls. The result can be stagnation at the top of the corporate ladder and increasing transcience among the young hopefuls who get tired of waiting and flee to another corporate opportunity elsewhere. But this problem is an internal corporate one and does not belong to the legislative domain to seek a solution, in my opinion.

I don't believe that corporations in general feel any "mission" per se to create more jobs, reduce national unemployment, etc. Therefore, I, personally, do not see why the elimination of mandatory retirement at age 65, or even at age 70, should greatly change the corporate approach to retirement plans and/or other fringe benefit plans. I believe that industrial corporations will merely amend their plans to accommodate the new philosophy and proceed to adjust their own local personnel practices and strategies to best meet their own needs from an employee motivational and from a cost containment standpoint.

SOME POSSIBLE APPROACHES TO THE ECONOMIC USE OF AN AGING WORKING POPULATION

I have a great deal of respect for the resourcefulness of corporate institutions when confronted with the need to solve a given problem and I have no doubt that if Congress elected to eliminate the element of discrimination on the basis of age entirely, without reference to even a 70-year-old chronological benchmark, that our industrial institutions would find, in due time, innovative and resourceful ways of constructively meeting this new challenge. I feel certain that many are well along on this path even now. I feel that it is appropriate for the Federal Government to establish the social philosophy and leave the implementation and experimentation up to the private institutions themselves as how best to comply.

Here are some ideas that might form the basis of some experiments in this area:

(a) When employees reach an early retirement "trigger date," they may have the following options:

(1) Elect early retirement, at actuarially reduced benefits.

(2) Continue working full time in present job.

(3) Go into a manpower pool of part-time employees available for short-term assignments that would replace the use of outside temporary services and the use of overtime for present inside employees.

(4) Go on a progressive program of increasing time off, that grows each year. Employee would draw only basic wage for time worked and start to draw down partial retirement benefits for time not worked, to an agreed formula actuarially determined.

(b) Undoubtedly, preretirement counseling will become a much more significant activity of the industrial institutions in the future. An outgrowth of this could be a growing interest in and a need for "out-placement assistance" where corporate industrial relations departments work with aging employees on a planned basis to assist in defining lifestyle goals and objectives for the employee and in designing a personalized implementation program to assist the employee in phasing into his defined post-industrial role.

(c) Our corporate experience reminds us that many things have a life cycle, i.e., a demand curve that rises, peaks, and declines. Certainly industrial products have such a life cycle—and why not an individual worker? Why does the wage have to go constantly onwards and upwards? When a given worker is no longer worth the wage he is being paid, or is physically incapable of performing this job efficiently and safely, why must termination be the only answer? When the above have been assessed to be valid, why not offer the employee another, lesser job in the corporation, one with a lesser wage as well? If an employee would accept a downgrading assignment gracefully, isn't it to the corporation's interest to have him do so? I believe it is. It is only the matter of ego that is a deterrent to what could be a pragmatic solution.

It is interesting to note from an article appearing in the economy and business section of Time magazine in the May 15, 1978 issue, that in Denmark certain "decruitment" experiments are being tried out, in the recycling of older, middle, and top managers to lower level jobs after they reach the age of 60. This program, pioneered by Co-op Denmark, reflects a survey of Danish managers over 50 years of age, where 70 percent of such managers preferred downgrading to retirement. Some people in this program expect to work past the age of 80.

Certainly, some experimentation along these lines would be useful and should be encouraged in our own country.

(d) Public sector and governmental service types of assignments could and should be made increasingly available for aging citizens. The mobility factor associated with offering new productive activities to older citizens is certainly a problem area, because many older persons would be reluctant to uproot and move away from their sphere of familiarity. But there are many public sector services now being performed at the local level, and if the need were there to capitalize on a mature and capable local resource like our aging retirees from the private sector, I feel sure there are even more public sector functions that could be decentralized and performed at the local level by his cadre of senior citizens.

These are only a few of the avenues that could be explored to find ways of increasing the productive utilization of our aging population. I am sure that future examination and discussions of this subject will develop many constructive suggestions for consideration.

CONCLUDING REMARKS

I realize that the objective of this initial hearing on this highly important and sensitive subject matter is essentially to pose the issues that are present. Returning then, to this objective to summarize, I consider that:

(1) There is a very real problem in the issue before us. That the present retirement practices and trends of our economic society, coupled with increasing longevity of our population, will create an enormous economic future burden upon our society.

(2) This burden can be relieved to a considerable extent by eliminating the mandatory feature of our retirement philosophy and allowing interested workers to continue actively in the work force on some basis for a longer period of time, reducing their need for retirement funds.

(3) The presently defined retirement age population of our work force represents a useful and valuable resource, an asset, or an investment if you will, that should be utilized, again on some variety of bases, perhaps entirely different than the mere continuation of their historic activity.

(4) The divergence of present pension benefits, specifications of retirement plans and means of assuring adequate funding, among the various elements of our society, both public and private, need serious reexamination and there is a fundamental need to redefine the objective of retirement itself, retirement pay, the "logic" of the wage continuation after productive employment ceases and the role of the Federal Government itself in this process.

(5) I congratulate this committee on recognizing the importance of this subject matter and initiating this dialog, which I am sure will become highly worthwhile and constructive as it develops over the future months and even years ahead.

(6) I wish to express my appreciation for the privilege of being allowed to present my personal thoughts, observations, and ideas on this subject and hope that perhaps a few of them may contribute somewhat to the success of your inquiry.

I thank you.

Senator CHURCH. Thank you very much.

We will look also to your other final recommendations. I want to commend you for an excellent statement and for a very fine, fluid, and well informed presentation. We appreciate it very much.

Mr. BABSON. Thank you.

Senator CHURCH. The hearings will be adjourned.

[Whereupon, at 12:06 p.m., the hearing adjourned.]

APPENDIX

CORRESPONDENCE RELATING TO HEARING

ITEM 1. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH, TO HON. ALAN K. CAMPBELL, CHAIRMAN, CIVIL SERVICE COMMISSION, DATED JULY 31, 1978

DEAR MR. CHAIRMAN: Thank you very much for participating in our recent hearing. We appreciated the opportunity to receive your firsthand report on procedural and conceptual changes which will accompany the end of mandatory retirement for the most Federal employees. We also appreciate the invitation to stay in close touch as you put new procedures into effect. It is clear that Federal agencies will be required to exercise great sensitivity and ingenuity in meeting the challenges ahead.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR FRANK CHURCH

Question 1. You point out that only 1,773 persons, or about 2 percent of all those retired in 1977 from the Federal service were mandatorily retired—at age 70 or above. Would you say that one reason for the small number of those mandatorily retiring may be the Federal agencies have, from time to time, offered inducements for early retirement in order to comply with a job freeze or other restriction?

Question 2. We've heard a great deal said in the past 2 days about the heavy cost to the economy of earlier and earlier retirement. Are you concerned about an average retirement age of 58.3 years for Federal employees?

Question 3. A July 15 "Federal Diary" article in the Washington Post said that the Federal Government is developing a middle-age spread of about 230,000 persons who are old enough and with enough service to retire on a full pension. Do you think that they should be retired now or do you think there might be good reason to try to persuade them to stay? Eligibility age for full retirement in civil service now stands at 62 years with at least 5 years of service, 60 years with 20 years of service, and 55 with 30 years. Do you think these are appropriate ages at which to provide full benefits?

Question 4. You use the future or conditional tense when you talk about approaches to such performance evaluation possibilities as:

Positions described by skills and abilities.

Fair and effective performance appraisals.

Self-analysis and career planning.

How far along are you toward any of these goals? Had you started toward them before this year's law banning mandatory Federal retirement went into effect? How are you working with unions to win their cooperation in arriving at fair and effective performance appraisals?

Question 5. What can be done to make what we now call preretirement training a more dynamic and acceptable process?

Question 6. The committee understands that phased and partial retirement have had limited acceptance in the Federal service. Does the problem relate to the way in which this option was presented? What can be done to make it more attractive?

Question 7. You endorsed flexitime and part-time work arrangements in your statement. In recent testimony before the Governmental Affairs Committee I pointed out the potential importance of such work arrangements to the older worker. I suggested either statutory or report language to emphasize that part-time employment positions should not be confined almost exclusively to the lower grades. Do you agree? In addition, I-suggested that the Civil Service Commission should be encouraged to develop personnel regulations to give career workers the option of selecting career part-time status and returning to full-time career status. Do you agree?

ITEM 2, LETTER FROM HON. ALAN K. CAMPBELL,[1] CHAIRMAN, CIVIL SERVICE COMMISSION, TO SENATOR FRANK CHURCH, DATED SEPTEMBER 6, 1978

DEAR SENATOR CHURCH: This is in reply to your letter requesting answers to additional questions which have occurred since the hearing held by our committee on July 19, 1978, concerning "Retirement, Employment, and Lifelong Learning." I have answered the questions in order as presented in your letter.

[*Question 1.* You point out that only 1,773 persons, or about 2 percent of all those retired in 1977 from the Federal service were mandatorily retired—at age 70 or above. Would you say that one reason for the small number of those mandatorily retiring may be that Federal agencies have, from time to time, offered inducements for early retirements in order to comply with a job freeze or other restriction?]

Response. In the public sector, like in the private sector, it sometimes becomes necessary to reduce the number of employees on the rolls, or the number of employees to be hired. There are several reasons for this, such as the discontinuance or reduction in certain work. Congress may decide to discontinue all or parts of programs, or funds may be reduced. For whatever reason there is a cutback, Federal agencies offer inducement for early retirement. That is, the Civil Service Retirement System provides that an employee under the retirement system who is involuntarily separated from the service is entitled to an immediate annuity if:

(1) He or she has been employed under the retirement system for at least 1 year within the 2-year period immediately preceding the separation on which the annuity is based, and

(2) He or she meets either of the following minimum requirements:

(a) Attainment of age 50 and completion of 20 years of creditable service, including 5 years of civilian service, or

(b) Regardless of age, has completed 25 years of creditable service, including 5 years of civilian service.

Figures show, however, that out of the total number of retirees (85,568), only 3,636, or little over 4 percent, were separated under this provision in fiscal year 1977. There are no available statistics which would show how many of the employees, who retired under other provisions of the law, may also have been subject to the reduction in force situation. But, a reduction in force situation probably would have little effect on the number of employees subject to mandatory retirement at age 70.

[*Question 2.* We've heard a great deal said in the past 2 days about the heavy cost to the economy of earlier and earlier retirement. Are you concerned about an average retirement age of 58.3 years for Federal employees?]

Response. Naturally, we are concerned when employees retire at an early age, particularly when the retiree receives an annuity which may not meet his needs (there are some annuitants receiving less than $200 per month). A chart showing the number of employee annuitants and survivor annuitants on the retirement roll as of September 30, 1977, by monthly rates of annuity is attached.

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[1] See statement, page 177.

TABLE B–2.—EMPLOYEE ANNUITANTS ADDED TO THE RETIREMENT ROLL DURING THE FISCAL YEARS 1921 TO 1977, BY PROVISION UNDER WHICH RETIRED AND NUMBER ON THE ROLL SEPT. 30, 1977, BY FISCAL YEAR RETIRED

Fiscal years	Number on roll Sept. 30, 1977	Total	Optional							Involuntary		Special provision			Transferred from other systems	Average initial annuity
			Mandatory 15 yrs' service	Disability	30-yr service: Age 55	30-yr service: Age 60	20 to 29 yrs' service, ages 60 to 61	12 to 29 yrs' service, age 62	5 yrs' service, age 62	Deferred	20 yrs' service, age 50	15, 25, or 30 yrs' service	Hazardous duty	Air traffic Controllers	Members of Congress		
1921–30	7	27,759	20,897	6,862													(1)
1931–40	517	72,868	32,775	20,676		7,809						11,608					(1)
1941–50	9,695	154,430	20,406	46,840	4,608	29,634		17,429	31,630			2,207	224		59	1,393	$78
1951–60	91,257	341,897	30,115	102,678	23,589	66,091		54,699	56,762		1,431	3,719	2,566		170	77	148
1961	21,470	50,228	4,090	16,501	3,136	7,358		11,547	1,803	4,077	656	681	337		31	11	187
1962	23,619	50,524	4,127	16,737	2,980	6,780		12,111	1,998	4,112	655	643	369		7	5	193
1963	25,455	49,666	4,328	15,439	3,006	6,575		13,371	1,202	3,997	776	486	438		38	10	217
1964	29,745	53,449	4,258	17,490	3,180	6,857		14,238	1,095	3,993	1,277	606	437		9	9	225
1965	30,982	51,996	4,155	17,927	3,229	6,235		13,196	877	3,956	1,309	655	401		51	9	236
1966	51,171	77,900	3,267	20,098	7,418	14,419		22,077	1,243	4,012	2,882	1,677	787		10	10	292
1967	33,701	48,759	2,475	15,434	5,192	4,302	3,644	10,186	883	3,864	1,183	1,113	436		27	20	270
1968	38,227	52,579	3,031	15,094	5,697	5,169	4,153	11,166	885	4,049	1,064	1,745	507		8	11	291
1969	41,604	55,154	2,618	15,748	5,790	6,006	4,679	12,482	1,007	4,003	850	1,424	498		37	12	310
1970	52,287	65,313	2,399	16,718	7,746	7,783	5,431	13,980	1,118	4,256	1,727	3,623	523		2	7	353
1971	68,013	81,812	2,298	20,715	8,826	8,079	6,091	15,077	1,303	4,809	3,709	10,291	578		34	2	325
1972	70,174	81,307	2,028	19,996	11,921	9,713	5,591	14,212	1,264	4,660	2,858	8,362	700		2		435
1973	110,321	122,883	1,902	25,652	18,922	16,416	6,638	17,717	1,780	4,912	6,162	21,675	1,026	28	52	1	485
1974	122,902	133,318	1,376	30,015	24,397	19,439	6,893	18,234	2,076	5,571	5,405	18,168	1,628	106	8	2	563
1975	93,318	99,767	1,561	31,875	15,456	10,028	4,102	10,783	1,637	6,776	3,690	12,180	1,566	60	51	2	597
1976	97,719	79,469	1,509	31,170	14,010	8,634	3,499	8,863	1,491	4,255	1,188	3,184	1,599	60	7		631
Transition quarter		22,945	428	9,027	3,746	2,019	1,031	2,338	469	1,243	498	1,709	425	11	1		591
1977	84,377	85,568	1,773	33,036	16,649	9,312	3,834	10,049	1,787	4,143	887	2,749	1,226	69	53		671
Total	1,096,561	1,859,591	151,816	545,728	189,408	258,658	55,586	303,755	188,998		38,207	108,505	16,272	334	657	1,577	

[1] Not available.

We would like to point out here, however, in answer to your question, that while the average retirement age for a Federal employee may be 58.3, nearly 43 percent of persons who retired in fiscal year 1977 were age 60 or over. Those who retired at a much earlier age, thus bringing the average age down, included air traffic controllers, who are mandatorily retired at age 56, due to the uniqueness of their profession; firefighters and law enforcement officers who are eligible to retire at age 50 with 20 years of service (because of the need for a young and vigorous work force in these occupations), and those employees mentioned earlier who were separated involuntarily.

[*Question 3.* A July 15 "Federal Diary" article in the Washington Post said that the Federal Government is developing a middle-age spread af about 230,000 persons who are old enough and with enough service to retire on a full pension. Do you think that they should be retired now or do you think there might be good reason to try to persuade them to stay? Eligibility age for full retirement in civil service now stands at 62 years with at least 5 years of service, 60 years with 20 years of service, and 55 with 30 years. Do you think these are appropriate ages at which to provide full benefits?]

Response. The fact that an individual has reached a certain age or has served a certain number of years is not sufficient reason to persuade or encourage him, or her, to retire, or not to retire. The Federal Government often loses a skilled employee at the peak of his career through retirement. This has always been, and will continue to be a problem, especially when retirement benefits make it economically feasible for the employee to retire at an earlier age. It must be kept in mind, however, that the liberalized benefits are necessary in order for the Federal Government to attract and retain competent employees in competition with private industry.

[*Question 4.* You use the future or conditional tense when you talk about approaches to such performance evaluation possibilities as:

Positions described by skills and abilities.

Fair and effective performance appraisals.

Self-analysis and career planning.

How far along are you toward any of these goals? Had you started toward them before this year's law banning mandatory Federal retirement went into effect? How are you working with unions to win their cooperation in arriving at fair and effective performance appraisals?]

Response. The future and conditional tenses were used in referring to the three possibilities listed in the question to indicate that they are not existing accomplishments but are among several proposals being considered as ways to improve personnel management in general and performance appraisal in particular. These improvements are intended to apply to Federal employees regardless of age. In the areas of performance requirements and performance appraisal, developmental work was underway well before enactment of Public Law 95-256 banning age 70 mandatory Federal retirement. Such basic improvements, however, are especially applicable to the needs of older workers. There has not yet been any substantive work on the self-analysis and career planning techniques as applied to the older employee.

Material on performance appraisal published last year was submitted to unions as well as other interested organizations and agencies for comments and suggestions which were carefully considered before publication. The same practice will be followed wherever feasible. We recommend to agencies which are undertaking changes in their performance appraisal systems to involve unions in early stages of planning and all along the process through the implementation of the new systems.

[*Question 5.* What can be done to make what we now call preretirement training a more dynamic and acceptable process?]

Response. There is nothing to add at this time to our previous comments concerning preretirement training or counseling.

[*Question 6.* The committee understands that phased and partial retirement have had limited acceptance in the Federal service. Does the problem relate to the way in which this option was presented? What can be done to make it more attractive?]

Response. Phased and partial retirement has never been formally presented. Information has only been presented to agencies through a Civil Service Commission bulletin. As stated in our letter of June 27, 1977 to the committee, participation in agency gradual retirement programs was slight in the most recent survey conducted by the Commission. This may, in part, be attributable to the civil service retirement law's liberal age and employment requirements for retirement.

Many civil service workers are eligible to and do retire at age 55 (after 30 years service). These people probably contemplate working in private industry or for themselves after retirement. They may not be interested in total immersion into the "leisure life" of a bona fide retiree. Another obstacle to gradual retirement participation is the before-the-fact commitment to retire at a specific future date. They are reluctant to participate because of such future uncertainties.

Methods of increasing agency and employee participation are simple and basic. First, greater publicity would have to be afforded to gradual retirement. Second, explanations of the advantages that would accrue to them through gradual retirement programs would have to be given to agencies and employees.

At this time, we cannot say whether more agencies are considering the implementation of gradual retirement programs. We consider it highly unlikely.

From what we have seen, the major obstacle to increased use of phased or partial retirement in the Federal service is an economic one. Under our current system an employee's annuity is computed on the basis of length of Government service and the highest average pay received during 3 consecutive years of employment. Because of career progression and the effects of annual Government pay raises, an employee's highest salary generally occurs at the end of his or her career.

Employees who opt for phased retirement by working part time, cut themselves off from the effect of this annual increase in their annuity, since their "high 3" pay level would probably have occurred before they began working part time. The longer an employee works part time before final retirement, the more he or she "loses." Although the amount of their creditable service increases, it is not enough to offset the loss of annual pay raises. Employees realize this and are generally reluctant to "phase out."

[*Question 7.* You endorsed flexitime and part-timework. arrangements in your statement. In recent testimony before the Governmental Affairs Committee I pointed out the potential importance of such work arrangements to the older worker. I suggested either statutory or report language to emphasize that part-time employment positions should not be confined almost exclusively to the lower grades. Do you agree? In addition, I suggested that the Civil Service Commission should be encouraged to develop personnel regulations to give career workers the option of selecting career part-time status and returning to full-time career status. Do you agree?]

Response. As I indicated in my testimony, this administration is taking a number of steps to increase the availability of part-time employment in the Federal service. One of our actions has been to emphasize increased part-time employment in professional positions at GS–7 and above. While we do not yet have complete reports of agency progress in this area yet, our belief is that substantial gains have been made over the last year. I should add, however, that we do not favor the "earmarking" of a specific percentage of jobs at each grade level as part time along the lines proposed in various legislation. This would severely limit the staffing flexibility of Federal employees and could restrict promotion opportunities for current full-time employees.

Current civil service regulations give agencies the authority and responsibility for setting work schedules. Agency officials can then permit employees to voluntarily switch from full time to part time and vice versa as the situation demands. Although we encourage agencies to accommodate employee needs in setting work schedules, the requirements of the organization take precedence and not all employee desires can be realized.

For the future, we may need to make some changes in this arrangement. The growing number of women in the work force and the desire for more employee control over the quality of work life are certain to increase the need and demand for part-time employment. Some European countries have already recgnized this situation and given public employees the right to switch from full time to part time under certain circumstances, e.g., if they have child caring responsibilities. We will be looking at these arrangements in developing our recommendations for the President on Federal part-time employment next year.

I hope the foregoing will be helpful for inclusion in your hearing record.

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

ITEM 3. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH, TO STANLEY M. BABSON, JR., NEW CANAAN, CONN., MANAGEMENT CONSULTANT, AND FORMER PRESIDENT OF FINANCE, TECHNICON CORP., DATED JULY 31, 1978

DEAR MR. BABSON: Your excellent statement at last week's hearing provided a fitting finale to our opening round of testimony. Your view from the private sector supplemented the viewpoints heard earlier in constructive and challenging ways. Thanks once again for participating.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes.

Sincerely,

FRANK CHURCH,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR FRANK CHURCH

Question 1. You heard the previous witness discuss Civil Service Commission plans for dealing with the end of mandatory retirement at age 70 in the Federal service. How adequate, in your opinion, will that program be?

Question 2. You have suggested that the Federal Government has a strategic role in defining the minimum and perhaps maximum standards of what constitutes a suitable retirement income. What do you think the minimum monthly and annual standard should be today?

Question 3. One of the major issues for our hearings is the appropriate role for the private and public sectors in responding to retirement income adequacy. I realize that it may not be possible now for you to tell us quantitatively what the appropriate mix should be. But could you outline in broad principles what would be the proper role of each and what emphasis should be placed upon public and private efforts to respond to the retirement income needs of older Americans?

Question 4. You also talk of short-range and superficial advantages to a company from an employee's severance motivated solely by cost reduction. Does the same apply to retirement? The notion of "making way for younger workers" often blinds assets the firm may be losing when enforced retirement is imposed. Do you agree?

Question 5. You have been associated with large corporations and with smaller firms. Have you seen, in any of the organizations you have been associated with, recognition of your concept of the employee as an asset instead of a cost?

Question 6. You talk about a "semiretirement fund" for employees who do not wish to work full time after some years with the company. How would this work? How would you prevent it becoming a prop for employees who want to coast restfully on the job, and who think that they will be able to do so on reduced pay for reduced hours?

Question 7. You mention in your testimony a study, cited in your book, which asserts that a current 25-year-old working man would gain more from a private investment fund than from social security. I am sure you know that social security, in addition to providing retirement income with cost-of-living adjustments, also offers survivors and disability benefits, as well as hospital insurance protection. Do your calculations take these factors into account?

Question 8. The 1975 Social Security Advisory Council recommended that serious consideration be given to extending gradually the eligible age for unreduced benefits for retired workers from 65 to 68, starting in the year 2005 and ending in the year 2023. Do you believe that this would be a socially desirable policy for future social security beneficiaries?

Question 9. You seem to suggest (bottom of page 34 and top of page 35) a pooling of funds by social security and retirement funds progressively over the next 20 years or so that "at a certain future period all retirement funds, both public sector and private, would in fact be one universal funding-as-you-work system." I would like more details. For example, how do you deal with current needs while building the universal funding system?

ITEM 4. LETTER FROM STANLEY M. BABSON, JR.,[1] NEW CANAAN, CONN., MANAGEMENT CONSULTANT, AND FORMER PRESIDENT OF FINANCE, TECHNICON CORP., TO SENATOR FRANK CHURCH, DATED AUGUST 28, 1978

DEAR SENATOR CHURCH: Thank you for your kind letter of July 31. I am glad you felt my statement before your committee hearing was constructive and useful and I am happy to be able to participate in this very excellent and important undertaking.

You have forwarded to me certain additional questions which have arisen out of the study of my testimony and I shall endeavor to answer them herewith to the extent feasible in letter form.

[*Question 1.* You heard the previous witness discuss Civil Service Commission plans for dealing with the end of mandatory retirement at age 70 in the Federal service. How adequate, in your opinion, will that program be?]

Response. I have no familiarity at all with the Civil Serivce Commission and I feel it would not be appropriate for me to comment on this particular question.

[*Question 2.* You have suggested that the Federal Government has a strategic role in defining the minimum and perhaps maximum standards of what constitutes a suitable retirement income. What do you think the minimum monthly and annual standard should be today?]

Response. As I indicated in my testimony, I feel that a "norm" in the private sector would be around 1½ percent of final 5 years average compensation, times years of service. This would mean that 40 years of service would provide a retirement benefit of 60 percent of pay, and 50 years of service, 75 percent of pay. Years of service in my concept would be years of service in the productive mainstream, whatever series of companies may be involved. I have recommended complete portability of retirement contributions, with no forfeitures at all.

This "minimum" concept does not preclude superimposed thrift plans on top of the pension plan, nor does it preclude even a more liberal retirement income feature, if such is the basis of the productive career of an employee.

I do personally favor putting some form of ceiling on the retirement feature, if only as a control against inflation. I would not approve any accumulating of pension benefits that yielded over 100 percent of final 5 years compensation after 40 years of service.

[*Question 3.* One of the major issues for our hearings is the appropriate role for the private and public sectors in responding to retirement income adequacy. I realize that it may not be possible now for you to tell us quantitatively what the appropriate mix should be. But could you outline in broad principles what should be the proper role of each and what emphasis should be placed upon public and private efforts to respond to the retirement income needs of older Americns?]

Response. As indicated in my text, I believe that the Government's role should be to define the minimum retirement benefit that is socially acceptable in our country in the present era; to police this policy, see that such benefits are adequately and soundly funded and that abuses and discrimination are controlled.

I feel the Government's role in the public sector amounts to, or should amount to, the same thing as in the private sector and that the present "giant kiting system" approach to public sector financing of retirement disbursements be totally changed over to a system paralleling the common practice in the private sector. I believe that the individual himself and his accumulated roster of employers should have the burden of providing for his retirement needs on a "pay-as-you-go" basis.

I believe the Government's only role in this, except insofar as it is the "employer" of public sector employees is to define the social policy and see that it is fairly and properly implemented.

Without doubt, there will be a large body of present retirees to whom this logic cannot apply because no such funding was set aside for them historically. These present retirees represent a financial obligation that must be faced and liquidated outside of this proposal. What I am proposing is to cover new employees entering

[1] See statement, page 186.

the productive mainstream and as many of existing workers as practical. It will admittedly take a generation or so to resolve the burden of transition from our past method of funding retirement benefits and what I am proposing for the future.

[*Question 4.* You also talk of short-range and superficial advantages to a company from an employee's severance motivated solely by cost reduction. Does the same apply to retirement? The notion of "making way for younger workers" often blinds assets the firm may be losing when enforced retirement is imposed. Do you agree?]

Response. When companies are seeking ways to prune costs, for whatever reason, they almost invariably look at payrolls to see what can be reduced from roster. Marginal employees are weeded out in this process, where possible, and also it is not uncommon to try to persuade employees who are nearing retirement to step aside and retire earlier. Some companies even offer pay incentives to encourage these employees to elect earlier retirement. The logic here is that such an incentive bonus is a "one-shot" payment that hurts earnings per share initially, but is designed, after the initial impact, to shift the payroll, which is an annually recurring change for this employee, away from current profit and loss impact and instead into the disbursement from retirement fund category, which does not affect current year profit and loss. This strategy does reduce annual costs to the corporation, after the initial incentive bonus is paid. It also does allow younger workers to remain with the company and not face the cost reduction "axe." The fact that a valuable asset to the company and to society, in the form of the mature and experienced worker who is placed on retirement, is lost for what appears to be a short-term economic gain, is, in my view, somewhat deceptive and illusory, particularly when viewed in the context of society at large.

[*Question 5.* You have been associated with large corporations and with smaller firms. Have you seen, in any of the organizations you have been associated with, recognition of your concept of the employee as an asset instead of a cost?]

Response. I think I would have to answer this question in the negative. While obviously, in individual cases, the asset value of a particular person is widely recognized, the application of this concept to employees generally is not.

[*Question 6.* You talk about a "semiretirement fund" for employees who do not wish to work full time after some years with the company. How would this work? How would you prevent it becoming a prop for employees who want to coast restfully on the job, and who think that they will be able to do so on reduced pay for reduced hours?]

Response. A good question and possibly a thorny one. The "semiretirement fund" could not become operative before a certain chronological date, let us say age 60, for example. Not all jobs within a given company must necessarily be eligible for such a program, so an employee moving to this program from full assignment might have to accept a different duty. Even if the new assignment only calls for 20 hours per week, or perhaps, if seasonally set up, only 30 weeks in the year, there would still have to be performance characteristics for the job which must be met, or the person would be asked to resign from the position. This would be the same as any full-time job now. If you don't perform the job adequately, you are dismissed. Also, the economics of the semiretirement fund should be established as an incentive to work, not as an incentive for nonwork. The mechanism is really designed to accommodate those employees who are tired and wish more time off to pursue other interests: its merit lies in the deferrral of the horrendous economics of full early retirement for too protracted a period of remaining life for an employee who wants some form of reprieve from full work.

[*Question 7.* You mention in your testimony a study, cited in your book, which asserts that a current 25-year-old working man would gain more from a private investment fund than from social security. I am sure you know that social security, in addition to providing retirement income with cost-of-living adjustments, also offers survivors and disability benefits, as well as hospital insurance protection. Do your calculations take these factors into account?]

Response. I am aware of the fact that social security offers protective payments for more than just retirement alone, but it is difficult to separate out the costs of these other features and isolate a true "applies to apples" comparison. Therefore, my calculations are admittedly somewhat simplistic. I feel quite sure, however, that whatever refinement in cost comparisons are made, the basic premise would remain true, i.e., that a worker would get significantly more for his dollar under a trusteed private fund than he would get from the social security system. Bear in mind, your social security system is a "giant kiting scheme" and you are still trying to take money from Peter to pay your past deficiency as regards Paul—

there is no way you can do this except by short-cutting Peter and hoping to be able to make it up some future day. This is getting to be an untenable strategy.

[*Question 8.* The 1975 Social Security Advisory Council recommended that serious consideration be given to extending gradually the eligible age for unreduced benefits for retired workers from 65 to 68, starting in the year 2005 and ending in the year 2023. Do you believe that this would be a socially desirable policy for future social security beneficiaries?]

Response. Yes, I believe this would help the economics of supporting the future retirement burden. It is only one recourse, however, and I would advise that you only do this one after, or simultaneously with, the correction of a number of abuses and discriminatory elements already identified in the retirement cost area. To defer the taking down of full social security benefits for one employee while still allowing, let us say, a public sector employee to enjoy a highly liberal retirement formula would be intolerable. You can't continue to have armed services noncombatant personnel earn full retirement benefits after 20 years, or the 2½ percent per annum formula for certain congressional members and pay for these lush benefits with the "stretched" timing of full social security pay eligibility for the rank and file employees in the United States. This would be unthinkable. I'd suggest correcting the abuses and reducing the discrimination first; plus, encourage more years of productive employment by eliminating the mandatory retirement date feature, also by allowing the flexibility of working part time and starting to draw down some partial retirement supplemental pay. Then, when all these things are done, it may be appropriate to make the move to deferring the date for eligibility of full social security benefits.

[*Question 9.* You seem to suggest (bottom of page 34 and top of page 35) a pooling of funds by social security and retirement funds progressively over the next 20 years or so that "at a certain future period all retirement funds, both public sector and private, would in fact be one universal funding-as-you-work system." I would like more details. For example, how do you deal with current needs while building the universal funding system?]

Response. There are two points that lie behind this question. The first relates to the private sector plans. Back in the distant past when the Federal Government had little control over, or visibility of, private pension plans, and even when there were few such plans in existence, there was a need for public sector funding, i.e., the social security system. The same conditions as existed then are far from today's present private pension scene, and while even the most recent legislation as regards private plans needs further "sharpening," nevertheless, the private plans are certainly now under good Federal vigilance and meeting such prescribed minimum specifications as have been to date promulgated. This being so, there is a redundancy in private sector pension plans and the social security system as it relates to employees covered by private plans. If you accept my recommendations for complete portability of private sector pension benefits for a given employee, then his pension funding (derived from his personal payroll contributions to social security, his employer's payroll contributions to social security, plus his employer's supplemental contributions into the defined private pension fund) are unnecessarily cumbersome and no longer serve the useful purpose planned in the past by the establishment of the social security system itself. I envisage that employee A will start work for company X and he will contribute a defined contribution toward his own ultimate pension benefit out of his weekly payroll. This contribution is presently going into a social security fund where matching contributions by his employer are also directed and credited to his account.

With the present status of Government regulation of private pension plans, in my opinion, such funds are more appropriately contributed *directly* into the employer's duly qualified pension fund together with the additional contributions required of the employer to properly fund this qualified plan on an annual basis. To split these various contributions between a Government social security fund and a private pension plan no longer serves a useful purpose in my view. I am sure that Government economists would agree and opt that all such funds go entirely into a social security pool. In this I disagree. The Government's direct access to, and control of, such funds does not serve the best interest of the employee himself nor the employer, inasmuch as there is no preservation of the integrity of funds earmarked for a specific employee. Nor is there adequate incentive for Federal administrators to optimize the productivity of the funded investments, maximize their yield, control costs and eliminate abuses. These highly important economic necessities are more likely to be found in the private sector than in the public sector.

Therefore, it is my recommendation that for such private sector employees and employers, all pension contributions be funded privately by the employer. Complete 100 percent portability be required for all contributions. Certification of adequate cash funding be required by law annually of all employers, assuring that control of funds has been placed beyond the corporate reach (except for the efficient management of fund resources). As employee transfers, for whatever reason, from company X to company Y, his total accumulated pension contributions in pension plan of company X, with accumulated earnings plus appreciation of portfolio, or its equivalent, would be transferred without forfeiture of any kind to the pension fund of company Y, where it would be "folded in" for the benefit of employee A into company Y's own pension trust vehicle, etc.

In the public sector, the funding crisis is really approaching critical proportions. In spite of this, I believe the same rules, the same definitions, the same techniques should be set up in parallel fashion to those of the private sector. Whether you call the public sector pension fund "social security" or some other name, or define some other vehicle, is immaterial, but the concept should parallel that of the conventional private sector pension plan on a going forward basis.

And how, you ask, do you take care of the transition from the present unfunded status to this new concept for public sector employees? In my view, you treat this as you would any new pension plan established by a company in the private sector. You calculate an unfunded past service liability and you agree to provide such funds over a certain extended period of time, i.e., 20, 30, perhaps even 40 years. The important thing is (a) to go forward on a proper basis and put a curfew on continuation of the past historic inadequate plan, and (b) to have a plan for reducing the unfunded past service liability over an acceptable economic timespan, one that is reasonably realistic.

In conclusion, I apologize for the brevity in treating these highly complex questions. Some of these require much more dialog and examination than I can possibly hope to convey in any letter such as this. The only objective I can accomplish here is to respond initially to your query and stimulate a direction, and perhaps interest, in your future investigation along these lines.

Again, I thank you for the interest you have shown in these ideas and I hope they may be somewhat useful in your project.

Very sincerely,

STANLEY M. BABSON, JR.

ITEM 5. LETTER FROM SENATOR FRANK CHURCH, TO ALFRED B. KIRSHNER, DIRECTOR, NEW YORK TEACHERS PENSION ASSOCIATION, INC., NEW YORK, N.Y., DATED AUGUST 4, 1978

DEAR MR. KIRSHNER: Thank you for your recent letter concerning possible testimony before this committee regarding the public employee pension system.

I appreciate your concern regarding this matter, and would like to invite you to submit written testimony for inclusion in the hearing record for the July 17, 18, and 19 hearings on "Retirement, Employment, and Lifelong Learning." The record will be held open until August 25 for your testimony.

Enclosed please find copies of written testimony submitted by witnesses for our hearings held in mid-July.

If this committee should have any future hearings on retirement policy directly related to pension issues, you may wish to submit additional testimony at that time.

I look forward to receiving your written testimony.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

ITEM 6. LETTER AND STATEMENT FROM WILLIAM WITHERS, PH. D., PRESIDENT, NEW YORK TEACHERS PENSION ASSOCIATION, INC., NEW YORK, N.Y., TO SENATOR FRANK CHURCH, DATED AUGUST 18, 1978

DEAR SENATOR CHURCH: Mr. Alfred Kirshner, one of our directors, has informed me that you are willing to accept a statement from our organization to be included in the record of the recent hearings of the Special Committee on Aging. We greatly appreciate this privilege and the statement is enclosed.

If we can be of any further service, or provide testimony at any future hearings, please let us know. We are anxious to cooperate with you in every possible way.

Sincerely yours,

WILLIAM WITHERS, PH.D.,
President.

[Enclosure.]

STATEMENT OF DR. WILLIAM WITHERS

There are thousands of public pension systems in the United States with funds amounting to $115 billion. Between 75 percent and 80 percent of these systems are contributory. This means that the life savings of millions of retired public employees are involved. In some plans, as much as 50 percent of the assets have been saved by employees from salary deductions during their years of employment. The assets of the New York Teachers Retirement System, despite large contributions from New York City prior to New York's present financial difficulties, are to a very considerable extent the actual savings of the teachers.

But public pensioners in the United States, unlike private pensioners, have little or no protection. During the hearings on ERISA (the Employee Retirement Income Security Act), Prof. Dan McGill, one of the leading authorities on pensions in the United States, pointed out that public pensioners are in as much need of protection as those in private pension systems, and for this reason a task force of the House Committee on Education and Labor was established to study the matter. Its report has been published recently.

The report reveals that most public pension funds are controlled by elected public officials and to a lesser degree by trustees elected by active employees. We find nothing in the report to refute the conclusions of an earlier study made by the Twentieth Century Fund that there exists a great conflict of interest. (Louis Kohlmeier, "Conflict of Interest: State and Local Pension Fund Asset Management," Twentieth Century Fund, New York, 1976.) Based on the decision of Judge Cardoza in *Meinhard* v. *Salmon* (1928), and other cases, the sole responsibility of a trustee is to protect the assets of a trust in the interest of the beneficiaries. But public pension trustees have frequently and flagrantly violated this responsibility by using trust funds for purposes unrelated to the welfare of the beneficiaries. In so doing, they have jeopardized the solvency of the funds they were supposed to protect. The pensioner has been helpless to prevent this. He has no representative on his board of trustees. If he goes to court, he is faced with huge legal expenses and is very likely to lose his case unless he appeals, since the lower courts are hesitant about charging public trustees with fiduciary irresponsibility.

The sad history of what has occurred in New York City since 1975 strongly supports this need for protection. Under pressure from the Governor, the mayor and the controller, and with the support of leaders of the municipal employee unions, the pension funds have been forced to buy millions of city and MAC bonds, most of which are unmarketable and have Caa ratings. To buy these bonds, millions of dollars worth of good pension assets had to be sold by the funds at huge losses. In 1977, the unamortized loss to the teachers pension fund alone amounted to $180 million. Why was this done?

New York City was on the verge of bankruptcy. The banks refused to buy any more city bonds. They were unloading them on customers who have since filed suits. City expenses or salaries were not cut sufficiently to balance the budget. The unions opposed such measures. They demanded salary and cost-of-living increases. Money was available in the pension funds and because the pensioners were unrepresented and had no political influence, fiduciary responsibility was totally disregarded.

As a result, the five city pension funds are now threatened with bankruptcy as well as the city. No permanent or long-run solution to the city's fiscal dilemma has been provided by literally robbing the pension funds of millions of dollars to provide salary and cost of living increases for union members and assist the banks to avoid any sizeable risk taking to finance New York City. Less than 1 percent of the total assets of the large city banks are invested in city securities.

The city controllers' office reported to Congress that 35 percent of the total pension fund assets are already in these securities. This was a gross underestimate intended to make Congress believe that the pension funds could legitimately be expected to buy even more of these bonds. The actual figure is at least 48 percent. The controllers' office included the variable assets in the total assets. The

variable assets cannot legally be used to buy these securities and most of the pensioners have claims only to the fixed assets which can be used. If one excludes the variable assets from the total, the five city pension funds are already about 50 percent invested in unmarketable city securities. If private pension fund trustees did this (invested more than 10 percent in the securities of one company or employer's securities) it would be illegal under ERISA, and it is certainly a violation of the common law concerning the obligations of trustees.

What has happened in New York City amounts to political expediency. But it is even worse. It is discrimination against a minority, old retired people, thousands of whom in New York City are receiving pensions of $4,000 a year or less. Many of these small pensions were 50 percent paid for out of employee savings.

What kind of old age discrimination is evil? Is it worse to deny a competent older person a job because of age than it is to rob him of his pension when he retires? The first of these has been prohibited by Federal law, but not the second. Why not? Let us not mince words. What has happened in New York City is outright theft condoned by a Federal statute, Public Law 94–236. Whether the city bonds bought by these funds are ever saleable, many millions of the pensioners' assets were squandered to buy them.

We have been working for 3 years to have the protections of ERISA extended to public retirement systems. There is no logical or moral reason why this should not be done. At the very least, public pension systems should be covered under the insurance provided by ERISA through the Pension Benefit Guaranty Corporation, or a similar corporation should be established to protect public pensioners.

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RETIREMENT, WORK, AND LIFELONG LEARNING

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 2—WASHINGTON, D.C.

JULY 18, 1978

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CONTENTS

	Page
Opening statement by Senator Frank Church, chairman	111
Statement by Senator Charles H. Percy	118
Statement by Senator Lawton Chiles	120

CHRONOLOGICAL LIST OF WITNESSES

Marshall, Hon. F. Ray, Secretary, Department of Labor; accompanied by Peter Henle, Deputy Assistant Secretary	112
Clague, Ewan, Laconia, N.H., consultant, and former Commissioner, U.S. Bureau of Labor Statistics	135

APPENDIX

Correspondence relating to hearing:	
Item 1. Letter and enclosure from Senator Frank Church, to Hon. F. Ray Marshall, Secretary, Department of Labor, dated July 31, 1978	153
Item 2. Letter and enclosures from Hon. F. Ray Marshall, Secretary, Department of Labor, to Senator Frank Church, dated September 11, 1978	154
Item 3. Letter and enclosure from Senator Frank Church, to Ewan Clague, Laconia, N.H., consultant, and former Commissioner, Bureau of Labor Statistics, dated July 31, 1978	168
Item 4. Letter and enclosure from Ewan Clague, Laconia, N.H., consultant, and former Commissioner, Bureau of Labor Statistics, to Senator Frank Church, dated September 5, 1978	168

RETIREMENT, WORK, AND LIFELONG LEARNING

TUESDAY, JULY 18, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 6226, Dirksen Senate Office Building, Hon. Frank Church (chairman) presiding.

Present: Senators Church, Chiles, and Percy.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; David A. Rust, Tony Arroyos, and Jeffrey R. Lewis, minority professional staff members; Marjorie J. Finney, correspondence assistant; and Madonna S. Pettit, research assistant.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. The hearing will please come to order.

My statement will be brief this morning because I judge by yesterday's session we will have much to talk about today, with both a Cabinet member and a highly informed expert on our witness list. But I would like to point out that yesterday's testimony and the questioning provided a good foundation for what may be the primary point to be discussed this morning. And that question is: What more should the United States be doing to promote retention of older persons in the labor force, as a matter of their own choice, instead of retiring them, often without choice?

Yesterday, we heard compelling reasons for questioning the current trend to earlier and earlier retirement:

No. 1, it flies in the face of clearly foreseeable demographic changes, including a rising proportion of older persons at the same time that the percentage of younger persons in the work force is expected to decline.

No. 2, some of the sharpest growth will be among the very old, especially those 80 or over. Both Secretary Califano and Dr. Harold Sheppard emphasized this point yesterday, and Dr. Sheppard said that there will be 8 million persons over 80 by the year 2,000, or about 1.7 million more than had been projected as late as 1971.

Will even a four-generational family be able to provide support services to the very elderly of the year 2025? After all, if current trends hold, the very old persons of that period will have fewer offspring to help care for them.

And, unless the inflation is somehow checked, won't more workers opt against early retirement because of their own individual realization that retirement income is far less adjustable to rising prices than is work income?

And so, if early retirement is under increasing scrutiny and concern, what do we do to answer the question raised earlier? How do we keep older workers working after we have been so profligate with their talents over the decades?

Secretary Marshall, I am glad that committee discussions with your Department indicate that you plan to grapple with that issue, among others, this morning.

I would like to close with two questions.

The new "Employment and Training Report" of the President, issued annually as required by the CETA—Comprehensive Employment and Training Act of 1973—has a chapter on older workers. At one point, page 98, the report says that the senior community service employment program funded through the Older Americans Act but administered by the Department of Labor, offered part-time work to 37,400 economically disadvantaged persons aged 55 and over. That number has gone up to more than 47,000 at this time. We would like to know if you, yourself, are satisfied with the growth of this particular program.

Second, the recent "Age Discrimination Report," together with information received from the committee from time to time, asserts that directors of general manpower projects, such as CETA, often say that they do not have to serve older workers because, after all, there is title IX, a categorical program for that age group.

Now the committee has been told that there has been some upgrading of older worker participation in CETA, but we would like to have your view with respects to this as well.

Mr. Secretary, I ask these questions now in the hopes that you may deal with them as you wish during the presentation of your testimony this morning.

We welcome you, Mr. Secretary, and I invite you to proceed.

STATEMENT OF HON. F. RAY MARSHALL, SECRETARY, DEPARTMENT OF LABOR, ACCOMPANIED BY PETER HENLE, DEPUTY ASSISTANT SECRETARY

Secretary MARSHALL. Thank you, Mr. Chairman.

I am pleased to have this opportunity to present to you my testimony on retirement issues. The Employee Retirement Income Security Act, which is designed to protect private pension funds so that they will be available for workers when they reach retirement age; and the Age Discrimination in Employment Act, which is designed to prevent discrimination against workers for reasons unrelated to their ability, that is, discrimination because of age.

That act also requires that we attempt to help older workers meet the employment problems they face and to see employers develop procedures to make better use of older workers. We are, in addition, responsible for the Comprehensive Employment and Training Act, which provides job opportunities for older Americans.

Retirement Trends

I think that some of the basic trends that influence our ability to carry out our mandate have been presented to you, but let me highlight a few of them. One is that Americans are retiring at earlier ages. In 1950, 46 percent of men aged 65 and over were in the labor force. By 1978, this figure had declined to 20 percent. There have been less dramatic trends for women, but the figures are similar. There are also similar declines for workers age 55 to 65.

A major reason for this tendency for Americans to retire at earlier ages is that the social security and private retirement systems provide greater opportunity for people to retire. The Social Security Act now makes it possible for people to elect benefits at 62. The evidence indicates that the benefits available under the social security system have improved from $138 in 1960 in constant 1975 dollars, to $207 in 1975. In 1960, 85 percent of the people eligible for social security received benefits. By 1976, this number had increased to 95 percent.

At the same time, there has been a rapid expansion of private pension plans. In 1960, there were about 1.8 million beneficiaries in these programs and they received $1.7 billion. By 1975, there were 7 million beneficiaries and these beneficiaries received $14.8 billion. Right now, just about one-half of all private wage and salary workers in the American work force participate in retirement plans.

Another significant part of the trend is that a larger and larger number of people retire and participate in social security plus some other retirement plan. Social Security Administration data show that in 1977, 30 percent of married couples and 15 percent of nonmarried persons receiving social security retirement benefits. The figures are higher for those just entering retirement, with 40 percent of the couples and 25 percent of individuals participating in social security also receive payments under some other plan.

Persistence of Poverty

I think it is fair to say that with social security, and with the expansion of private pension plans, older Americans today are much more fortunate than their predecessors. They are retiring with greater financial security than ever before. However, too many Americans past 60 are not financially secure. While we have done much to eliminate poverty among older people, it is still a serious problem in terms of the number of people involved, even if less dramatic, in terms of percentages of people involved.

Your interpretation of this particular problem depends upon the estimate that you use. The official poverty level is about $2,700 for one person over 65, and $3,400 for an aged couple in 1976. Using this formula, the number of older persons with incomes below the level may be as low as 1 million, or less than 5 percent of persons over 65. The BLS family budgets provide an alternative measure of living costs for retired persons in urban areas. In 1976, the lower level budget was about $4,700 for a retired couple—nearly 40 percent higher than the poverty standard. Using this budget, the number of older Americans falling below this level may be as high as 3 million, or almost 15 percent of those persons over 65.

It is important to ask who are these people who are below the BLS lower level budget, and they tend to fall in two categories. One consists of people with no private pension plans. The other includes those receiving benefits from private pension plans which are not protected against inflation so that the longer they are retired the less valuable their pension plans become.

There is a correlation between wage and salary levels and participation in private pension plans so that workers with very low levels of income are less likely to have coverage than workers with higher levels.

The second category consists of those people who are forced to retire from the work force because of various personal or physical conditions. We are, therefore, left with a challenging problem of providing for active participation of older workers in the work force well into their sixties and beyond. It seems to me that one of the most important challenges that we face is not just to make workers secure in their retirement but to make it possible for them to have fuller employment at higher earnings if they want to continue.

Changes in the ADEA

Now there are a number of laws and programs designed to help older Americans, and I would like to mention just a few of these. One that we are responsible for is the Age Discrimination in Employment Act, which is a major tool for assuring older workers of their job rights.

Now the purposes of ADEA are threefold: (1) To promote employment of older persons based on their ability rather than age; (2) to prohibit arbitrary age discrimination in employment; and (3) to help employers and workers find ways of meeting problems arising from the impact of age on employment.

As you know, under the ADEA amendments enacted in April of this year, protection under the act has been extended by barring mandatory retirement in private industry before age 70, beginning January 1, 1979. Under the original act, employees in private industry could be mandatorily retired at age 65. However, as of September 30 of this year. ADEA coverage for Federal employees will apply without an upper age limit, and an age 70 mandatory retirement requirement will be repealed. The enforcement provisions of the act are also strengthened by the 1978 amendments. Work opportunities for older workers will be expanded greatly by the amendments, especially for those who would have faced mandatory retirement at age 65 and desire to continue working.

The Department of Labor is also required to examine the effect of raising the upper age limit in the act from age 65 to 70 with a view to determining the feasibility of raising the limit further or eliminating it in the future. We are required to report to the President and the Congress on this study on an interim basis by January 1, 1981, and to submit a final report by January 1, 1982.

An Aging Population

The issues of income adequacy and employment options for older Americans will become more acute as older persons become a larger and larger share of the total population.

It is important to note that this process will take place gradually over the next three-quarters of a century. Currently, the 25 million men and women over 65 make up about 11 percent of the population. By the year 2000, their numbers will increase to 33 million—still only 12 percent of the projected total—however, by 2035, with the aging of the "baby boom" cohort, there will be almost 58 million persons over 65, or 19 percent of the projected total population.

This growth will have far-reaching effects on society and social institutions. It will place a tremendous burden on the social security system and therefore on the younger working population. In strengthening the financing of the social security system in 1977, Congress mandated an increase in the payroll tax from 12.1 in 1978 to 15.3 percent in 1990. Given current actuarial projections, the tax rate will have to be increased by an additional 4 percentage points by 2035 in order to maintain the system's solvency and projected benefit levels. Our advance knowledge, of course, affords us time for considering other approaches. The administrators of public employee pensions supported by tax revenues, and of some underfunded private plans, must come to grips with these same questions.

The impact of these changes will be mitigated by two factors. One is the increased participation of women in the labor force resulting in increased revenues for the social security and public treasuries. The second is the relative decline in the youth population, which may result in slower growth in school and other child-oriented expenditures. One way of expressing these factors is through the so-called "dependency ratio," which denotes the average number of nonworkers who must be supported by each worker. This ratio is expected to decline from its current level of about 80 children and aged persons per 100 adults between 20 and 64, to only 70 per 100 by the start of the next century. At that point, though, it will begin to rise once more, passing the 80 per 100 mark again by about 2025. The extent to which these factors will mitigate the problem posed by an aging population cannot be accurately predicted at this time.

These trends, however, lend greater urgency to the necessity of expanding the employment options of the aged. It will be increasingly difficult for all older Americans to experience a comfortable retirement if we depend primarily on "transfer" systems supported by smaller cohorts of younger workers. And yet, the prospect of an expanding older population also has its optimistic aspects. As the current low birthrate makes itself felt in the labor markets of the future, the skills and contributions of older workers will be increasingly sought. Employers will find themselves competing for the services of older workers, possibly bidding up wages and accommodating their desires for more flexible work schedules. As employers take a positive approach in which they recognize the worth of their older employees, the ultimate result will be wider opportunities and more cooperative relations among different age groups.

Current DOL Efforts

The Department of Labor is actively seeking to meet the present and future needs of older Americans. Our current activities reflect two major concerns.

The Department's first major concern is insuring that older Americans will have the option of continued employment.

While discrimination against older workers has not been eliminated during the 10 years since enactment of the Age Discrimination in Employment Act, much progress has been made and the Department is doing everything it can in order to be able to more accurately target programs to help older workers.

The Department of Labor has emphasized education activities, enforcement, and the development of a body of legal precedents. The act has helped older workers in terms of increased job opportunities as well as reemployment, on-the-job gains, and back wages. As a result of efforts we have made to strengthen our enforcement effort, a record $10 million in monetary compensation was found due to 1,943 individuals in the 40–65 group during fiscal year 1977.

We are now working to develop policies for the implementation of the 1978 amendments to the ADEA. While enforcement responsibility for the act's prohibitions against age discrimination will be transferred to the Equal Employment Opportunity Commission—EEOC—on July 1, 1978, we will continue to exert full enforcement efforts on this vital program pending the transfer.

Research under the act will continue to be the responsibility of the Department of Labor. We currently have an unsolicited proposal under consideration that would implement the study requriement under section 5 of the act concerning the upper age limit. We are determined to have the study underway as expeditiously as possible.

We also have a continuing responsibility under section 3 of the ADEA to undertake and promote research with a view to reducing barriers to the employment of older persons and to disseminate the findings of studies and other materials to promote the employment of older persons. One area that may prove worthy of future research is the option of flexible work arrangements for older employees. Older workers should have the chance to "ease into" retirement—to continue working at rewarding jobs on a part-time or part-year basis, if they prefer. Employers ideally should provide a full menu of options for the older employee: Continued full-time work, regular part time, temporary callback, and consulting relationship. Community work is yet another area in which the talents of older workers can be readily utilized.

We are also involved more directly in providing employment opportunities to older Americans. For example, we are charged with the administration of title IX of the Older Americans Act—senior community service employment program. Under this program, meaningful part-time employment is provided to low income, older workers. Their work touches on a variety of community activities and functions. In addition, participants receive substantial supportive services. Title IX grants are expected to provide 47,500 job opportunities to older workers during the program year starting July 1, 1978.

In addition, title I, II, and VI of CETA provide valuable public service employment, training, and comprehensive services to older Americans. CETA is estimated to have helped more than 98,000 workers older than age 55 during 1977. Some of the most successful projects have involved senior citizens rendering services to other senior citizens.

Mr. Chairman, I want to assure you that the problems of older Americans are of the utmost concern to the Department of Labor. We are devoting an ever increasing amount of effort to addressing these matters. Enforcement of the age discrimination provisions and programs offering jobs and training to older workers provide substance to this concern.

Second, the Department is concerned with insuring a comfortable retirement for those older persons who have chosen to leave the labor force.

This is partly in connection with our concern for the Old Age Survivor Disability and Health Insurance Trust Fund and their security but also in connection with the private pension plans under the Employee Retirement Income Security Act of 1974. Through aggressively enforcing our mandate under the Employee Retirement Income Security Act, we are doing every thing we can in the Department to assure that when workers who are eligible for these pensions get ready to retire, the funds are likely to be there.

The Department is also involved with enforcing the provisions of the Employee Retirement Income Security Act of 1974—ERISA. The enactment of ERISA was based on the realization that a pension plan is not a "gift" from the employer, but is a part of the total wage package for which the employee bargains. Under ERISA, millions of workers have a vested right to a pension where no such right existed before. Furthermore, all workers covered by private pension plans are protected against careless or unscrupulos administration, and those who participate in defined benefit plans have their vested benefits guaranteed by the Pension Benefit Guaranty Corporation.

As part of its ERISA mandate, the Department is particularly interested in eliminating abuses in the private pension system. Congressional hearings preceding ERISA uncovered many instances where individuals who had expected to retire comfortably with dignity, found they would not receive the benefits they believed they had earned. Among the major reasons of this were inadequate funding and misunderstandings about expected benefits. The Department is focusing its current efforts on eliminating mismanagement and misunderstandings by a combination of enforcement activities and public education efforts. We feel that, due in part to our efforts, plan participants have a better understanding of their rights under their plans and the act. Furthermore, the Department's active enforcement program is working toward insuring that assets in private pension plans are used for the exclusive benefit of all plan participants and beneficiaries.

Another aspect of the Department's work in this area is the variety of public service employment programs providing services to the elderly community, primarily under title VI of the Comprehensive Employment and Training Act. Examples of the many innovative projects supported under this title range from a Wisconsin program aimed at protecting the elderly from unscrupulous insurance sales tactics to a Washington effort helping senior citizens apply for exemptions from utility surcharges.

We also have a number of programs under which CETA workers provide home health care to older workers. We think that these are some of the most effective of the CETA programs that we have.

The Department will continue to work jointly with Congress in the future to protect and expand the rights of older Americans.

We would like to suggest several areas of primary concern:

First: The entire income support system for the elderly should be reviewed. The role of the private pension system and its relation to social security should be studied with the aim of providing more adequate income support to the retired. Special attention must be given to the effects of inflation on private pension benefits. The soundness of the Government financed programs also should be carefully examined. These are some of the issues that will be addressed by the recently announced President's Commission on Pension Policy, which will undertake a comprehensive review of retirement, survivor, and disability programs existing in the United States.

Second: As a major employer, the Federal Government should become a leader in offering flexible work schedules and wider career options for older workers. The Department supports the concept of legislation recently passed by the House and pending before the Senate which authorizes an experiment with flextime work opportunities within the Government. We also endorse wider opportunities for part-time employment in the Federal Government.

Third: Increasing attention should be given to encouraging private employers to provide a wider selection of work arrangements for older workers. This committee may wish to consider further hearings to publicize efforts by private employers already offering such arrangements, thus encouraging others to follow this example.

Mr. Chairman, the Department of Labor appreciates this chance to demonstrate its concern with the problems and opportunities facing our older citizens. We look forward to working closely with Congress on the issues discussed today.

Thank you.

Senator CHURCH. Thank you very much, Mr. Secretary.

I would like to ask Senator Percy to ask whatever questions he has at this time as he has another engagement.

STATEMENT BY SENATOR CHARLES H. PERCY

Senator PERCY. Thank you, Senator Church. Senator Chiles and I have to go to a markup, so I will be very brief.

We appreciate very much indeed your being here Secretary Marshall, and I appreciate your consideration, Mr. Chairman.

The semiretirement phase is one of the toughest problems now facing us, and I think we are less prepared to move into this area than almost any other now being considered by the Congress. The work of your Department is essential in that regard.

I would appreciate your comments on the generally noted fact that people are ill-prepared to retire. Those who are best prepared often have planned and take early retirement. They have thought about it, they have discussed it with their families, they have made a plan for their life, and they are generally pretty well organized people anyway—we almost wish they would not retire so soon. They are ready for it because they have built-up a lifetime of activities outside the structure of work.

Those who really depend on their work—some place to go to, some people to be with, some place to some back from—are the ones least likely to have planned their life as well.

Phased-In Retirement

My own industrial experience shows that when we introduced a program of compulsory retirement at age 68, we did it on a phased in basis. We required beginning at age 65 a paid vacation plan plus an extra month the next year, plus 2 months the next year, plus 3 months the next year, so they phased out with a program of 15 weeks of counseling with the families 5 years prior to retirement, on various phases of adjustment to the retirement.

I have lost track really as to whether those programs our company started in Chicago, and I think 15 to 16 other companies followed us later, has become any kind of move, whether industry looks upon its obligation to help psychologically prepare people for their retirement and whether that phased out program has even been tried in the Department of Labor itself. I wonder if you would advise me either now or subsequently, for the record, as to whether that aspect of retirement is being looked at and being given serious consideration by the Department as well as by industry and labor unions themselves. I think UAW has done an outstanding job in helping people retire.

Secretary Marshall. Well, I think that it is a problem, Senator Percy, and it is correlated with the other one that I mentioned. That is, many of the people who are not prepared for retirement, in terms of having educated themselves, are the same people who have the least financial support when they get ready to retire. The people who plan for retirement seem to be also those people who have more financial security. Lower income workers are less likely to do that.

I think that we ought to first try to do everything we can to provide for steadier income and employment for people and to insure that they will be able to work. I think the prohibition of mandatory retirements will be beneficial in that regard, but we also need to help people prepare psychologically for retirement.

Let me ask Mr. Henle to comment on what we know about the programs that have been undertaken by various people.

Mr. Henle. Well, we do not have an inventory of such programs, but we do have a couple of examples that have come to our attention in your own area. Continental Illinois Bank has a special program which affects about 850 part-timers out of a total work force of 8,500. Half of these part-timers are over 65. The bank has been using part-timers successfully for over a decade.

Another example we have been given information about is Northrop out in California. This is an arrangement for about 300 retirees, including machinists and accountants, during peak work periods. They can be called back to work for up to 60 days. So it is those kinds of arrangements that we would like to promote and see given more publicity to encourage others to follow.

Senator Percy. One last item that we also discussed with Secretary Califano. I would hope that the Department of Labor could address itself to the problem of so many people 65 and over who are disillusioned with medicare and medicaid because they have been led to be-

lieve that these two cover their medical expenses when really they cover less than half of the patients' costs—43 percent is the last figure I saw. This is also true of social security. How much of that is supposed to be anything other than a supplement for their own retirement plans, for their own savings accrued for purposes of retirement?

I think we all need to do a better job of destroying the impression that older people can rely upon social security because we just can't keep raising rates up fast enough. We have to establish a ceiling above which we cannot raise the rates.

Thank you very much indeed, Mr. Chairman.

Senator CHURCH. Senator Chiles.

Senator CHILES. Mr. Chairman, I hate to impinge on your time, but if I could ask a couple questions.

Senator CHURCH. Feel free. Ask whatever you wish.

STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. Mr. Secretary, I just had an opportunity to see this publication entitled "Senior Aides," which describes the program that is being funded through your Department, with the NCSC. We have six of those projects funded in Florida, and as I have gone around the State, I see very clearly the enthusiasm that an older person has for this work opportunity and the kind of fulfillment and justification that they get from that. I notice the senior aides program, the green thumb and the foster grandparent programs, always seem to have complete enthusiasm from those people that are participating in the program, those that are recipients of the service and the people in the community. I just don't find anybody knocking those particular programs.

I am always hearing people that are criticizing this or that, but I never hear any criticism of these programs, and where I find those programs, I find a tremendous enthusiasm in the community by the people who are participating. I see that we have a lady that was cited for setting up work through that senior aide program at Fort Myers, Edith Obery. She did an outstanding job.

VALUE OF "SENIOR AIDES"

It looks to me that this is one of the most attractive options that we have. We generally, I think, are getting more for our money. We pay these people part-time salaries for their services. They are very satisfied with that, they are looking for part-time income. I don't know of a better return that we are getting for our dollar, and I just certainly hope that the Department would continue the broadening of those programs. I think they have tremendous support in the Congress, too.

Secretary MARSHALL. I agree, Senator Chiles. I have worked in those programs myself, and I think that it is a very good program from all perspectives, and I think that it is the next best thing that can be done for older people. We can assist people to stay employed and thus keep them in the economy.

Senator CHILES. Many of these people don't want that full-time job. What I find is that a lot of these elderly people are women, for example, and they are only looking for part-time work. They will

quickly tell you that with their age or other demands on their time, they are really looking for some fulfilling hours and they are not looking for full-time employment. I find the same thing with many men citing that.

Secretary MARSHALL. I think that is right. We have the same experience. I think we can do a lot more with part-time work in the private sector. Certainly, these programs ought to be available. They are useful from the standpoint of the work that gets done, because the participants do things that the society needs. These jobs are useful to the people that are doing the work because they get a sense of fulfillment, participation, and accomplishment. I have had people tell me they would work in the program even if we didn't pay them.

Senator CHILES. Well, I find that to be true. In fact, I find many of them say, "We work a lot more hours than the hours we are paid for." I also find in those programs where there are a few senior aides or green thumb, there are others in the program that are pure volunteers and will almost tell you: "I don't really have to have the money. I don't need the money, I want the fulfillment of the program." So it also seems to me that it attracts a greater number of participants because you have that program and many of them are not being paid, they just want to participate.

OLDER WORKERS UNDER CETA

I also wanted to bring to your attention the language in section 215 of the Senate committee's CETA bill. That particular language, based on language proposed by Senator Domenici and myself, provides for services for elderly workers under CETA.

Many of us feel that the older workers are currently underserved by CETA and I wanted to call that section to your attention, if it survives in the bill that comes out of the conference. I think, as you said in your statement, that the Department of Labor is giving the utmost attention the needs of our elderly and that this language would give you a statutory mandate to incorporate that as a part of CETA. I certainly hope you people will be able to follow that, if we can have that enacted as part of the reauthorization of CETA.

Secretary MARSHALL. Well, we think that we need the targeted programs like green thumb that you have mentioned, but we also need to encourage CETA to employ older workers. It now provides jobs for about 100,000 older workers in fiscal year 1977, and we think that—as the overall level of unemployment declines—the participation by older workers in the system should and probably will increase.

Senator CHILES. Thank you, Mr. Chairman.

Senator CHURCH. Thank you, Senator.

Now, Mr. Secretary, as I followed you in your testimony, some questions occurred to me, and I would like to go back to your testimony and ask them.

Secretary MARSHALL. All right.

QUESTIONS ON PRIVATE PENSIONS

Senator CHURCH. On page 3, you speak of private pension plans and you say, "By 1975, $14.8 billion were paid to 7 million beneficiaries of the private plans." Then you say, "An estimated 47 percent of

wage and salary workers in the private sector are currently participating in retirement plans." Well, if you divide $14.8 billion by 7 million beneficiaries——

Secretary MARSHALL. I see what you are moving toward, Mr. Chairman. That means that they participate in the sense that they are covered by the private pension plan, but it does not actually mean they are getting retirement benefits.

Senator CHURCH. I see, but that is not what it says. It says by 1975, $14.8 billion were paid to 7 million beneficiaries, so that money is actually paid to beneficiaries who are presently retired.

Secretary MARSHALL. Yes, sir.

Senator CHURCH. Now the other sentence. They are simply covered, but if you take the $14.8 billion and divide it by the 7 million beneficiaries, my computation comes out to about $175 a month average. When you consider that many of those private pension plans allow very generous pensions indeed for executives, that average of $175 a month would suggest that the big majority of beneficiaries under private pension plans may be getting even less, perhaps considerably less.

When you also consider that these plans typically make no provision for cost-of-living increases—that is, for the inflation—it clearly underscores the fact that the social security system is the main reliance of nearly everybody, doesn't it?

Secretary MARSHALL. Yes; and especially lower income workers.

Senator CHURCH. I think that the record should show that 7 out of 10 aged individual beneficiaries in this country, and one out of two elderly couple beneficiaries rely on social security for over half of their income. Do you have enough data to tell this committee whether private insurance programs are going to play an increasingly important role, they are going to be revised in ways that will make them better, or they are going to play a less important role—even less important than they play today looking to the future?

ROLE OF ERISA

Secretary MARSHALL. I think if we look to the future, there are a number of things that are fairly clear. One is that the passage of ERISA has greatly strengthened the funds. It has also caused a number of the funds to go out of existence, because if they are not actuarily sound they could not meet the requirements of ERISA. Many others cited poor economic conditions as the cause for their termination.

We have done everything we can to try to minimize the costs of meeting the requirements of ERISA. I think the pension funds in the future will therefore be sounder than they have been in the past and that when workers get ready to retire, they will have more security. They would tend to know that those funds have been protected as much as possible.

I think there will be greater reliance on private pension funds in the future than now. I think, though, that we have got a lot of work to do, from the public policy perspective, to look at the actuarial soundness of these programs. We are very much concerned about that in the Department of Labor because we are responsible for ERISA.

I am also chairman of the Board of the Pension Benefit Guaranty Corporation, which does assume responsibility for guaranteeing certain benefits. We need to look at the questions of unfunded liabilities of the pension funds, the economic impact of the funds, the relationship between the public and private pension funds. All these things we have under very careful scrutiny.

Senator CHURCH. Mr. Secretary, in that connection yesterday, Secretary Califano testified that the integrity of employer pension plans is open to serious question, and I quote now from his testimony. "In 1976, Federal pension plans had unfunded liabilities between $243 and $425 billion."

Now we are talking about Federal pensions. That would be the military and civil service, among others. Those are the principal ones.

Those are astonishing figures.

For State and local pension plans, the estimate is between $100 and $270 billion. The estimate for private plans is roughly $200 billion. Together, these unfunded liabilities may well exceed the national debt of more than $600 billion. Ten of the largest industrial corporations in America have unfunded pension liabilities equal to a third or more of their net worth; seven of them have unfunded liabilities which exceed the aggregate market value of the common stock.

When you read that statement you wonder if we are not just living in a soap bubble.

Secretary MARSHALL. Let me say I think it is important to make the distinction between the Government programs and private plans. Government programs are, to a significant degree, on a pay-as-you-go basis. They are not fully funded in the sense that they do not accumulate. The assumption is made that the Government will not default on its pension plans. I don't know if that is a valid assumption, but it is one that has been made.

A problem concerning the private pension plans is the degree to which these plans are fully funded. This is a very difficult area. We have just completed a special study of it. Using different actuarial methods, you can reach totally different conclusions about the size of unfunded liabilities.

There is no question that is a serious problem, but I think it requires very careful thought. It is easy to exaggerate it. It is easy to use some actuarial methods that make it look like the funds are not as sound as they really are in terms of their ability to pay off their obligations.

FUNDING RESPONSIBILITIES

We have initiated review of this problem of calculating funding responsibilities. We will be publishing in the Federal Register a proposal for calculating pension fund liability on a uniform and reliable basis. One of the reasons for the disagreement among people these days is because of different ways in making the calculations. So I conclude that, yes, underfunding is a serious problem. We do need to pay particular attention to the soundness of these funds as well as their overall economic impact on the society and the impact on the individual.

Senator CHURCH. Under ERISA, you were charged with the responsibility of reviewing private pension programs and ascertaining whether or not they were sound. What happens in a given case if you determine that a pension plan is unsound, that it is unreliable, and will not, in all likelihood, pay out as promised?

Secretary MARSHALL. Well, what happens depends on the conclusion we reach as to why the fund is, or is not sound. Our primary responsibility under ERISA is to see that the fiduciary responsibilities are not violated by plan administrators, and in that capacity what we do——

Senator CHURCH. You mean that the money is not misappropriated?

Secretary MARSHALL. It is either misappropriated or you have not made wise investments, or you have not otherwise adequately protected the funds. We are responsible primarily for insuring the fiduciary provisions of ERISA. What we try to do once we discover a fiduciary breach is first to remove the funds from the control of the trustees or administrators responsible for the breach, and second, try through civil action, to seek restoration of the fund. Any criminal activity disclosed by our investigation is referred to the Justice Department for action.

Senator CHURCH. All of that has to do with mismanagement. My question relates to a fund that is structurally unsound, where the income is obviously insufficient to meet the obligation. Do you have anything to do with those cases?

Secretary MARSHALL. In those cases, the main responsibility is with IRS, and that the withdrawal of the fund's tax exemption. IRS can also levy an excise tax against an underfunded plan.

Senator CHURCH. Is that the only Government sanction?

Secretary MARSHALL. Those are the main sanctions. Now, of course, a really difficult question for the Government would be to determine whether or not those funds are actuarially sound.

Senator CHURCH. Do you know of any case where the IRS has actually taken that kind of action?

Secretary MARSHALL. I know that they have taken the first steps to withdraw the tax qualification of the Central States Fund, but have withheld pending the results of the current effort by both agencies to require the plan to meet ERISA and tax standards.

Let me see what Mr. Henle knows. Do you know of cases where the IRS has withdrawn tax exempt status because of unsoundness of the fund?

Mr. HENLE. No, they didn't take that action in the Central States case because of the unsoundness of the fund.

Secretary MARSHALL. That was in connection with violations of fiduciary responsibility. We can find the answer to that. I don't know what action IRS might have taken.

Senator CHURCH. You made an interesting statement a few minutes ago, Mr. Secretary. You said even though Government pensions may be insufficiently funded, one assumes that the Government will honor the obligation by appropriating sufficient money to meet the need on a year-to-year basis, and the pension obligation will be honored.

Granting that assumption, certainly Congress has undertaken to safeguard the social security system by the action taken last year. Granted that assumption may be valid where Government needs are concerned. There is, however, no such assumption that can really be made where private companies are concerned.

Secretary MARSHALL. That is right except the safeguards we do have under ERISA.

Senator CHURCH. Are those safeguards related only to management?

Secretary MARSHALL. No, ERISA contains minimum funding requirements. The law also provides safeguards if the fund is termi-

nated. If a single employer defined benefit plan terminates now, then the Pension Benefit Guaranty Corporation has responsibility to pay the beneficiaries, and we have done that. That is not true of the multiemployer funds now because their terminations are not automatically covered. The Pension Benefit Guaranty Corporation can elect to cover multiemployer plans, but coverage will not be automatic until July of 1979.

Mr. Henle would like to add a comment.

Senator CHURCH. Yes.

Mr. HENLE. Mr. Chairman, the process of providing accounting or actuarial evaluation of a private pension plan is not axiomatic.

Senator CHURCH. I know that.

Mr. HENLE. There is less disagreement about evaluating vested benefits. I am sure you understand that vested benefits are the benefits that would be nonforfeitable as of a given moment of time if that firm, say, suddenly went bankrupt. Now the status, as I understand it, with regard to vested benefits, is that the private pension system is really in pretty good shape and most funds have cash assets on hand that equal or exceed 80 to 90 percent of the value of vested benefits.

When you move from valuing vested liabilities or vested benefits into the realm of the unvested, then you are making assumptions about what proportion of your present work force will receive benefits or at least will stay until they become eligible for vested benefit. You have to make assumptions regarding the rate of return you are going to receive for your assets and your investments. You have to consider the turnover among the employees and while you don't really get into the realm of make-believe, you certainly get to the point where some very arbitrary assumptions have to be made. That is why the Department is moving to suggest or require some uniform methods for actuaries to use in this valuation.

MULTIEMPLOYER BENEFIT PLANS

Senator CHURCH. In September 1977, PBGC's report raised major concern over the unfunded liabilities of multiemployer plans. The Congress deferred mandatory coverage until July 1, 1979, and ordered the PBGC to prepare a comprehensive report on the situation. That report, just released, found that about 160 of the 2,000 multiemployer plans were experiencing financial difficulties serious enough to threaten solvency within the next decade. All of these plans had pension benefits totaling $8.3 billion for 1.3 million workers who would be affected. The PBGC made no response to the Congress concerning this situation. What do we do about this?

Secretary MARSHALL. There are a lot of things. What the report attempted to do was to explore the options rather than make the recommendations. We thought it was important to have a debate to look at the present termination requirements to see if they really made sense. Sometimes the present termination requirements make it difficult for the firm to continue to be solvent and to pay the pensions. It might be better to change the 30-percent liability rule and to continue to collect as much income as the firm can pay.

We will obviously have to pay some attention to the premiums if we are going to base this on an insurance principle. There are a lot of things that can be done, both with respect to the premiums paid

for the termination insurance, and to the procedures used for termination.

A variety of alternatives has been explored in the PBGC report, all designed with the idea of doing whatever can be done to assure that the workers get the pensions rather than simply carry out the letter of the law, which might not be as sound a way to proceed as others that are outlined in that report.

Senator CHURCH. Does the insurance system presently cover single employee plans?

Secretary MARSHALL. Yes.

Senator CHURCH. What has been your experience to date? Have you collected premiums for this?

Secretary MARSHALL. Yes.

Senator CHURCH. How long has this insurance been in effect?

Secretary MARSHALL. Since the enactment of ERISA, September 1974.

Senator CHURCH. You have not had sufficient experience then to know whether you are actually administering this program on a sound insurance basis?

Secretary MARSHALL. The impression that I get from studying the issue is that with respect to single employers we have very little problem. The real problem is with the multiemployer plan and the reason is that the assumption that was made initially that in the development of ERISA multiemployer plans were more financially sound than single employer plans. The assumption was made because of the feeling that the large multiemployer plans like those in the coal mining industry and construction would be less of a problem.

Actually, it has turned out to be the reverse. Because declining industries and, to some extent, because of the procedures adopted for the multiemployer plans some employers will desire to withdraw from the plan and others will choose not to join the plan because they would have to assume that liability of other employers which were unable to fund their share of vested benefits. Those are the kinds of things that we think we may have to change in order to deal effectively with the multiemployer plans.

SINGLE EMPLOYER BENEFIT PLANS

Senator CHURCH. Since we cannot solve the multiemployer plan this morning—except to indicate the problems—let's go back to the single employer plans. How many of these single employers come under the program and can you tell me whether or not it is a voluntary matter or whether it is something else.

Secretary MARSHALL. I think we have some statistics somewhere. We will have to find those figures for you.

[Subsequent to the hearing, Secretary Marshall supplied the following information:]

The Employee Retirement Income Security Act of 1974 (ERISA) covers only employees in the private sector who are participants in welfare benefit plans and pension benefit plans. Total private sector employment is about 80 million workers. About 45 million are covered by welfare benefit plans; 39 million are covered by pension benefit plans, the subject of your committee's questions.

ERISA draws a distinction between two categories of pension plans. One is an individual account plan. In an individual account plan, each participant has

an individual account to which employer contributions are allocated. On retirement, a participant's benefit is based solely on the amount contributed to his or her account and any income, expense, gains and losses, and any forfeitures of other participants' accounts that may be allocated to the participant's account. Thus, prior to retirement, no particular level of benefits is promised. The most common type of individual account plan is a deferred profit-sharing arrangement, where a certain percentage of the employer's profits is allocated among participants' accounts. Another type of individual account plan is a money purchase plan in which the employer makes a specified level of contributions to the account of each employee.

The second category of pension plan is a defined benefit plan. Any pension plan which is not an individual account plan—i.e., any pension plan that does not base benefits solely on the balance in the participant's account of retirement—is a defined benefit plan. Thus, any plan which promises a specified level of benefits at retirement is a defined benefit plan.

Under ERISA, all pension plans, whether individual account or defined benefit, are generally subject to reporting and disclosure and fiduciary responsibility provisions and must meet certain participation, vesting and benefit accrual standards. In addition, defined benefit plans and money purchase individual account plans are subject to certain funding standards. Participants' benefits under defined benefit plans must be funded in advance of retirement in accordance with reasonable actuarial assumptions. These provisions are enforced by the Department of Labor and the Internal Revenue Service.

Single employer and multiemployer defined benefit plans must also pay insurance premiums to the Pension Benefit Guaranty Corporation (PBGC), which protects basic vested pension benefits in the event of plan termination. The PBGC currently insures some 80,000 defined benefit plans covering almost 33 million participants.

Because no specific level of benefits is promised by individual account plans, these plans are not covered by PBGC insurance. However, ERISA's sanctions against mismanagement of plan assets by fiduciaries, as well as for violations of the reporting and disclosure participating and vesting requirements do apply to these plans. Participants who believe that the conduct of any plan fiduciary or the operation of any plan provision violates ERISA, may notify the Labor Department for investigation of their complaint, or may bring an enforcement claim in U.S. Federal District Courts.

There are currently about 400,000 individual account plans covering 6 million participants which are subject to ERISA.

Senator CHURCH. Is it a voluntary proposition for companies to come within this insurance program or is it mandatory?

Secretary MARSHALL. It is mandatory if the plan is the defined benefit type, which is the most common.

Senator CHURCH. So, all of them presumably are participating.

Secretary MARSHALL. Multiemployer plans are required to report and to pay premiums, however, benefits are not automatically insured by PBGC.

Senator CHURCH. How many single employer private pension plans have failed since ERISA was enacted?

Secretary MARSHALL. I don't have that information immediately available. We can get it for you from the PBGC. We don't have it. The estimated figure is roughly 3,000, but we can get you the exact figures.

Senator CHURCH. The estimated figure for what?

Secretary MARSHALL For the private pension plans that have failed, single employer plans that have failed.

Senator CHURCH. In the last 3 years?

While you are supplying the committee with that figure I wish you would supply us with the number of employees that were affected.

Secretary MARSHALL. We can do that.

[Subsequent to the hearing, Secretary Marshall supplied the following information:]

Administrators of plans covered by ERISA's termination insurance provisions which intend to terminate must file a notice of termination with the PBGC. Since September 1974, approximately 20,000 insured plans with 450,000 participants have terminated.

PBGC attempts to determine the reasons for plan termination. Of the total number of plans that filed termination notices with PBGC from September 1974 through September 1977, 42 percent cited business-related reasons (adverse business conditions, change of ownership, liquidation, etc.) as the major reason. Another 8 percent claimed that the plan was becoming too costly. About 17 percent mentioned ERISA alone as the reason; 11 percent cited ERISA in combination with other factors. 23 percent cited "other" or no reason. Many plans citing ERISA as the cause for termination probably could not withstand the added costs of implementing ERISA's minimum participation, vesting, and funding standards.

Of the 20,000 plans which have terminated since September 1974, virtually all had sufficient assets to pay the benefits guaranteed by PBGC. Only about 500 did not have enough assets to pay that portion of promised benefits that are guaranteed by the PBGC. The PBGC has placed half of these plans under its trusteeship. About 22,000 workers and retirees are in these trusteed plans. The PBGC is already paying benefits to the retirees, and will pay benefits to the others when they reach retirement age.

Although multiemployer defined benefit plans are now required to pay premiums to PBGC, they will not be fully protected by PBGC insurance until July 1, 1979. The original act set the date of full coverage as January 1, 1978, but the effective date was delayed by Congress because of the financial difficulties being experienced by several large plans. PBGC may elect, at its discretion, to pay insurance benefits on behalf of multiemployed plans terminating before that date. PBGC has elected to cover benefits in four terminated multiemployer plans, in the millinery and milk industries.

When a failed plan comes under PBGC trusteeship, the retiree is not assured the same benefits as promised under the terms of the plan. Only basic pension benefits are guaranteed. Increases in the value of benefits are covered by insurance on a phased-in basis at the rate of 20 percent per year or $20 per month whichever is greater. Analyses by the PBGC show that, overall, about 85 percent to 90 percent of fully vested benefits have been guaranteed under terminated plans.

In addition, benefits under trusteed plans are limited under a formula based on social security benefit calculations. This ceiling on benefits is adjusted periodically and current stands at $1,005.68 per month for an annuity starting at age 65, with actuarial reductions for benefits payable at earlier ages. This limit is far higher than benefits paid under the average plan. Currently the average monthly check issued by PBGC is $110.

Sanctions can be imposed on a plan sponsor who fails to adequately fund a plan according to the requirements of ERISA. Two cases must be distinguished: a terminated plan, and an ongoing plan.

When a pension plan is terminated, the employer is liable to the PBGC for any insufficiency of plan assets as compared to the total value of the benefit guaranteed by PBGC, up to 30 percent of the employer's net worth. As noted above, only about 500 of the 20,000 terminated plans were insufficient, giving rise to liability under this provision. This employer liability serves both as a deterrent to termination of an underfunded plan and as a source of revenue for PBGC's insurance program.

In the case of an ongoing plan to which required contributions are not made, the Internal Revenue Service may invoke a tax of 5 percent of the accumulated funding deficiency for each tax year in which there is such a deficiency. The IRS can also revoke the tax-deductible status of contributions made by the employer to the plan. In appropriate cases the PBGC is empowered to seek a court order terminating an underfunded plan.

There have been reports in the press that the financial security of many firms is threatened by their unfunded pension liabilities. HEW Secretary Califano has claimed that total unfunded liabilities of private pension plans may exceed $200 billion. In the Department of Labor's opinion, these figures are overstated and misused. In addition, the quoted figures are calculated by pension fund actuaries using a variety of actuarial methods and assumptions regarding labor

turnover, future benefit increases, etc. Since these figures are not calculated on a consistent basis, any quoted aggregate amount is not a meaningful figure.

This past January, the Department of Labor initiated a review of the methods used in calculating pension plan liabilities. We have completed that review and will soon issue in the Federal Register a proposal for calculating pension fund liabilities on a reliable, consistent basis.

Senator CHURCH. Have these failures been largely due to bankruptcies?

Secretary MARSHALL. I am not sure what all of the reasons are. I am sure that economic conditions have played a part.

Senator CHURCH. What is the Government's responsibility under the insurance program in the case of a failure?

Secretary MARSHALL. The PBGC takes an accounting of the remaining assets. In most cases, they have been sufficient to pay off vested obligations. If they are not, PBGC insurance pays benefits to those workers who had guaranteed benefits.

Senator CHURCH. For the balance of their lives?

Secretary MARSHALL. To assume largely the same benefits subject to certain limitations and an upward limit they would have had if they had retired under the plan.

Senator CHURCH. Is this program operating in the black right now?

Secretary MARSHALL. Yes; it is in the black right now. We can get you the exact numbers on that, too.

[Subsequent to the hearing, Secretary Marshall supplied the following information:]

ERISA requires PBGC to be self-supporting, and with the new premium enacted by Congress in December 1977, PBGC expects its termination insurance program for single employer plans to be in the black hereafter. PBGC further expects the new $2.60 premium to eliminate within the next 10 years the deficit it incurred earlier under this program. At the end of fiscal year 1977, the deficit amounted to about $95 million.

For multiemployer plans the situation is quite different. Technically, PBGC has neither a surplus nor a deficit at this time in the multiemployer fund. Because of statutory restrictions on PBGC's discretion to pay guaranteed benefits under multiemployer plans that terminate prior to July 1, 1979, PBGC cannot assume liabilities greater than the assets attribuable to this discretionary period will cover. Relying on cash flow considerations, the Corporation has assumed responsibility for four terminated multiemployer plans whose participants' benefits may have to be sharply cut, at some time in the future, unless Congress revises ERISA in this regard.

I might add that PBGC recently sent to Congress a detailed report showing that unless the multiemployer provisions of ERISA are changed, preferably before July 1, 1979, the Corporation could be required to guarantee benefits under 160 multiemployer plans which are viewed as being in serious enough financial difficulty so as to cause their termination over the next 10 years. Were they all to terminate the PBGC liability could exceed $4.8 billion requiring a premium of nearly $80 per participant. The Corporation expects to recommend appropriate legislation on this matter in time to allow for prompt congressional action to avoid the financial crisis that mandatory multiemployer guarantees under the current law might precipitate.

Senator CHURCH. I can see some tremendous problems ahead if we do not look at this carefully. At least, our obligation and premium charge are insufficient to cover the cost. There would be no end to it.

Secretary MARSHALL. That is right. We see serious problems, too, and that is why we thought it was a good idea to defer the mandatory coverage of the multiemployer plans to July of 1979, to give the Congress and us a chance to examine the options, and look at what we know about the problem.

More Openings for Older Workers?

Senator Church. On page 10 of your statement, Mr. Secretary, you said it is a foreseeable situation that "Employers will find themselves competing for the services of older workers, possibly bidding up wages and accommodating their desires for more flexible work schedules." What makes you think so?

Secretary Marshall. A good bit depends, of course, on what happens to the economy. I think we will find a shortage of workers in the future because of demographic changes. There can be a shortage of workers and the consequence of that would be to place a greater premium on retaining older workers and using older workers in the work force. That is the content in which the statement is made. I think that you can almost put it down as a rule that when employers face labor shortages they tend to reverse some procedures that have been used when they have surpluses in labor.

Senator Church. How do you reconcile that assumption with the statements we often hear these days that the unemployment level in this country will not return to the 3 percent that we have known in times of full employment, but may remain somewhere between 4 and 5 percent? Even in relatively prosperous times, if that is so, then it is hard to reconcile an unemployment figure of that magnitude with your projections of a possible labor shortage.

Secretary Marshall. Well, I think that whatever unemployment figure we have, I believe it can be 4 percent or less without a great deal of strain on the economy. I believe we can get to 4-percent unemployment by 1983—I won't say easily because we have to do some things in order to get there—but I believe we can do it.

Now, much depends on what kind of public policy we continue to have to reduce unemployment below that. The so-called frictional level of unemployment, which is about 4 percent, would depend on such things as how long it takes people to move between jobs, and the labor market information system. At that level of unemployment, what you would have is relatively short unemployment. The only people who would be unemployed would be people who are between jobs.

The composition of unemployment as well as employment varies a good bit, even right now. The unemployment rate of people over 55 years of age, right now, is 3.1 percent. For males, it is 3 percent, having declined from 3.3 percent in December 1976; and for females, 3.1 percent, down from 4 percent. Now, as demographic shifts in the work force take place, such shifts are reflected in the unemployment figure of particular groups.

For example, one of the reasons that we have trouble with reducing the unemployment rate of young blacks, which is now 37.1 percent, is because between 1966 and 1976, the rate of increase in the working age population of blacks was about twice the rate for whites. There are other factors inpacting on that, but the demographic aspect of it is important.

So what I believe is likely to happen is that there will be an increasing shortage of workers in the so-called secondary labor market or in relatively low-wage jobs. In fact, I think you can see that there will eventually be a shortage of younger workers because of the declining birthrate, and that means that you have to place much greater reliance on older people.

Senator CHURCH. Somewhere, not in your testimony, but in the facts that have been brought to my attention by the committee staff, I find that in fiscal year 1977, persons 55 years or older accounted for only about 6 percent of all new enrollees in the CETA public service jobs program. Is that 6 percent right?

Secretary MARSHALL. That is approximately right. The CETA system, as you know, is a decentralized system where most decisions are made by local sponsors. They are supposed to make the determination, based on their work force, to put together the array of programs that will meet the labor market needs of their areas.

One of the things that we have found is that as a result of the decentralized decisionmaking in the CETA system, some reported national objectives have not been realized. The participation of young people went down when we went from the MDTA system to CETA, for example, and yet almost one-half the unemloyed are under 24 years of age, so we believe there was a need for special youth programs because the CETA system would not accommodate young people. The CETA system is likely to pay primary attention to giving employment to the most employable people in the work force in order to reduce unemployment. It is not likely to favor young or older people without either supportive programs or special training.

We believe that because of the nature of that decisionmaking process, we need to try to target the CETA program more on structural problems, and many of these structural problems involve older people. That is what we are trying to do with the CETA reauthorization. We also believe that not only do we need to focus the CETA system more on older——

Senator CHURCH. How do you propose focusing both on older workers who are underrepresented and on young workers?

Secretary MARSHALL. Well, you can do it two ways. One is to have national programs which the system resists, like the older Americans program of green thumb. We have discretionary funds with which to establish national programs.

The other ways is to try to encourage the CETA prime sponsors. This can be done through requirements which are difficult because they meet resistance from the sponsors because their flexibility is reduced. In some cases of national objectives, however, we have had to do that and we have had to say that in order to, we want to give priority to these people, and we have tried to encourage the program to do that.

Another way to target a group is by adjusting the eligibility requirements. This could be done by limiting the income eligibility requirements, for example, and limiting the amount that can be paid by the CETA system. You can do more to assure that the low income people will participate in the system. You can also encourage greater use of community based organizations that deal primarily with older Americans, like the Farmers Union, or the age program, which will see to it that that part of the population gets served.

CETA "TARGETING"

Now, as cyclical unemployment declines, it becomes much more important for us to target the whole program toward those whose unemployment is not caused mainly by cyclical factors, and we have at-

tempted to do this in the CETA reauthorization bill which is currently before the Congress. We tried to accomplish this in the stimulus program which we introduced in May 1977, but in the reauthorization we tried to do some more. We believe we have been relatively successful in achieving the objective of bringing down the overall level of unemployment. We believe now that we need to concentrate more on these groups and individuals with special need.

Now, of course, among older workers generally, you don't have much of an unemployment problem, but you have a heavy unemployment problem and employment needs among particular groups of older workers, particularly the low-income older workers, and we think that is what we ought to concentrate our attention on. After all, 3.1 percent is not a relatively serious problem, and it will get lower. But there are older Americans with special problems, and our programs ought to try to reach them.

Senator CHURCH. The administration has had a remarkably good record that needs to be emphasized, I think, in bringing down unemployment in the last 2 years, from 7.8 percent to 5.7 percent.

Is the present 5.7 percent a seasonal phenomenon? I noticed that in the last month the unemployment rate dropped to 5.7 percent. I am wondering if we can hope, or expect, that that figure will not go up again.

Secretary MARSHALL. It might fluctuate. It is hard to say. I don't believe that the trend down, you know, from almost 8 percent to below 6 percent is any kind of statistical aberration. I know it is not, because the expansion of employment and because special groups like older people have been targeted by our programs. If you look at each one of these groups, you can see that in some cases their unemployment rate was moving in the opposite direction from the overall rate until our program went into operation. During the first half of 1977, for example, black unemployment was rising while white unemployment was going down. During the last half, black unemployment declined faster than the overall.

Senator CHURCH. The targeting seems to be working.

Secretary MARSHALL. It does seem to be working. I think there is no doubt that we have reduced the unemployment rate, and that there is a trend. Now it might be a statistical aberration. We might have calculated 5.7 percent when it was really 5.8 percent. That is within a range of error. I do not believe, however, that the trend is an aberration or seasonal. I believe we can, therefore, if we do the right things, continue to reduce that overall rate until we get 4 percent by 1983.

Senator CHURCH. Since we have actually managed to reduce the unemployment rate from 7.8 to 5.7 percent, is there any way to estimate what part of this represents government jobs furnished through CETA and what part of it represents private sector jobs?

Secretary MARSHALL. It is possible to make that estimate.

Senator CHURCH. Could you give us that estimate?

Secretary MARSHALL. Yes, we can supply it.

[Subsequent to the hearings, Secretary Marshall supplied the following information:]

In December 1976, the aggregate unemployment rate stood at 7.8 percent, out of a civilian labor force of 95.9 million workers. By June 1978, the rate had dropped to 5.7 percent out of a civilian labor force of just over 100 million.

During the same period, total employment (seasonally adjusted), as reported in household survey, rose by 6.5 million workers. The rise was concentrated almost entirely in the private sector. On a seasonally adjusted basis, the Federal Government reported only 22,000 more employees in June 1978 than in December 1976; State and local governments reported an increase of 525,000.

While the CETA program has undoubtedly been an important factor in the brightening employment picture, firm estimates of its impact are not yet available. Economists from the Departments of Labor, Commerce, and Treasury are currently participating in a Stimulus Evaluation Task Force which will analyze the effectiveness of the Economic Stimulus Appropriations Act of 1977. Estimates of the impact of Public Service Employment (PSE) jobs, under CETA titles II and VI, will be one aspect of their study. The task force expects to issue a report this fall.

Some preliminary estimates of PSE impact have already been made by Department of Labor researchers. At the time the Economic Stimulus Appropriations Act was enacted, in May 1977, there was 325,000 PSE positions under CETA; by March 1978, the target of 750,000 PSE positions was achieved. The average gross budget cost per year of a PSE position was estimated to be $8,600.

Many participants would have received Government transfers (unemployment compensation, food stamps, or AFDC payments) in the absence of the PSE program; savings or these programs were estimated by the Congressional Budget Office to be approximately $2,200 per participant. The resulting cost per participant is ($8,600—$2,200) or $6,400.

CETA expenditures also had an important expansionary effect through the conventional Government spending multipliers. The researchers estimated that multiplier effects resulted in the creation of one additional private sector job for every five net CETA jobs.

Additional benefits to society and to participants, of course, result when former PSE participants obtain private sector jobs with higher earnings than they would have obtained without their PSE experience, and when they pay income taxes on these higher earnings.

We would like to emphasize that these estimates, while based on sound methodology, remain sketchy and preliminary. This fall's report by the Stimulus Evaluation Task Force will contain more detailed findings on the role of public jobs programs in the economic recovery.

Senator CHURCH. Second, is it possible to give us some estimate of the net saving in tax dollars represented by the reduction of the unemployment rate from 7.8 percent to 5.7 percent?

Secretary MARSHALL. It is.

Senator CHURCH. Taking into account the cost of the program also, the reduction in unemployment compensation and other expenses associated in the unemployment area.

Secretary MARSHALL. It is possible. We have made estimates of those things and we would be glad to supply them.

[Subsequent to the hearing, Secretary Marshall supplied the following information:]

Unemployment reductions result in net tax savings through two mechanisms. First, expenditures are saved on various income maintenance programs (unemployment compensation, food stamps, etc.). Second, the newly employed contribute tax dollars to public treasuries.

If the June unemployment rate had stood at its December 1976 level of 7.8 percent, an additional 2.1 million persons (on a seasonally adjusted basis) would have been unemployed. Using the figure developed by the Congressional Buget Office for CETA jobs, we estimate the income maintenance savings at approximately $4.6 billion per year. Additional Federal tax revenues are estimated to be about $4 billion per year.

Secretary MARSHALL. Now, one distinction that has to be made is that the difference between declining unemployment and expanding employment. Because of the growth in the labor force during 1977, employment had to expand about 4.2 million in order to reduce unemployment by about 1.4 percent during that whole time. The reason for

that is that we generated lot more jobs and more people came to take those jobs, and therefore you had an increase in labor force participation rate as well as the declining unemployment.

Senator CHURCH. And you had the biggest graduating class, didn't, you. this past year?

Secretary MARSHALL. Yes.

Senator CHURCH. Moving into the labor market.

Secretary MARSHALL. Yes. Of course, much of the gain in employment was among young people, but the black teenage unemployment rate is one that continues to be very stubborn. It did decline, after reaching a peak of about 40 percent in the spring and summer of 1977, but still there is 37.1 percent now.

Senator CHURCH. I am told that the traditional unemployment rate during periods of full employment is about 4 percent. Do you share the view that some have expressed, that this traditional rate must be increased because of the added numbers of women who are entering the job market?

STRUCTURAL CHANGES IN WORK FORCE

Secretary MARSHALL. No; I believe that one of the reasons that people argue that the so-called normal full employment rate has increased to 4.8 percent, is because there are structural changes. More women and more young people are in the work force.

It seems to me they would reduce the figure. In other words, use counterstructural programs to offset the structural shifts and therefore lower the unemployment rate that you could have without inflation. I think it is entirely possible to do that.

A lot depends on what we do externally—what we do about immigration, and particularly the illegal immigration into the work force, what we do about international trade and energy problems, and what happens in other countries. We believe that you can get unemployment down to 4.8 percent without even using these structural programs, and to get it down by the remaining 0.8 percent by using the structural programs is not that hard. That is, it is relatively less difficult than what we have already done during the past 15 months. We will have to change the focus of the program, but I think it is entirely possible to do it.

Senator CHURCH. Thank you very much, Mr. Secretary, for your testimony this morning. It has been very helpful and we appreciate your coming.

Secretary MARSHALL. Thank you, Mr. Chairman.

Senator CHURCH. Senator Pete V. Domenici, the ranking minority member of our committee, cannot be with us today, He has, however, submitted a statement, which I will now insert into the record.

[The statement of Senator Domenici follows:]

STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, yesterday we began what I hope will become a truly comprehensive series of hearings focusing attention on a wide range of issues relating to employment, retirement, and continuing education. Secretary Califano testified at length on the demographic changes which are taking place within our society. and the impact these changes are having on the delivery of services to our citizens.

Dr. Harold Sheppard gave us insight into the attitudes and expectations of working Americans. This is an area that must be explored in depth if these hearings are to have lasting value. If the Congress and the executive branch are to shape meaningful and effective public policies, we must know and understand those forces that motivate working Americans of all ages. Dr. Sheppard noted, in response to a question, the need for developing a consensus around any policy we might develop.

Today, we will receive testimony from Secretary Marshall and Ewan Clague, a former Commissioner of Labor Statistics. I hope that they can and will build upon what was said yesterday.

Mr. Chairman, we need to know much more about the attitudes and expectations of younger workers toward their jobs . . . their employers . . . retirement . . . social security . . . inflation . . . productivity . . . taxes . . . and so forth. The views of younger workers are vital because they must pay the taxes that fund the social services and income transfer programs that enable most older Americans to live in relative comfort and security. In addition, today's youthful workers can look forward to a longer, healthier lifespan—and potentially a longer working life. How long they remain in the work force, when they retire, and how well they prepare for their retirement will have a major impact on the next generation of public and private sector policymakers.

In the short run, we must gain a better understanding of the attitudes of older workers toward retirement. We have just extended the protection of the Age Discrimination in Employment Act of 1967 to include workers between the ages of 65 and 70. But at the same time, American workers have been retiring at an earlier age. We also need to know how middle age and older workers perceive the need for second career training and preretirement counseling.

I hope that Secretary Marshall and Commissioner Clague will address these issues during the course of their testimony and responses to questions from this committee.

Senator CHURCH. Our next witness is Ewan Clague, consultant, and former U.S. Commissioner of the Bureau of Labor Statistics.

We are happy to have you, Mr. Clague. I wonder if you could submit your entire statement for the record and highlight it in your testimony.

STATEMENT OF EWAN CLAGUE, LACONIA, N.H., CONSULTANT, AND FORMER COMMISSIONER, U.S. BUREAU OF LABOR STATISTICS

Mr. CLAGUE. Mr. Chairman, I do welcome this opportunity to testify this morning at your hearing on "Retirement, Work, and Lifelong Learning." My prepared statement is too long to read, so I will summarize it for you.

Senator CHURCH. Please do so. Your full prepared statement will appear in the record.[1]

Mr. CLAGUE. In the introduction, I have pointed out that there are three basic programs which constitute the core of the problem. One is the Consumer Price Index, which is one of our most widely used statistics representing the U.S. economy. The second is productivity, which is the hopeful statistic that enables us to overcome rising costs. The third is old age retirement, which constitutes such a large proportion of our problem in the field of social wellbeing.

CONSUMER PRICE INDEX ROLE

With respect to the Consumer Price Index, it was my experience to guide it through the most rapid rise it ever had—from 1946 to 1948, in the postwar period. Then we did have in the Korean war a second

[1] See. p. 144.

upward movement of about 10 percent. But after that, from 1951 to 1965, the average rise was about 1.5 percent a year, which means about one-tenth of a percent a month. It was not a serious factor in our economy, and since productivity was higher and wages increased at least twice that fast, we had a rising standard of living.

That all changed after 1965. I have a table here which highlights that fact. The increase in the Consumer Price Index was 4.2 percent in 1968, then they went up to 5.9 percent in 1970. We next had the recession of 1970–71 that brought it down to 4.3 percent in 1971, and then President Nixon applied price controls in 1971–72, which brought it down to 3.3 percent. But when controls were taken off in 1973, it jumped about 6 percent by midsummer, then 11 percent in the next year. After that it retreated downward, due to the recession of 1975. The bottom was reached in 1976 and 5.8 percent, followed by 6.5 in 1977, up to 7 percent by May 1978, and the administration's committee has estimated 7.2 percent for the whole year 1978.

One of my interests has been projecting many of these economic series into the future. So I took the rate of increase from 1967, the base period of 100, and carried it through to 1978. I think we shall hit 200 sometime this fall. I hesitate to name the month.

Under that circumstance, I have raised the question: Suppose we continue this rate of inflation for the next 10 years or so, through 1990. The index that is now 200 would be 400, and the index to the year 2001 would be 800. In other words, it would be four times as high as it now is.

I cited a few prices to show the effect of that price rise, because most people notice only month to month, or even year to year, and don't take into account this annual 6 percent increase. It does not seem like much over 1 year. But when it accumulates over the decade, it becomes quite dramatic.

I chose as an example that a half gallon of milk in our home now cost 85 cents. This would be $3.40 in the year 2001. A $100 man's suit would cost $400. The Metro fare—I think I should have said busfare—here in Washington, which is now 50 cents during rush hours, would be $2 or even more, because income is not yet meeting expenses. I want to emphasize that this is not a forecast of where the economy is going, or the future price level. I am just trying to emphasize that this is the trend in which we are now operating.

My next point then was to turn to the problem of the——

Senator CHURCH. Before you move ahead, I notice that every sharp spurt in inflation is associated with war, with the aftermath of the war.

Mr. CLAGUE. Right.

Senator CHURCH. It makes me wonder why we are such a war prone country when we pay such a heavy economic price for it.

The Second World War, Korea, Vietnam—each with a dramatic spurt in inflation afterward.

Mr. CLAGUE. Yes. If I may comment on that, I think that even if we had had price controls during the war in Vietnam itself in 1965, say, to 1969, by holding prices down we might still have had in the early 1970's the same increases that we have had recently.

Senator CHURCH. The same thing.

Mr. CLAGUE. Yes.

Senator CHURCH. That is borne out by the fact that when President Nixon temporarily put on controls in 1972, and then in 1973, following his reelection, abandoned them, you had a very rapid spurt upward.

Mr. CLAGUE. One of the problems is that, when you keep a control like that temporarily, people observe it. The labor people and the employers went along, but when it was taken off, the explosion occurred.

Senator CHURCH. Making up for lost time.

PRODUCTIVITY PROBLEM

Mr. CLAGUE. Right. In the next area of wages and salaries, I am talking about the effect of wages and what they have to do with the rising prices. Of course, the cost of living is a basic wage increase that most all workers want to achieve in any case. Productivity works in favor of reducing prices; it means more output for the same amount of labor, and consequently works in the other direction.

This pattern was set in motion in 1948 by the famous contract in the automobile industry between General Motors—and the other firms—and Walter Reuther, president of the United Automobile Workers. They worked productivity into the contract, but they also worked in the Consumer Price Index, so that every quarter-year the wages would rise in accordance with the quarterly increase in the cost of living.

On the productivity side, I do want to emphasize that their decision was to use productivity on the basis of the national rise in productivity, not the increase in the auto industry. So I have a table here showing that in the auto industry itself, the productivity did exceed the national average, and therefore the employer's return here was not a factor in causing any increase in prices. The productivity of the auto industry is higher than the general average.

On the next page, I have a table showing the 1967 to 1978 rate of change in productivity in the private business sector. This was put out by the Bureau of Labor Statistics, the annual indexes. There are two points about this. One is that productivity is always best in business recovery, because that is the period when the employer who has fixed up his firm and put it in good shape can produce more output at lower cost. This accounts for the fact that in a very good progressive year, like 1968, we can get a 3.3 percent productivity gain, and in 1976, recuperating from the 1975 recession, we got 4.2 percent.

Senator CHURCH. May I ask you a question?

Mr. CLAGUE. Yes.

Senator CHURCH. In your productivity index on page 7, you show that using 1967 as a base year, productivity in the private business sector in this country has increased less than 20 percent—19.9 percent to be exact—between 1967 and 1978.

Mr. CLAGUE. That is right.

Senator CHURCH. That is over an 11-year period.

Mr. CLAGUE. In this next table, it is shown a little better. We did very poorly in the first quarter of 1978—only 0.3 percent. That would mean 1.2 percent for the whole year 1978.

Senator CHURCH. While our productivity has increased by roughly, say, 20 percent in the past 11 years, how much has the cost-of-living index risen in the same period?

Mr. CLAGUE. In the same period it has doubled. The price index is now nearly 200.

Senator CHURCH. So our productivity is increasing at a rate of only one-fifth that of the cost of living.

Mr. CLAGUE. That is right.

Senator CHURCH. Do you have figures that would compare our rate of productivity growth with that of other industralized nations in western Europe?

Mr. CLAGUE. I don't have it right with me, but I can answer in a general way without the actual figures. In Britain, it is much lower than us. Britain is really not doing very well. Germany and Japan are doing much, much better.

Senator CHURCH. Much better than we are?

Mr. CLAGUE. Much better than we are, yes; that is right. They are working hard and being highly productive.

In France, it is about like us. Italy is relatively poor on this point, too much labor and not enough productivity.

There are sets of figures, Mr. Chairman, that would give that whole comparison in recent years. The Bureau of Labor Statistics has them. I just don't remember the exact figures.

Senator CHURCH. Are you able to tell us how the Germans and Japanese have achieved a much higher level of productivity, other than the generalized statement that they are working harder? I mean, are there statistics that would bear out the fact that they put a relatively higher percentage of money into new plant equipment and related activities?

Mr. CLAGUE. Yes, indeed. That is the exact point; plus the point that labor in those countries has suffered from inflation. You will recall that after World War I, the German inflation in the early 1920's brought the German mark down to zero. They had to revalue their money. So in the postwar period of 1946 and thereafter, the German people were prepared—the worst thing they felt that could happen was another inflation. Consequently, the labor movement was very careful in its bargaining about wages. In Japan it was much the same—a dangerous inflation which alerted them to the fact that they must exercise restraint in the wage field, or else it will go up through the roof. So they have been able to keep inflation under control. It is interesting that those two peoples, who suffered defeat in the war, were the ones who appreciated the problem. At the present time, the German inflation is the lowest, I believe, of any country in the world.

Senator CHURCH. Thank you.

Mr. CLAGUE. I have some illustrations here of another factor that is bringing down our productivity in this country; that is, the raising of our health and safety standards. I want to emphasize that that is no argument against raising those standards. But I do want to cite the coal mine industry, in which I have made five studies in the last 6 or 7 years. Productivity in coal mining was spectacular from 1948 to 1968; it increased at 6 percent a year. That accounted for the very high wages of the coal miner.

From 1969 to the present, productivity has gone down by one-third. In other words, in underground mines an output of over 15 tons per man per day in 1969 has fallen to less than 10 tons. That is due in part to safety standards that have been set in motion, as well as the other

health standards, such as the elimination of black lung. This has effect then of reducing the productivity in coal mining. This same problem of safety and health is rising in other industries; in steel, in textiles, and others. These improvements in standards will reduce the productivity down to 2 percent a year, or perhaps less. This is not a criticism of higher standards; but it indicates that we have to be careful about wages rising too rapidly.

Early Retirement Factor

Then I come to early retirement as an inflation factor. I regard this as the marginal factor. I did try to emphasize in my paper that any one of these factors, by themselves—for instance, the rise in the Consumer Price Index—would gradually fade out. The cost-of-living increase that the retirees get does not occur until a year after they have suffered from it. This lag would bring the inflation down, if it was not for some other factors pushing it up.

Now, in connection with the earlier retirement, I have a table here which shows that in 1964, 1967, and 1970, there were just about one-third of the men workers wanting to retire earlier, and a little less than half of the women—46 percent.

Now you will notice how sharply it has jumped in recent years. We have half the men in 1976 retiring at 62 and 56 percent of the women.

In the economics of social security, when we have an inflation rate of 7 percent or higher, it pays to retire at 62 and get the benefits over the 62–64 period rather than waiting until 65 and getting the benefits then, only to find out that they are lower than they would have been with retirement at 62. I think that this is one of the factors that leads to earlier retirement.

I mention one other point concerning retirement; that is in a recent action of the Congress, Mr. Chairman, of dropping the age permitting earnings plus benefits from 72 to 70. It will be interesting to see to what extent that has any bearing upon the work of retirement decision of workers.

I noted also, which is not in my paper, that there is a 3-percent bonus now for each year of work after 65; in other words, for the person who stays int he labor force. When social security was first set up, we had a 1-percent bonus for every year that the worker worked, so that a man or women who put in 40 years would have 40 percent higher benefits on retiring than the simple average earnings. That bonus was lost in the revisions of the early 1950's. But it was a very valid point. If the person has an incentive to stay on working longer, and not draw benefits, that will reduce the benefit payments and bring the system more into better balance.

Senator Church. But is there really any incentive as long as the inducement is lower than the annual rate of inflation?

Mr. Clague. Well, in social security, I have called that the passive factor here. Social security is not really a very strong factor in causing early retirement in itself.

Senator Church. You see what I mean?

Mr. Clague. Yes.

Senator Church. I mean, if you give a person a 3-percent incentive to continue to stay in the work force, and in the meanwhile inflation

is diminishing the value of the dollar at the rate of 7 percent a year, that person would be better off retiring and taking the cost-of-living adjustment on his retirement income.

Mr. CLAGUE. Yes, and it will be quite interesting to see whether this modest incentive has any effect. We will have to wait and see what the result will be.

Senator CHURCH. Yes.

Mr. CLAGUE. In private industry, the situation was that private firms started out establishing retirement systems prior to World War I. I have mentioned some of them that were setting up retirement systems for their own employees. However, that movement came to a disaster in the 1930's. As you recall, the railroad systems which had been started went bankrupt, and the U.S. Government had to take them over—the railroad retirement program.

When social security was being debated in 1936, there was a very strong move to permit private industry firms to set up their own retirement systems instead of social security. But the experience with failures had been so bad that the proposal did not pass. Therefore, a private retirement system did not develop substantially in the 1930's.

However, in the post-war period, it grew up as an addition to social security in the form of supplementary private pension plans. Those have expanded very rapidly in recent years—in the last 20 years—and especially in the last 15 years.

There are two kinds of private plans. One is like the limited mine workers, which is completely independent. The mine workers retire at age 55 with their own private retirement pension independent of social security. On the other hand, the auto workers linked theirs into social security. The employer pays for only retirement, but saves money when social security goes into effect at age 65. Under the General Motors, the Ford, and the Chrysler plans, the workers get company benefits at whatever age is chosen for early retirement; but when the workers reach age 65 and social security becomes effective, then the employer cost declines. Therefore, there is a substantial saving to the private firm in merging their retirement benefits with social security.

Senator CHURCH. In other words, they just piggyback on the social security.

Mr. CLAGUE. That is right. They can provide early retirement, but when social security picks up, the employer pays less.

Senator CHURCH. Yes.

PRIVATE PENSIONS

Mr. CLAGUE. There has been some discussion on the Hill about this problem of private pensions, partly because in the early stages they were pretty much based on the long-service employee who works for most of his life with the firm. There were, sometimes, bad happenings—a man laid off at age 58—he needed to be 60 to get a pension, and he didn't get it. Then there was the other problem, which was mentioned earlier in your hearings, Mr. Chairman, people working in one place and another and another, but never having enough service to get any private pensions at all. The worker earns social security, but nothing else.

So then the law was amended, and Congress made these changes that are set forth here, a worker could qualify in 10 years; or he could qualify with a combination of age and length of service totaling 45; or with 25 percent vested after 5 years, but not getting the full amount until 15 years. Each of these provisions qualifies more pensioners.

But these changes have had another effect; namely, it has resulted in a loss of some plans, because this cost was more than some of the smaller firms could bear. I don't know the statistics on that. This is a case in which we may be improving the private pension system, but we are limiting their numbers to those firms that will be able to finance the program. I would like to read a paragraph here.

These private industry workers can retire at earlier ages on their own funds and then get social security when that becomes available. This may be one factor stimulating retirement at 62 under social security. The conclusion is that there is substantial early retirement in private industry plans, but it does have some limitations. In some firms and industries, there are occasional upward adjustments of benefits to offset the rising cost of living, but these are small. The purchasing power of a private pension falls behind the rising cost of living. Hence, these plans make only a limited contribution to greater inflation.

Federal Retirement Programs

Next, we come to the Federal Government, which has a multitude of retirement systems. The largest is the Federal civil service program, of which I am a beneficiary. It provides for long service, if that turns out the way the employee likes it. A recent change that has been made, as I find out here from the report, is that for about 95 percent of all Federal employees, the mandatory retirement age has now been abolished, so that they can now work into age 70 and beyond.

I have a table which shows what is happening to Federal civil service. In 1966, we had about 561,000 retired employees, and in 1977 we had about 1.1 million. The number has just about doubled. The payments were $1.2 billion in 1966, and now they are $8.1 billion. That is six tmies as much money. The combination is twice as many workers, each of them getting 3 times as much benefit. The reason is, of course——

Senator Church. That is not in constant dollars?

Mr. Clague. Pardon?

Senator Church. That is not in contant dollars?

Mr. Clague. No, that is because of longer service and higher pay. The average has risen from about $2,400 a year to $7,400 a year. In the Federal service, unlike social security, longer service provides higher benefits.

Senator Church. My point being is, your schedule here—on page 13—is in nominal dollars, not in constant dollars.

Mr. Clague. Oh, yes, indeed. That is right.

Senator Church. In that same period the value of the dollar has declined, as you pointed out earlier.

Mr. Clague. Yes. As a matter of fact, I touch on that in the next paragraph because I am one of the beneficiaries of that. Our benefits are raised twice a year by the Consumer Price Index. It runs January to June, and then we get the increase in September. Likewise, from July to December, with the new payment in April. So our benefits are escalated by the Consumer Price Index.

I want to emphasize strongly here that Federal employment is not growing. The approximate total for 1957 was about 2.2 million. Now it is 2.7 million, but in May 1978, it was 2,744,000, and in 1974 it was 2,724,000. So in the last 4 years we have had no increase at all in Federal employment.

Senator CHURCH. However, that does not take into account an article appearing in the morning paper?

Mr. CLAGUE. Yes.

Senator CHURCH. Millions on the Federal payroll.

Mr. CLAGUE. Secondary.

Senator CHURCH. Secondary, which was expanded maximum.

Mr. CLAGUE. I am not sure that they come under our Federal pensions.

Senator CHURCH. No, I don't think they do.

STATE AND LOCAL RETIREMENT

Mr. CLAGUE. No. They may be falling into the next problem which is our toughest problem, what I call the bombshell; namely, State and local government retirement. In that discussion, I made one error, which I hope it is the only one in this paper. That date of December 31, 1964, in New York, should be 1965. I didn't pay enough attention to the fact that Mayor Lindsay was elected in 1965. In New York City, the election comes a year after the Federal. Other than that mistake of date, the figures I present are correct.

The issue of early retirement in New York City came up in connection with the sanitation workers. Policemen and firefighters had taken the lead in early retirement, but it was the sanitation workers who broke through. Upon taking office in January 1966, Mayor Lindsay encountered a 10-day strike of the transport workers.

Three months later, in April, his administration faced the possibility of another strike by the sanitation workers. That was averted by giving them retirement at 50 percent of earnings after 20 years of service at any age. Five years later, the transit workers got retirement at age 50. The effect of that was to insure that those types of workers could retire at age 50 or any time after that, and then be able to enter other industries.

There is one more point about that retirement system. New York provided that the benefits in retirement would be paid at the total earnings in the last year of work so that the——

Senator CHURCH. That is a calamitous provision. I am wondering to what extent it has been a pattern for other retirement programs by those cities.

Mr. CLAGUE. I do not know to what extent. In fact, one of my limitations here is that I have not been able to study other cities. I know New York, because I was in the middle of that discussion. I think it does exist in a varsity of other places, but I am not sure where. The big point is, giving that bonus insures that the retiring worker puts in as much overtime as he can. That is why you have read in the papers about these workers drawing benefits equal to 115 percent of their regular earnings. This is because the benefits are based upon the overtime earnings in the last year of service. I don't know why they adopted the principle that the overtime earnings

should count in retirement benefits. Nor do I know how widespread that system is in other State and local governments.

The second advantage that workers can get from early retirement is that they can then go into private industry and earn a second retirement. That makes it possible for such a worker to earn social security also, provided the city government is not linked to social security. Thus, a worker could end up with three pensions—the city government, a private industry firm, and social security.

Now, one other point about city and other local government retirements, namely, disability. That is a very significant factor when there are from 75 to 90 percent of retired individuals being declared disabled. In that case, they do not pay any taxes on that retirement income, which again is a strong incentive to seek retirement.

Just one point on the economics. State and local government employment is rising rapidly. It has tripled since 1950. Employment in the past year has risen by 500,000. A retirement system which retires workers at an early age does not seem to be in trouble when employment is increasing rapidly. That is a situation in which the real danger is not apparent. There is plenty of money flowing in to take care of retirees at the moment, but the point is that when employment levels off or is cut back, the accumulating costs begin to exceed the income, and the system is in trouble.

Senator CHURCH. Those studies have been ordered, have they not, at least for the Federal programs?

Mr. CLAGUE. Yes; there is a study of the Federal system which is concerned with the whole subject of retirement. I believe there are some other studies in prospect, but I am not very clear about what they are.

Senator CHURCH. And some very tentative action is being taken in the Congress with respect to some of the most serious abuses of the military pension, the double-dipping abuses.

Mr. CLAGUE. Yes; I didn't go into that, partly because it is a big field in itself, and because it is just starting right now to get some of the expansions coming from World War II, with the Korean war following after. I am a veteran of World War I, so I am aware of that general situation, but that is a big study in itself.

COST-OF-LIVING ADJUSTMENT

Senator CHURCH. Yes; one of the difficulties where the elderly are concerned—particularly those on the social security system—is that the periodic annual adjustment for cost of living, which I sponsored some years ago, and succeeded in incorporating in the social security law, is based upon the Consumer Price Index, which is normally used for this purpose. But our studies show that the cost of the elderly's major purchases—for example, food, fuel, medical care, and housing—is increasing more rapidly than other prices.

These necessities pretty much consume the whole retirement income for those struggling on limited budgets. My question is whether the Consumer Price Index is a proper method for determining the actual inflation affecting retired people? What is your opinion?

Mr. CLAGUE. That question arose long before we got into this current inflation. Back in the midsixties, the question was raised, "Why

don't we have separate cost-of-living indexes for elderly couples and elderly singles?" This arose after our revision of the Consumer Price Index in 1964, when we turned in a new index. At that time, I was still Commissioner, and I made a proposal that we should have an elderly person's index prepared, perhaps quarterly would be enough. But at that time, the decision was made not to set up such an index. The authorities decided that it was not worth the cost; consequently, nothing was done.

I would agree with you that in some respects in the current situation, we really need an older person's index—an older couple and an older single. That would enable us to know, quarter by quarter, how things are going, because we might run into a situation in which food might be scarce and high-priced. And food is a large fraction of elderly persons' budgets.

Senator CHURCH. Thank you very much, Mr. Clague, for your very interesting testimony. Your full written statement will be a very important document in these hearings as well as your actual testimony.

Mr. CLAGUE. Thank you.

[The prepared statement of Mr. Clague follows:]

PREPARED STATEMENT OF EWAN CLAGUE

Mr. Chairman and members of the committee, I welcome this opportunity to testify here this morning at your hearing on "Retirement, Work and Lifelong Learning." The title I have selected is "Inflation and Retirement—The Cumulative Costs of Retirement Compounded by Inflation."

Introduction

The Consumer Price Index was initiated in World War I when President Woodrow Wilson instructed the Commissioner of Labor Statistics, Royal Meeker, to construct a cost-of-living index for use in regulating wage increases in war industries. The family expenditure surveys were begun in 1918, but the war ended before they were completed, so the index based on these surveys was not completed and published until 1920. The index, constructed on a 1913 base=100, was 211 in June 1920.

After recovering moderately from the 1921 slump, consumer prices remained quite stable. Industrial workers, who had become accustomed to cost-of-living increases during the war, found that the index of the 1920's wasn't doing them any good. So some unions requested the Commissioner of Labor Statistics to make some studies of worker productivity as a basis for wage increases.

A research statistician was appointed, historical data on production and employment were assembled and the first productivity indexes (on a 1913 base) were published in the Monthly Labor Review in July 1926. Over the next 2 years, about a dozen industries were covered, including automobiles, which had the best record of all—output per manhour three times the 1913 level.

But the outbreak of the depression of the 1930's destroyed all labor interest in productivity. Unemployment became the dominant statistic in the economy, which sank into the deepest and longest depression in its history.

In that situation, President Roosevelt appointed a Committee on Economic Security, which worked for 2 years in developing a comprehensive social security program covering old age insurance, unemployment compensation, plus public assistance for the needy.

At that same time, the Consumer Price Index was given the first comprehensive revision since 1918–19. Family expenditure studies were conducted, new commodities and services were added, and a greatly improved index was introduced in 1940 on a 1935–39 base.

These are the origins of the programs which are playing such sifinificant roles in the U.S. economy of the 1970's—old age retirement, the cost of living, and productivity.

I. The Consumer Price Index

RELATION TO INFLATION

When the Committee on Economic Security worked out the social security programs in 1934–35, they were cautious and conservative. Unemployment compensation was scheduled for only 16 weeks, public assistance scales were modest and old age insurance benefits were designed as a floor on which pesronal savings and family contributions could be added.

World War II disrupted the carefullly drawn programs. Price and wage controls held the line during the war, but they collapsed in the postwar readjustment and the Consumer Price Index jumped from approximatell 130 in the summer of 1946 to a peak of 175 in the autumn of 1948—an increase of nearly 35 percent in two years.

Prices declined slightly in 1949 and early 1950, but the outbreak of the Korean War caused an increase of about 10 percent from the summer of 1950 to the spring of 1951. But in the next 14 years, from the summer of 1951 to the outbreak in Vietnam in the spring of 1965, the CPI increased on the average only about 1.5 percent a year. With wage increases averaging at least twice that much, there was a substantial rise in the standard of living of American workers and their families.

The outbreak of war in Vietnam in 1965 opened up a new era in cost-of-living increases. By 1967, the index had risen 5.8 percent, which was nearly 3 percent a year, double the previous trend. By 1970, there was a further increase of 16.3 percent, which was an average of 5.4 percent a year.

This was too rapid a rate of increase for Congress to legislate from time to time some upward adjustment in benefits to offset the loss of buying power through inflation. So Congress adopted an automatic system of raising benefits once a year by the amount of the rise in the Consumer Price Index.

The following table shows the annual rates of increases measuring from mid-year to mid-year, 1968–78.

TABLE 1.—*Consumer Price Index: Wage Earners and Clerical Workers, Annual Rates of Increase, 1968–78*

(1967=100)

Year:	*Increase (percent)*
1968	4.2
1969	5.4
1970	5.9
1971	4.3
1972	3.3
1973	6.2
1974	11.0
1975	9.1
1976	5.8
1977	6.5
1978	[1] 7.0

[1] May 1977 to May 1978.

There are two significant points in this table. One is that the business recession of 1970–71 produced a 30 percent decline (5.9 down to 4.3), which was followed by a still slower rate (3.3) by the summer of 1972. That was the effect of the controls which President Nixon imposed in August 1971.

Controls were taken off in 1973, and the CPI immediately responded. There was a 6.2 percent increase to mid-year, followed by a full year increase of 11 percent in the summer of 1974. Then came the worst business recession in the United States since the 1930's. However, the index responded slowly, reaching bottom in 1976, with a rate slightly under 6 percent (5.8). Then the upturn was resumed—6.5 percent in 1977 and 7 percent for the most recent index (May). Furthermore, the administration's economists have recently come out with an estimate of 7.2 percent for the calendar year 1978.

At the present rates of increase the index should cross 200 by autumn, which means that the index will have doubled in the 11 years from 1967 to 1978. Because the average citizen is more conscious of month-to-month changes in the index, or perhaps the year-to-year, he or she is not fully aware of the eventual

impact of those rates of increase. A projection into the future will highlight the impact of inflation.

If the 1968–78 cost-of-living increase continues into the future, the Consumer Price Index at the end of 1990 will be about 400 (double the present) and will be nearing 800 by the year 2001 (doubling again). This is *not* a forecast; it is a projection to show where the economy is going unless steps are taken to control inflation, whatever may be the cost.

To illustrate the meaning of these statistics, here are a few homely examples. In our home, a half-gallon of milk now costs 85 cents; in 2001 it would be $3.40. A $100 men's suit would cost $400; the Metro fare in Washington would be $2, or possibly even more, because the fares aren't high enough now to cover expenses.

The problem for the U.S. Government and the American people is, what can be done to slow down this rate of inflation, and, if possible, bring it to a halt? The answer to that question must come from an analysis of the factors that produce the inflation.

II. Wages and Salaries

Wages and salaries are the dominant factor in the national income, averaging in recent years about 77 percent. Adding the income of small proprietors brings the total to about 83 percent. About five-sixths of the national income goes to people who get income from work.

Wages in the U.S. economy are largely determined by collective bargaining. It is true that only about one-fifth of the total labor force is fully organized, but the unorganized generally follow along, usually with some lag in time and occasionally with some shortfall in wages and fringe benefits. At the lower end of the scale, the Federal and State governments step in with minimum wage requirements, which are periodically raised to keep pace with general wage increases.

When questioned one time by a reporter as to what wages labor wanted, AFL President Samuel Gompers answered "more." So the problem becomes, how much more? From the employer's viewpoint, the source of wage increases is profits. But some firms in an industry don't have any profits, so there is the risk of loss of jobs if the wage increase is too high. In that situation, the cost of living usually becomes a floor; wages should not fall through loss of purchasing power. It is also evident that in a competitive society employers will always be trying to improve their efficiency. This factor is measured by indexes of productivity, which are the statistical measurement of output per manhour of work.

The postwar inflation of 1946–48 brought these two concepts together in the famous escalator collective bargaining contract between labor and management in the automobile industry. In first postwar bargaining of 1945–46, there had been a prolonged strike with serious loss of urgently needed auto production.

There was national concern about another strike in 1948. Suddenly in late May, there was a public announcement that Charles Wilson, the president of General Motors, and Walter Reuther, the president of the Automobile Workers union, had signed a new type of contract which combined two very significant factors. The first was an annual increase in wages equal to the average increase in productivity in the national economy as a whole, which was estimated to be a little under 3 percent a year. The other factor was a quarterly increase in wages based upon the changes in the Consumer Price Index.

While General Motors was the first to sign an agreement, Ford, Chrysler, and the other companies accepted the general principles, so there was no automobile strike in 1948, and automobile production expanded rapidly.

In 1950, when the contract came up for renewal, the auto workers had actually suffered a small loss in wages on the cost-of-living factor (the index had come down a few points). But the productivity factor had produced an increase of more than 5 percent in wages. The contract was sufficient popular among the workers and their families that it was renewed for a 5-year term. After that the term was changed to 3 years. When the next renewal of the contract comes up in 1979, it will have been in operation in the auto industry for 31 years.

One reason for the continued success of the automobile contract was that the productivity increases (based on productivity in the national economy) were nearly always lower than productivity in automobiles. The Bureau of Labor Statistics reported the following annual rates in motor vehicles, 1970–76: 2.0, 16.7, 4.0, 2.5, —4.4, 6.8, 9.1. Except for the disastrous year 1974 (—4.4), all the other years are good to excellent for profits. So it is not bargained wage increases which have sent auto prices to such high levels; it is the escalation by the Consumer Price Index.

Furthermore, the high inflation in recent years has created greater interest by both management and labor in contracts of the escalator type, namely, with precise quarterly, semiannual or annual wage increases based directly on the CPI. According to the most recent data of the Bureau of Labor Statistics, the number of workers covered was about 5.7 million under major contracts. What that type of contract does is to tie wages more closely to the cost of living.

But during the 1970's, national productivity has not been maintained at its theoretical 3 percent level for the total private economy. The next table shows the annual increases for the period 1967–78.

TABLE 2.—PRODUCTIVITY IN THE PRIVATE BUSINESS SECTOR, ANNUAL INDEXES

Year	Index	Rate of change (percent)
1967	100.0	
1968	103.3	3.3
1969	103.7	.4
1970	104.5	.7
1971	107.8	3.2
1972	111.0	3.0
1973	113.1	1.9
1974	109.9	−2.8
1975	111.8	1.7
1976	116.5	4.2
1977	119.5	2.6
1978 [1]	119.9	.3

[1] First quarter.

This is a classic case. Productivity reached 3.3 percent in 1968, but fell back to 0.4 percent in the peak year 1969. It improved substantially in 1971–72, but then slackened off in 1973 and had an actual loss (−2.8 percent) in the business downturn beginning in 1974. On the upgrade, some improvement came in 1975, with the highest increase of the decade in 1976 (4.2). Then came the slackening in 1977, with some indication of a further slowdown in 1978, although there may be an improvement in the second quarter.

The record of the decade 1968–77 is not up to the previous productivity gains. The average gain for 1967–77 is just a little under 2 percent a year, which is a substantial decline from the 3 percent which was approximately the rate for the period between the Korean War and the outbreak in Vietnam.

The outlook for higher productivity in the immediate future is not very good. With increasing population and expanding industrial production, the effects upon the environment are becoming greater and Congress is establishing new higher standards of health and safety in American industries.

The most striking example of the new standards is the bituminous coal industry. For a period of 20 years, 1948–68, that industry had one of the highest productivity increases in U.S. industry—an average gain of about 6 percent per year. Employment in the industry declined from 425,000 miners in 1948 to 125,000 in 1968, a cutback of 300,000 miners. Yet because of the productivity, the miners' wages were among the highest in American industry.

In 1969, Congress passed the Coal Mine Health and Safety Act, which established new health and safety standards. Furthermore, Congress provided special pensions for all miners, currently working or previously retired, who were afflicted with black lung and other diseases. Widows and children of such miners were also covered. The costs were not charged to the industry, but paid from Federal funds. The result was about 210,000 ex-miners, with 145,000 widows with and without children, drawing black lung benefits in 1973. The program (for new cases) ended in 1973, but the existing case load is being carried to the 1980's.

Coal mining provides an excellent example of the price which society must pay to create safe and healthy working conditions in American industries. New environmental standards are also being set for the steel industry, chemicals, textiles, and a number of others. In such industries, the improvements in health and safety are essential, both for the affected workers and the general population. But it must be clearly understood by the American people that these changes require more labor and will reduce productivity per man.

The prospect for the economy is that productivity in the private business sector will continue into the 1980's at the 2 percent level, with the possibility of some-

further reduction. Under those assumptions the outlook would be this—with respect to the cost-of-living factor, the system of escalating old age retirement benefits by the Consumer Price Index, as outlined in section I, contributes to further inflation by increasing consumer buying. But it is important to emphasize that this is a passive factor in causing inflation. Consumer prices rise during the year; but during those 12 months, the purchasing power of the monthly benefits declines. At the end of the year, the beneficiary receives an increase in the monthly benefits equivalent to the loss of purchasing power. But then during the next year he loses again, and so on. The point is that this is a fading factor in causing inflation. If it were the only factor, the inflation would eventually be brought to an end.

However, if wage increases for the economy as a whole exceed the 2 percent productivity gain, they begin to offset the savings made possible by lagging escalation through the cost of living. To the extent that average economywide increases exceed productivity, to that extent they constitute an additional factor producing inflation.

III. Early Retirement As An Inflation Factor

This brings up the question as to what other factors in the economy may be generating inflation. One possibility is early retirement. The selection of 65 years as the appropriate age of retriement originated in the old age and mothers' pension systems in the various States before and after World War I. These welfare pensions were usually set at $30 per month.

Social Security

When the social security program was adopted, 65 years was designated as the age for the receipt of old age benefits. But there was one modification, namely, that workers could retire as early as 62, with the proviso that the benefit would be reduced by 6.7 percent for each early year. The idea was that the eventual cost would be about the same, since the early benefit payments would be offset by the savings to the fund by the reduced benefits after 65.

These early retirement schedules were firmly maintained down to within the last few years. But inflation began to stimulate early retirement as shown by the following table.

TABLE 3.—RATIO OF RETIREMENT TO ELIGIBLES, SELECTED YEARS, 1964–76

Year	Men (percent)	Women (percent)
1964	31	46
1967	33	46
1970	34	46
1972	39	49
1974	44	56
1976	49	54

What this table shows, year by year, is the proportion of men and women workers eligible for retirement who actually chose to do so at ages 62–64. Two points are clear. One is that women retire earlier than men. In the longer past, about one-third of men workers and nearly half of the women retired early. The other point is that the inflation rates of the 1970's stimulated that decision. In 1976, just about half of the men eligibles and 56 percent of the women chose early retirement.

At inflation rates of 7 percent or more, the early retiree would get higher benefits after age 65 than the fellow worker who continued working until age 65 and then drew his benefits.

One modification voted by Congress recently was a reduction in the age at which the retiree was entitled to both benefits and earnings. This action was in response to a proposal that all beneficiaries should be entitled to full benefits at 65 without any reduction at all for earnings. The additional cost of this would have been substantial. Congress was willing to make a reduction of 2 years to age 70. It will be of interest to note in the next few years the extent to which this increases the benefit payments.

In summary on social security, it must be emphasized that the system has retained its original basic character. The escalation of benefits by the Consumer Price Index is the major factor in the expension of the benefit payments, and the year's lag in applying the cost-of-living increase would gradually bring the index down to stability, if there were no other inflation factors operating to push prices upward.

PRIVATE INDUSTRY RETIREMENT SYSTEMS

Private industry and a few unions developed retirement systems at about the beginning of the century. The A.T. & T. program was established in 1913. A number of railroad companies created pension systems for long-service employees.

However, the depression of the 1930's bankrupted many of the private systems. The plight of the railroad companies was such that Congress passed an act in 1935 (prior to the Social Security Act) creating a national retirement system for all railroad employees. This has continued, separate from social security, down to the present.

When the Social Security Act was being debated in Congress, a strong drive was made for a provision offering employers an opportunity to set up their own private retirement systems, in which the employers would be excluded from social security. One factor causing the rejection of that idea was the disastrous experience of the early 1930's.

But after World War II, there was a marked growth of individual company and industrywide pension plans, which were supplementary to social security. In some industries, such as bituminous coal mining, the pension plan was completely independent of social security. In other industries, such as automobiles, company plans paid early retirement benefits from their own funds, but cut back their own payments by the amount of social security benefits when these became available. On either of these bases, the growth in private industry retirement plans during the 1950's and 1960's was very impressive.

It is important to note at this point that these industry plans provide substantially earlier retirement than social security. The prevailing retirement age was 60. This was usually expressed in a combination of age and length of service—60 and 30, or 55 and 35. On length of service, there were minimum requirements of 15 years, 20 years, or even total service up to retirement age.

As the systems developed, problems arose. A worker laid off at age 58 would lose his pension due at 60. A worker who never worked as long as 15 years for any one company found himself without any private pensions, despite a lifetime of work. In fact, there are workers who go through an entire working life without serving long enough with any employer to earn a private pension. They would of course get social security benefits upon retirement.

Congress took a long look at this general situation some years ago and came up with new and firm specifications for private industry pension plans. One was a requirement that the worker be entitled to some pension after a definite minimum length of service, for which there are three alternatives. One is a fully vested benefit after 10 years. Another is the rule which provides 50 percent vesting when a combination of age and service equals 45. Still another provides for 25 percent vesting after 5 years, reaching full vesting after 15 years.

Another requirement was for adequate reserves for pension funds. In addition, provision was made for a reinsurance fund administered by the Department of Labor to rescue any failing funds.

The trend in private industry plans has been in the direction of earlier retirement. In a number of major industries, the plans provide for 30 years of service at age 55. There is one incentive toward this early retirement (apart from a need to retire from work), namely, that a worker retired from one firm or industry can work and earn wages without loss of the pension. In the automobile industry, such early pensions are now payable at age 50. But such early retirement in automobiles, steel, and some other industries is subject to a requirement that the retiree is restrained from earning wages or salaries in any other industry.

The more stringent requirements of the recent legislation is resulting in some decline in private pension plans, especially among smaller companies. The higher standards established by the new legislation may restrain to some extent the growth of private pension plans.

On the subject of early retirement, there is little doubt that these plans create a larger financial burden on industry than would be the case if their retirement

ages corresponded to those of social security. As it is, these private industry workers can retire at earlier ages on their own funds and then get social security when that becomes available. This may be one factor stimulating retirement at 62 under social security.

The conclusion is that there is substantial early retirement in private industry plans. But it does have some limitations. In some firms and industries there are occasional upward adjustments of benefits to offset the rising cost of living. But these are small. The purchasing power of a private pension falls behind the rising cost of living. Hence these plans make only a limited contribution to greater inflation.

FEDERAL GOVERNMENT

The Federal Government has a multitude of retirement systems, both civilian and military. For civilians the Civil Service Retirement System is the largest and can be used as a model for the minor ones.

The Federal Government has a wide range of retirement possibilities. At the upper limit retirement was formerly compulsory at age 70, with the proviso that an empuloyee could work beyond 70 in order to achieve 15 years of service. At the lower end of the scale employees with 20 years of service can retire at age 60. Employees with 30 years of service can retire at age 55, and even earlier, if they accept a reduction in benefits.

The following table shows the upward trend in number of civil service retirees and the corresponding payments.

TABLE 4.—FEDERAL CIVIL SERVICE RETIREES AND BENEFITS, SELECTED FISCAL YEARS, 1956–76

[Dollar amounts in millions

Year	Number	Payment
1966	560, 992	$1, 322
1968	604, 873	1, 665
1970	662, 223	2, 129
1973	843, 520	3, 762
1974	938, 654	4, 825
1975	989, 786	6, 052
1976	1, 038, 377	7, 098
1977	1, 096, 561	8, 143

In the 11-year period from 1966 to 1977, the civil service retirees under that system increased from about 561,000 to almost 1,097,000—very nearly double. Over that same period, the benefit payments increased from $1.3 billion in 1966 to $8.1 billion in 1977. The average annual benefits increased from about $2,400 a year to more than $7,400. Beneficiaries double and benefits triple.

The most recent change is that after September 30, 1978, mandatory retirement has been abolished for about 95 percent of all Federal employees.

Retired civil service employees have their benefits escalated by the Consumer Price Index, but with a somewhat different formula from social security. Civil service retirees have catchup payments twice a year. The increases are calculated on the June and December indexes, with benefits payable three months later in each case. Therefore, civil service employees receive benefits more closely following the rise in the cost of living than do social security beneficiaries. In both instances, of course, they are always losing ground except in the month of catchup.

Federal civil service employees have in the past paid substantially more for their retirement benefits than the social security coverage. The Federal contribution rate is now 7 percent of wages and salaries, and it was 6 percent for many years before that. Social security now has a contribution rate of 6.05 percent, but this includes about 1 percent for the hospital insurance program under medicare.

The most recent development is that Congress has ordered a study of the possibility of merging the Federal Government retirement programs with social security.

There is one important point concerning Federal employment which is not fully understood by the public. Federal employment is *not* growing rapidly. In 1957, the figures were about 2,217,000; in May 1978, about 2,744,000. That is an increase of 525,000, or approximately 25,000 a year. But there has been no recent growth at all; the average for 1974 was 2,724,000 and for 1977 almost exactly the same—2,727,000.

MILITARY PENSIONS

This subject requires more attention than could be given for this paper. Veterans of World War II are reaching retirement ages, and they will be closely followed by those from the Korean War. This cost falls on the Federal Government and will constitute a retirement outlay in the future much higher than the funds required for civil service and other civilian employees.

STATE AND LOCAL GOVERNMENTS

Retirement systems were slow in developing in State and local governments, partly because in some places the employees were political appointees subject to occasional turnovers. A retirement program can't operate under such circumstances. In other places, the employees were able to stay on the job as long as they wanted to do so, even into age 70 and beyond.

But the new conditions in the postwar economy brought some fundamental changes in the States, counties, and cities. The lead was taken by workers providing essential services, such as police, firefighters, transportation workers, and sanitation workers.

The situation in New York City is so well known that it can serve as a case study, representative of many other cities throughout the country. The transit workers (subway and bus) had a contract with New York City which expired on December 31, 1964. The newly elected Mayor Lindsay did not take office until January, but the union leaders refused to settle with the outgoing mayor. They then conducted a strike in the first week of Mayor Lindsay's term. After some bitter negotiations a strike settlement was reached.

Then in April, the contract with the city's sanitation workers came up for renewal. It was vital for the new administration not to have another strike. So the city negotiators accepted a provision which permitted sanitation workers to retire at 50 percent of earnings after 20 years of service, at any age.

This was a monumental change in retirement policy. From that day forward early retirement options spread rapidly. The transit workers wanted the same privilege, but the city feared the loss of so many of its skilled workers, especially the machinists repairing the cars. However, in 1971 an agreement was reached for retirement at age 50 after 20 years of service with a benefit of 50 percent of earnings, with additional benefits of 2 percent a year for longer service. A worker entering at age 25 could retire at 50 with 60 percent of earnings.

The stimulus toward early retirement was greatly strengthened by another provision of the contract which raised monthly benefit payments. These were based upon the employees' earnings in the last year of service, including all overtime earnings. The result was that employees planning to retire sought all the overtime they could get. Stories have appeared in the press recently citing examples of retired employees drawing benefits higher than their regular full-time earnings on the job. Of course, that scale of benefits could easily be achieved by long-service employees.

But the other advantage achieved by early retirees was the opportunity to earn a second retirement benefit from another employer. An employee retiring at 50 years of age could earn social security coverage by age 60, and, in addition, possibly a second retirement pension with a private firm.

This overlapping of retirement benefits, coupled with full-time earnings from work, is the duplication of incomes which causes inflation.

New York is not unique; it is quite typical. Throughout the country other local governments (and States) have established retirement systems which permit early retirement. This is one reason that the local governments are in financial trouble.

Police and firemen have long been in the lead of the drive for early retirement. Because of the personal danger in those occupations, early retirement seems natural and logical. However, those systems usually provide for tax-free benefits for disabled retirees. The result has been in many cities and counties that from 75 to 90 percent of the early retirees are classified as disabled, which means that they pay no taxes on the benefits, or only a small amount.

Police and firemen are very special classes of local employees with relatively small numbers. The problem is that other State and local employees attempt to match these retirement benefits, or at least to move toward them. And in the case of these other employees the numbers are startling.

State and local government employment in 1950 numbered about 4 million; in May 1978, the number was nearly 12.9 million—more than triple expansion.

Within the last year (May to May) there has been an increase of 500,000 employees, desipte all efforts which have been made to hold down and even to cut back on city government employment.

Local government employees comprise about three-quarters of the total, with the States about one-quarter. However, State employment is growing somewhat faster. In 1955, local employment was about 3.6 million and State less than 1.2. In April 1978, the preliminary figures are 3.5 million and 9.7. Both constitute the fastest growing employment in the U.S. economy.

Retirement systems for organizations with such high growth rates in employment have a favorable financing factor which conceals some basic problems. New employees start at the bottom of the ladder; retirement comes later. It is when the employment expansion slackens and finally comes to a halt that the reckoning comes. And an actual cutback in employment would produce a crisis in the retirement program.

In this situation, early retirement may be the timebomb that will upset the system. Employees young enough to get other jobs will take the retirement benefits and hunt other work, in which they can have both earnings and benefits. The older employees will be entitled to benefits which cannot be met by the contributions. The alternatives are failure to pay benefits or increases in contributions and taxes.

What is urgently needed is more intensive study of the early retirement problem in order to find out what could be done to bring the situation under control.

Conclusion

It is not any one factor, but rather a combination of factors, which together produce a persistent inflation.

Escalation of wages and salaries by the Consumer Price Index is a strong sustaining factor in a rising cost of living. But it is offset by an increase in productivity, which reduces labor costs to the employer. If consumer prices rise 6 percent in a year, and productivity is only 2 percent, it would require an economy-wide increase of about 9 percent to generate a further rise in prices.

But if these two factors are not sufficient to create inflation, there are some others which can help push the ball over the line. Still another is the escalation of retirement benefits by the Consumer Price Index. Since these benefits are paid largely to nonproducers, they have the effect of increasing consumption without any corresponding increase in production. Any shortage in the contributions available to balance the benefit increase will generate additional inflation.

Finally, there is early retirement, which is not adequately provided for. Early retirement has two inflationary factors. One is the shortened duration of contributions, perhaps 30 years of work to age 50, plus a lengthened duration of benefits, age 50 to age 80.

The other is the combination of full-time earnings and early retirement benefits. Furthermore, the new earnings may produce a second retirement benefit.

Theoretically, all these factors could be brought under control by the appropriate balancing of benefits and contributions. This can be done by restricting the benefits and raising the contributions until the program is in balance.

In practice, this is what is not done. The pressure against higher contributions is forceful. So the problem is postponed.

What is needed is a study of this problem while it is still in its elementary stages, in order that some reasonably satisfactory solution can be devised.

Senator CHURCH. The hearings are now recessed until tomorrow morning at 10 o'clock.

[Whereupon, at 12:05 p.m., the hearing recessed, to reconvene at 10 a.m., Wednesday, July 19, 1978.]

APPENDIX

Correspondence Relating to Hearing

Item 1. Letter and Enclosure From Senator Frank Church, to Hon. F. Ray Marshall, Secretary, Department of Labor, Dated July 31, 1978

Dear Mr. Secretary: Thank you very much for your testimony at our recent hearing on "Retirement, Work, and Lifelong Learning." I was glad that you could participate, and I look forward to a close working relationship with personnel from your Department as our hearings and studies on related issues continue.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

Frank Church,
Chairman.

[Enclosure]

Questions From Senator Frank Church

1. You have indicated that the Bureau of Labor Statistics projects a continuing decline in the labor force participation rates of older persons through the turn of the century—from 48 percent in 1977 for men 55 or older to 35 percent in 2000. To what extent will the enactment of the Age Discrimination in Employment Act Amendments affect this downward trend? In addition, is there a possibility that the trend may be reversed, as pension costs continue to climb because of the higher ratio of older persons to younger workers?

2. One of the committee's witnesses—William Babson, a financial consultant—suggested the establishment of minimum benefits, along the lines of a minimum wage. What is your reaction to this proposal?

3. What was the rationale for transferring responsibility for administering the Age Discrimination in Employment Act from the Department of Labor to the Equal Employment Opportunity Commission—especially since EEOC has a huge backlog of claims?

4. What would be the cost of reducing or eliminating the FICA tax for older workers by extending the current earned-income tax credit to aged persons without children?

5. In fiscal 1977, persons 55 or older accounted for only about 6 percent of all new enrollees in the CETA (Comprehensive Employment and Training Act) public service jobs programs. What has the Department done or plans to do to sensitize prime sponsors about the needs of older workers?

6. You have said in your written statement that more Americans are finding it possible to retire at an earlier age because of "rising standards of living and increased concern with income security." Do you think this trend toward earlier retirement is desirable when the cost of public and private income maintenance programs are mounting rapidly and will increase more rapidly in a few years?

7. You state that the labor force participation rate for men 55 and over is expected to drop from 48 percent now to 35 percent in 2000. For older woman, it is expected to decline from 23 percent to 19 percent during this same period. What assumptions are made in arriving at this rate of decline? What has been the history of accuracy of labor force participation rates for the 55+ group in the past?

8. The 1978 Age Discrimination in Employment Act Amendments direct the Secretary of Labor to conduct a study concerning the effect of raising the upper age limit of the Age Discrimination in Employment Act to 70 as well as the feasibility of eliminating the upper age ceiling entirely. Your letter of July 12, written in response to a committee inquiry, says you will make every effort to issue an interim report by January 1981, and a final report by 1982. When do you expect this study to begin?

9. The Department of Labor's annual report under the Age Discrimination in Employment Act has for 10 years referred to a study in progress under section 5 of the act to examine "the institutional and other arrangements giving rise to involuntary retirement." To date, no satisfactory study has been completed. When do you propose to complete this study? Will this be part of the overall study mandated by section 6 of the 1978 amendments or will it be handled separately? What are your specific plans and timetables to address this issue?

10. The Senate version of the 1978 Older Americans Act Amendments directs the Department of Labor to give special consideration to minority organizations in awarding grants and contracts under the senior community service employment program. Earlier this month, funding for the senior community service employment program increased significantly. What are the Department's plans, if any, to award contracts to minority organizations, such as the National Caucus on the Black Aged and the National Association of Older Persons?

11. What is the Department of Labor doing to promote job performance evaluation and mid-career training?

12. The House of Representatives recently passed the Federal Employes Flexible and Compressed Work Schedules Act (H.R. 7814) and the Federal Employes Part-Time Career Employment Act (H.R. 10126). What is your Department's position concerning these two bills?

Questions From Senator Edward W. Brooke

Senator Brooke asked that the following questions be raised, since he was unable to attend the hearing in which you testified:

1. How many age discrimination cases has DOL received during the past three years?

2. How many age discrimination cases does DOL bring to court?

3. What are the criteria for telling a complainant that he or she should sue an employer on his/her own? In other words, what are the reasons that DOL takes some cases and tells other persons to sue on their own?

4. What would you estimate the average cost to the individual for bringing his/her own age discrimination case to court?

5. Do large employers tend to dismiss individually brought age discrimination complaints as of no consequence because they may believe that few people discriminated against have either the time or the money to sue on their own?

6. Some persons have suggested that the agency administering the Age Discrimination in Employment Act should be given "cease and desist" authority. Would you agree?

Item 2. Letter and Enclosures from Hon. F. Ray Marshall,[1] Secretary, Department of Labor, to Senator Frank Church, Dated September 11, 1978

Dear Senator Church: This is in response to your letter with questions from yourself and Senator Brooke following my appearance before your committee on July 18, 1978. I am also enclosing the inserts for the record which we were to supply.

I hope this information is useful to you, Senator Brooke, and other members of the committee.

Sincerely,

Ray Marshall,
Secretary of Labor.

[Enclosures.]

Response to Questions From Senator Frank Church

Question 1. You have indicated that the Bureau of Labor Statistics projects a continuing decline in the labor force participation rates of older persons through the turn of the century—from 48 percent in 1977 for men 55 or older to

[1] See statement, p. 112.

35 percent in 2000. To what extent will the enactment of the Age Discrimination in Employment Act Amendments affect this downward trend? In addition, is there a possibility that the trend may be reversed, as pension costs continue to climb because of the higher ratio of older persons to younger workers?

Response. The enactment of the 1978 amendments to the Age Discrimination in Employment Act is expected to have a relatively small impact on the number of older persons in the labor force. In testimony before the House Select Committee on Aging on May 19, 1978, Department of Labor spokesmen noted that labor force participation profiles suggest the number leaving the labor force because of mandatory retirement requirements is small. The availability of retirement benefits, and possibly declining health, are probably more important incentives for leaving the labor force.

Using data provided by the Social Security Administration (SSA) and the Current Population Survey (CPS), Department researchers estimated that an additional 125,000 to 172,000 men and women aged 65 to 69 would be in the labor force if mandatory retirement before age 70 were banned. This represents a net addition to the U.S. labor force of less than two-tenths of 1 percent due to the 1978 ADEA amendments. The same study estimated that about 36,000 men aged 65–69 were unemployed or involuntarily working part time as a result of mandatory retirement.

As part of the study mandated by the 1978 ADEA amendments, we will be developing more refined and detailed estimates of the effects of the mandatory retirement changes. Congress has asked the Department to develop such information in order to help examine the feasibility of outlawing mandatory retirement altogether.

In a "pay-as-you-go" system like social security (and many public-employee pension plans), a growing number of retirees places an increasing burden on younger workers whose taxes must finance benefits. The result may be growing pressure to lower benefits or raise the age of eligibility.

Both of these changes, of course, would act to increase the labor force participation rate of older persons. In the case of the social security system, it is hard to conjecture just how strong—and how effective—these pressures from younger workers will be.

In the case of a fully funded private pension plan, these demographic shifts should theoretically have no effect, since by the time the worker retires all contributions on his behalf have already been made. However, benefits under private pension plans may not be entirely funded in advance of retirement because of the extended amortization period for funding benefit increases and unfunded prior service costs. Thus, to a more limited extent, they will be subject to similar pressures to the ones that OASI will face.

Question 2. One of the committee's witnesses—William Babson, a financial consultant—suggested the establishment of minimum benefits, along the lines of a minimum wage. What is your reaction to this proposal?

Response. We are unable to take a position on Mr. Babson's proposal to establish minimum pension benefits without studying his specific proposal in considerably more detail and discussing it within the administration. However, without adopting a position, we can sketch out the potential economic effects of such a law.

As the law currently stands, companies are under no obligation to offer a pension plan to their employees. (Those who choose to do so, though, must meet ERISA standards.) A minimum-benefits law could be expected to cause some plans to go out of existence because sponsors will consider the plan excessively costly.

The necessity to fund the new minimum benefits could have negative employment effects as employers unable to bear the higher labor cost lay off workers or cut back their hiring plans. In the long run, a minimum benefit law could also slow the growth or take-home wages as the company's labor costs are reallocated away from current wages toward deferred wages (pensions).

These economic effects would be selective in their impact, having their strongest impact on employers whose plans do not already provide the mandated minimum.

Question 3. What was the rationale for transferring responsibility for administering the Age Discrimination in Employment Act from the Department of Labor to the Equal Employment Opportunity Commission—especially since EEOC has a huge backlog of claims?

Response. The transfer of responsibility for enforcement of the ADEA (and the Equal Pay Act) from the Department of Labor to the EEOC is scheduled to take effect on July 1, 1979. Attached are copies of testimony presented last March before the Senate Committee on Governmental Affairs, Subcommittee on Legislation and National Security, by Mr. Donald Elisburg,[1] Assistant Secretary of the Employment Standards Administration in the Department of Labor, and Mr. James T. McIntyre, Jr.,[2] of the Office of Management and Budget, concerning the reorganization plan under which this change is being made. These statements explain in full the rationale for the transfer of responsibilities.

Question 4. What would be the cost of reducing or eliminating the FICA tax for older workers by extending the current earned-income tax credit to aged persons without children?

Response. The earned-income tax credit (EITC) currently applies to earnings up to $8,000 for parents with children in the household. The EITC amounts to a 10 percent credit on earnings up to $4,000; the credit begins to be reduced at a 10 percent rate when earnings exceed $4,000, finally disappearing at $8,000.

Through use of earnings data from the March 1977 Current Population Survey, we have made a rough estimate of the revenue loss that would be caused by extending the EITC to workers 65 and over. The estimate was developed under the following assumptions:

—Only the earnings of the over-65 worker would be eligible for the EITC. Thus, if only one partner in a marriage were 65 or older, only he (or she) would be eligible for the credit.

—Persons over 65 living alone or with unrelated individuals would be eligible.

—All workers eligible for the EITC would claim it.

Under these assumptions, we estimate that the annual cost of such a change in EITC provisions would be approximately $272 million. Of this total, $152 million would go to aged persons living with a spouse; $120 million would go to aged persons living alone or with unrelated individuals.

Question 5. In fiscal 1977, persons 55 or older accounted for only about 6 percent of all new enrollees in the CETA (Comprehensive Employment and Training Act) public service jobs programs. What has the Department done or planned to do to sensitize sponsors about the needs of older workers?

Response. As a followup to the national program for selected population segments (NPSPS) operated under title III of CETA, a series of monographs was prepared describing various approaches to the provision of services for specific groups, including older workers. These monographs were distributed through the system and served to assist prime sponsors in developing better programs for older workers.

Additionally, prime sponsors were directed, in developing their grant applications for fiscal year 1978, to identify planned service levels in their CETA programs by race, age, and sex, comparable to the incidence of these categories of workers in the unemployed population. Prime sponsors were expected to plan programs at levels approximately the levels of need. Where variances were found between the level of need and planned levels of services, it was necessary to provide an explanation to the regional office and, where indicated, to make the necessary modifications in the service plan. We regard the linking of the grant application approval process to the planning of levels of services for age, race and sex groups as an important first step in the approach to assessing service levels by age.

Question 6. You have said in your written statement that more Americans are finding it possible to retire at an earlier age because of "rising standards of living and increased concern with income security." Do you think this trend toward earlier retirement is desirable when the cost of public and private income maintenance programs are mounting rapidly and will increase more rapidly in a few years?

Response. The trend toward earlier retirement has been apparent for the past four decades and is linked to the dramatic expansion of social security, among other factors. At the end of World War II, for example, just under half of men 65 and over were still in the labor force; today the figure is one-fifth. A typical male worker today, retiring at about 62, can look forward to over 15 years of

[1] See p. 161.
[2] See p. 163.

retirement. With the income security provided by OASI, furthermore, the prospect of inability to work because of declining health has been rendered less worrisome.

This trend toward early retirement does pose difficulties for retirement income programs financed on a "pay-as-you-go" basis, inculding social security, SSI, and many public-employee pensions, all of which are sensitive to demographic changes. The Department advocates several strategies for dealing with these difficulties.

—Vigorous enforcement of the Age Discrimination in Employment Act, and dissemination of information to employers concerning the abilities of older workers, will ensure that "retirement," when it occurs, is truly voluntary.

—The encouragement of part-time "call-back," and other flexible arrangements for older workers will afford them the option of partial rather than full retirement.

—The expansion of private pensions, which operate on a funded basis, will provide a supplemental source of retirement income which lacks social security's extreme sensitivity to demographic factors. In the Department's opinion, it is posible to expand the scope of the private pension system within the framework of full ERISA protections.

We believe that the combination of early retirement and projected demographic changes merits concern but not alarm. It is possible to deal with these changes without radically cutting back the options afforded to older persons.

Question 7. You state that the labor force participation rate for men 55 and over is expected to drop from 48 percent now to 35 percent in 2000. For older women, it is expected to decline from 23 percent to 19 percent during this same period. What assumptions are made in arriving at his rate of decline? What has been the history of accuracy of labor force projections for the 55+ group in the past?

Response. The BLS labor force projections cited in the prepared statements were developed by applying projected labor force participation rates to Census projections of the number of persons in specific age brackets (55–59, 60–64, etc.). The projections for the over–55 participation rate cited in our testimony are an aggregation of these different age brackets, and thus reflect the shifting age distribution within the older population as well as changing labor force behavior.

The BLS analysts developed separate projections for three different sets of assumptions:

—In series A, the participation rate for each age/race/sex cohort within the over-55 population is assumed to remain constant at its 1977 rate. This is not a realistic assumption, but serves as a "baseline" case to isolate the effect of demographic shifts within the over-55 age group. In series A, the participation rate for over-55 males would drop from 47.5 in 1978 to 44.5 by 2000; for women, it would drop from 22.6 to 21.0.

—In series B, it is assumed that the cohort-specific participation rates will be stable until 1980, due to the recent mandatory retirement changes, but will then continue to fall at one-half the trend rate for 1970–1977. This would result in the participation rate for over-55 men dropping to 34.5 by 2000; the rate for women would drop to 18.6. This projection reflects the intermediate assumptions and was used in our prepared statement.

—In series C, cohort-specific participation rates are assumed to continue dropping at the 1970–1977 trend rate, without interruption. The participation rates for over-55 men and women would decline to 23.4 and 15.9, respectively, by 2000. This is an extreme scenario. It is not expected that participation will decline as rapidly as series C suggests, since the 1970–77 trends on which it is based reflect two recessionary periods.

BLS labor force projections are continually revised as a result of testing the assumptions against actual experience. Past projections have shown some tendency—which we believe has been remedied in this latest series—to underestimate the trend toward early retirement. Also, the labor force behavior of adult women in general has been difficult to model over the past decades. Overall, though, the BLS projections have had a good record for accuracy. The 1965 projections, for example, overestimated the size of the over-55 labor force in 1970 by only 37,000 persons, for an error marging of less than 3 percent. The 1965 figures overstated the 1975 over-55 labor force by 1.7 million; however, the error margin was probably badly inflated by the 1975 recession.

TABLE 1.—PROJECTED TOTAL LABOR FORCE PARTICIPATION RATES OF PERSONS 55 AND OVER, BY AGE AND SEX, ACCORDING TO 3 DIFFERENT ASSUMPTIONS [1]

Series and age group	Males						Females					
	1978	1980	1985	1990	1995	2000	1978	1980	1985	1990	1995	2000
A. High:												
55 plus	47.5	47.2	46.1	43.7	42.9	44.5	22.6	22.2	22.1	20.9	20.1	21.0
55 to 59	83.2	83.2	83.1	80.8	80.7	80.8	48.1	48.1	48.1	48.1	48.1	48.1
60 to 64	62.9	62.9	62.8	62.7	62.7	62.7	32.9	32.9	32.9	32.9	33.0	32.9
65 to 69	29.4	29.4	29.5	29.4	29.4	29.4	14.6	14.6	14.3	14.6	14.6	14.7
70 to 74	19.2	19.2	19.2	19.2	19.2	19.3	7.4	7.5	7.7	7.5	7.4	7.5
75 plus	9.4	9.4	9.4	9.4	9.4	9.4	2.7	2.7	2.9	2.9	2.7	2.7
B. Medium:												
55 plus	47.5	47.2	43.3	36.8	35.4	34.5	22.6	22.2	21.4	19.3	18.3	18.6
55 to 59	83.2	83.2	80.7	78.2	75.8	73.4	48.1	48.1	47.6	47.1	46.6	46.1
60 to 64	62.9	62.9	59.8	55.2	51.4	47.3	32.9	32.9	31.9	31.0	30.0	29.0
65 to 69	29.4	29.4	25.2	20.8	16.4	12.2	14.6	14.6	13.4	12.7	11.9	11.1
70 to 74	19.2	19.2	17.6	16.0	14.4	12.9	7.4	7.5	7.1	6.5	5.9	5.4
75 plus	9.4	9.4	8.3	7.2	6.1	5.0	2.7	2.7	2.6	2.4	1.9	1.6
C. Low:												
55 plus	46.4	43.3	37.9	29.4	25.0	23.4	22.6	21.8	18.5	18.0	15.9	15.9
55 to 59	82.2	80.4	80.2	70.6	65.7	60.9	48.0	47.5	46.6	45.6	44.6	43.6
60 to 64	61.4	58.3	50.8	43.2	35.7	27.9	32.5	31.7	27.2	27.8	26.0	24.0
65 to 69	27.7	21.1	12.5	4.1	1.9	1.9	14.2	13.4	11.4	9.7	8.0	6.4
70 to 74	18.6	17.3	14.1	10.8	7.7	4.6	7.2	6.8	6.0	4.8	3.7	2.7
75 plus	8.9	8.0	5.8	3.6	1.6	1.2	2.6	2.4	2.0	1.5	1.2	1.2

[1] A. High series assumes constant 1977 annual average rates for each age-sex-race subgroup of the population. B. Medium series assumes constant rates to 1980, then a drop at ½ the trend rate for 1970–77. C. Low series assumes continuation of the 1970–77 trend, unabated.

Question 8. The 1978 Age Discrimination in Employment Act Amendments direct the Secretary of Labor to conduct a study concerning the effect of raising the upper age limit of the ADEA to 70 as well as the feasibility of eliminating the upper age ceiling entirely. Your letter of July 12, written in response to a committee inquiry, says you will make every effort to issue an interim report by January 1981, and a final report by 1982. When do you expect this study to begin?

Question 9. The Department of Labor's annual report under the ADEA has for 10 years referred to a study in progress under section 5 of the act to examine "the institutional and other arrangements giving rise to involuntary retirement." To date, no satisfactory study has been completed. When do you propose to complete this study? Will this be part of the overall study mandated by section 6 of the 1978 amendments or will it be handled separately? What are your specific plans and timetables to address this issue?

Response to questions 8 and 9. Under section 5 of the ADEA, the Secretary of Labor is directed to "undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement and report his findings and any appropriate legislative recommendations to the President and Congress." Section 6 of the 1978 amendments amended section 5 of the ADEA to specify that the study of involuntary retirement shall include: an examination of the effect of raising the upper age limit of the act to age 70 for non-Federal coverage, determinations as to the feasibility of eliminating the age limit or raising it above 70 years of age, and an examination of the effects of two exemptions. One of the exemptions pertains to certain executive policy-making personnel entitled to pensions of at least $27,000 a year; the other pertains to tenured faculty employed in institutions of higher education and is set to expire on July 1, 1982. The amendments specify that the study may be undertaken directly by the Secretary of Labor or by contract or other arrangement, and stipulate that the Secretary is to submit an interim report on the section 5 study by January 1, 1981, and a final report by January 1, 1982.

We have been working to develop an appropriate approach to fulfill the study requirements of section 5 as amended by section 6 of the 1977 amendments, including an adequate staff capacity to oversee contract work. We expect to publish a request for proposals for contract work on the study shortly. Interest in possible contract work on the study has been indicated by several research-oriented organizations. We expect to complete the study within the time requirements of the act.

Question 10. The Senate version of the 1978 Older Americans Act Amendments directs the Department of Labor to give special consideration to minority organi-

zations in awarding grants and contracts under the senior community service employment program. Earlier this month, funding for the senior community service employment program increased significantly. What are the Department's plans, if any, to award contracts to minority organizations, such as the National Caucus on the Black Aged and the National Association of Older Persons?

Response. The fiscal year 1978 appropriation did allow for a considerable expansion of the senior community service employment program. Mindful of the Senate's intention that minority organizations begin to play an active role in the administration of the program, we reserved about $5.4 million for projects with new national-level sponsoring agencies. In awarding these funds we are using a competitive process that has entailed the public solicitation of grant applications, which were reviewed and rated by a panel of knowledgeable Federal employees drawn from the Department of Labor, the Administration on Aging, the Department of Agriculture, and ACTION. The rating criteria used by the panel gave special consideration to applicant organizations that showed an orientation to the employment-related needs of older persons from minority groups.

Of the 10 applications received, the panel recommended that three be approved for funding. These were the applications submitted by the National Urban League, the Association National Pro Spanish Speaking Elderly, and the National Center on the Black Aged, all three being minority oriented organizations.

The responsible officials in the Employment and Training Administration concurred with the panel and, as a result, we are now negotiating the final terms and conditions of funding with these organizations. I am told that the negotiations are proceeding smoothly and that we will probably be executing the grants in the very near future. The full $5.4 million will be awarded to provide for projects that will make employment available to more than 1,200 persons in 21 different States.

Question 11. What is the Department of Labor doing to promote job performance evaluation and mid-career training?

Response. The Department of Labor, through the auspices of its research and development efforts, has sponsored several projects of varying scale to examine various aspects of mid-career training. Most notable among these was a study conducted under the authority of the Manpower Development and Training Act of 1962 to determine what the potential was for a program of job upgrading. The focus of the Department's employment and training efforts in the past few years, however, has been toward finding jobs for unemployed people. It is our hope that, as the economy improves and the employment picture gets better, DOL will be in a better position to mount programs to deal with some of the problems of mid-career training and to examine further the quality of performance of those graduating from our training programs. In this regard, both the Senate passed and House reported versions of CETA contain a provision authorizing prime sponsors to conduct upgrading programs through agreements with public and private employers.

Question 12. The House of Representatives recently passed the Federal Employees Flexible and Compressed Work Schedules Act (H.R. 7814) and the Federal Employees Part-Time Career Employment Act (H.R. 10126). What is your Department's position concerning these two bills?

Response. The administration has expressed strong support for H.R. 7814. The legislation represents a reasonable and balanced approach to the testing and evaluation of flexible and compressed schedules in Federal agencies. Therefore, we favor enactment of this legislation.

As for the provision of part-time employment, this Department strongly supports such efforts. Part-time employment is one method of providing a wider selection of work opportunities, especially for older workers. We encourage private industry to adopt such arrangements and we support as well governmental efforts. In this regard, the administration has taken steps to increase part-time employment in the Federal Government. On September 16, 1977, the President called upon all agencies to establish innovative programs to expand permanent part-time opportunities. As a result of this directive, the number of permanent part-time workers increased by about 20 percent during the last year at a time when the total permanent work force *dropped* by over 6,000 positions.

As for the specifics of the legislation as passed by both the House and the Senate, we are aware that the Office of Management and Budget and the Civil Service Commission have expressed opposition to certain provisions. We would defer to these agencies on these matters.

RESPONSE TO QUESTIONS FROM SENATOR EDWARD W. BROOKE

Question 1. How many age discrimination cases had DOL received during the past 3 years.

Response. During fiscal year 1975 through fiscal year 1977, including the fiscal year 1976 transition quarter, 18,011 age discrimination complaints were filed against 15,997 establishments. This represents an annual average of approximately 5,540 complaints to date. Complaints have been received at about the same rate in fiscal year 1978.

Question 2. How many age discrimination cases does DOL bring to court?

Response. The ADEA permits both private suits and suits by the Department. Departmental suits have emphasized precedential litigation and pattern and practice cases. Legal action by the Department of Labor over the past 10 years has resulted in the establishment of a new body of law in the field of discrimination against older workers. Since the act's effective date on June 12, 1968, the Department has instituted over 450 court actions. In calendar year 1977, the Department filed 86 lawsuits, two petitions for adjudication of civil contempt, and one petition to enforce an investigative subpena. Also, at the appellate level in 1977, the Department filed nine briefs in cases brought by the Secretary and 16 briefs as amicus curiae in cases brought by private individuals.

Question 3. What are the criteria for telling a complainant that he or she should sue an employer on his/her own? In other words, what are the reasons that DOL takes some cases and tells other persons to sue on their own?

Response. Departmental litigation priorities emphasize obtaining favorable court decisions on unsettled issues of law and prosecuting large pattern and practice cases. While this does not preclude legal action by the Department in small cases, it delineates the extent to which the Department can accept such cases for litigation. Complainants are neither encouraged nor discouraged from litigating privately; they are fully advised of the choices available to them and are then left to make their own decisions based on the advice of private counsel. At least 433 private suits (which typically involve only one or a few aggrieved individuals) were filed in calendar year 1977. In past years, over half of all private ADEA suits were dismissed for procedural reasons without a hearing on the merits. Under the 1978 amendments to the act, major procedural impediments to private suits were removed, and it is anticipated that the impact of private litigation under the act will increase.

In the selection of smaller cases which do not involve precedential issues, the Department tends to emphasize suits that meet the following criteria:

(1) Prima facie evidence of discrimination appears to be strong;

(2) The harm to the discriminatees is substantial—e.g., discharge as contrasted to failure to promote; and

(3) The enforcement impact of the suit may be substantial—e.g.. the employer has a significant segment of the local labor force or the practice is one believed to be common in the industry.

Question 4. What would you estimate the average cost to the individual for bringing his/her own age discrimination case to court?

Response. As data on the costs to plaintiffs of private ADEA suits are not reported to us, we do not have such an estimate. We note, however, that the statute permits plaintiffs to seek recovery of wage and related losses (plus an equal amount as liquidated damages in the event of willful violations) and, in addition, reasonable attorneys' fees and court costs.

Question 5. Do large employers tend to dismiss individually brought age discrimination complaints as of no consequence because they may believe that few people discriminated against have the time or the money to sue on their own?

Response. We are not in a position to speculate on employer motivations behind such decisions and objective data is not available. The Department must attempt to conciliate a resolution of ADEA charges before private plaintiffs may sue, and the possibility that the Department may initiate an investigation which would include other individuals is always a factor mitigating against this tendency on the employer's part.

Question 6. Some persons have suggested that the agency administering the ADEA should be given "cease and desist" authority. Would you agree?

Response. To date, the Department has not assessed the need for cease and desist authority. President Carter's Reorganization Plan No. 1 of 1978, effective May 6, 1978, provides for the transfer of ADEA enforcement from the Department of Labor to the Equal Employment Opportunity Commission on July 1, 1979. In

light of this, and the fact that enforcement of Federal equal employment opportunities laws is continually evolving, you may wish to obtain the views of the EEOC on this issue.

STATEMENT OF DONALD ELISBURG, ASSISTANT SECRETARY, DEPARTMENT OF LABOR, BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS, U.S. SENATE, MARCH 6, 1978

Mr. Chairman and members of this committee, I appreciate this opportunity to appear here today to discuss with you Reorganization Plan No. 1 of 1978. As you know, major portions of the Federal equal employment opportunity program are lodged in the Department of Labor and will be affected by the plan. With me today to discuss the plan and its effect on the Department of Labor are Xavier Vela, Administrator of the Wage and Hour Division; and Weldon Rougeau, Director of the Office of Federal Contract Compliance Programs.

Before I begin, I want to state our support for the reorganization of the Federal EEO programs as spelled out in the plan. The Department of Labor worked very closely with the Office of Management and Budget as this proposal evolved. Reorganization Plan No. 1 is a workable solution to the many deficiences in the Federal equal employment opportunity programs. It is most important that the gains and losses in organizational functions by the Department of Labor be viewed in the context of the total plan. The end result will be a major step forward in assuring equal employment opportunities for all Americans.

Briefly, the plan will move the enforcement of the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) to the Equal Employment Opportunity Commission (EEOC) effective July 1, 1979. Enforcement of these statutes is currently lodged in the Wage and Hour Division of the Employment Standards Administration. The ADEA promotes the employment of older workers between 40 and 65 years of age based on ability rather than age; prohibits arbitrary age discrimination in employment; and helps employers and employees find ways to meet problems arising from the impact of age on employment. The EPA provides that employers may not pay employees of one sex wages at rates lower than those paid employees of the opposite sex, employed in the same establishment, for equal work on jobs requiring substantially equal skill, effort, and responsibility which are performed under similar working conditions.

Transfer of the ADEA enforcement to the EEOC involves the transfer of 119 positions and $3.5 million; the EPA, 198 positions and $5.3 million. These figures include legal personnel.

We firmly believe in the Department of Labor that the two programs which will be transferred to the EEOC in mid-1979 have made major strides in fulfilling their stated purpose during the past year. This administration has been fully committed to improvements in their enforcement. We have made commitments of additional resources to overcome prior deficiencies; and we will continue this effort during the transition period, giving priority to full enforcement efforts on these programs.

During fiscal year 1977, there were complaints against 5,054 establishments alleging violations of the ADEA, and 5,600 investigations and conciliation actions were taken in 5,006 establishments. Monetary violations amounting to a record $10 million affecting 1,943 individuals were disclosed—$8.9 million affecting 1,707 persons were disclosed as a result of fact-finding investigations, and the remainder resulted from conciliations in which employers, employment agencies, and labor organizations consented to pay while not being formally charged with or admitting to violations of the act. During calendar year 1977, the Department filed 86 lawsuits under the ADEA.

As a result of the Department of Labor enforcement effort during fiscal year 1977, 1,293 individuals who had suffered age discrimination were aided. A total of $2.7 million in lost income was restored to 744 individuals in 383 establishments, and 532 persons who were hired or reinstated are projected to earn $4.1 million a year in wages. Also, employers agreed that they would consider applicants aged 40 to 65 for anticipated job vacancies totaling 14,584 a year.

The Wage and Hour Division's investigations disclosed illegal advertising in 508 establishments, illegal discharges affecting 648 individuals in 232 establishments, and illegal refusals to hire in 166 establishments affecting 1,380 persons.

The enforcement effort under the Equal Pay Act showed similar beneficial results during fiscal year 1977. Almost $16 million was found owing to 19,382 employees for equal pay violations as a result of compliance actions by the

Wage and Hour Division. Almost 13,000 employees benefited from restored income of nearly $7 million during that year. During the fiscal year, complaints were received against 2,742 establishments, over 650 of which involved executive, administrative, and professional employees. Also, during fiscal year 1977, 80 equal pay lawsuits were filed and several significant cases were resolved.

I am confident that the joining together of the equal pay and age discrimination programs with the title VII program will mean major improvements in the total Federal effort to eliminate discrimination from the Nation's work scene. In the case of the ADEA, consolidation will unify compatible standards, since the ADEA was modeled on title VII. In the case of the EPA, consolidation will unify all types of sex-related discrimination protection in one agency. As I indicated previously, the Department of Labor supports the reorganization proposal, and I can assure you of our utmost cooperation to accomplish a smooth transition.

Turning now from the reorganization plan, I would like to discuss the contract compliance program. As President Carter indicated in his message to the Congress, an executive order will consoliate the enforcement of the Federal contract compliance programs into the Department of Labor on October 1, 1978. The Executive order consolidation will mean the transfer of 1,571 positions and $33.1 million.

As you know, the Office of Federal Contract Compliance Programs (OFCCP) now has an oversight role in the enforcement of Executive Order 11246, which prohibits Federal contractors and subcontractors from discriminating in employment because of race, color, religion, sex, or national origin. However, regardless of discrimination, these employers must also take affirmative action to ensure equal opportunity in all areas of employment. In addition to the Executive order program, OFCCP also administers equal employment opportunity programs for handicapped workers and Vietnam era and disabled veterans. Section 503 of the Rehabilitation Act of 1973 prohibits Federal contractors and subcontractors from discriminating in employment because of physical or mental handicap, and requires affirmative action to employ and advance in employment qualified handicapped workers. Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits Federal contractors and subcontractors from discriminating in employment, requires them to take affirmative action to employ and advance in employment qualified Vietnam era veterans during the first 4 years after their discharge, and requires them to take such action for certain qualified disabled veterans throughout their working lives.

These programs establish coverage of employers through a contractual relationship. The Executive order is, of course, based upon the contracting authority of the President while the section 503 and section 402 programs are established by legislation. Employer obligations under these programs are contract performance standards agreed to in return for payment from Federal tax dollars; and thus Federal court decisions on the Executive order program have generally held that its authority to eliminate discrimination is broader than and not limited by any provision in other Federal equal employment opportunity laws such as ADEA, EPA, and title VII.

During the past year we have made major improvements in the Federal contract compliance programs. The enforcement of the Executive order program is now at the highest point since the inception of the program. Prior to 1977, the Department had succeeded in debarring only 13 contractors from Government contract work. Since January 1977, debarment actions have been completed against three companies. Administrative enforcement actions are currently pending against 14 other companies, and 5 other enforcement cases are pending in the courts.

Of course, while we will not hesitate to enforce the Executive order against employers who discriminate or who refuse to take affirmative action, we are in the business of achieving compliance, not debarring contractors. We would rather have a contractor agree to a meaningful counciliation agreement that to lose a Government contract. In that regard, we have been successful in achieving substantial compliance on a voluntary basis. Since 1969, an estimated $200 million has been restored to workers under the Executive order, some of which was obtained jointly under the Executive order and title VII.

The Department also has taken several initiatives to substantially improve its management capabilities. The Department has effected a reduction in the number of compliance agencies enforcing Executive Order 11246. New and revised regulations will soon be issued to revise the format for compliance by construction contractors and subcontractors and to expand protection of women and minorities

in the construction industry. Training of compliance officer staff has been expanded and is continuing. Improved management information systems are being developed. Improved coordination with the EEOC, Department of Justice, and the Civil Service Commission has resulted in the issuance of joint guidelines on employment selection procedures. In addition, within the Labor Department, the OFCCP and the Employment and Training Administration have entered into an agreement under which we expect to increase minority employment and the entrance of women into nontraditional jobs.

In the veterans and handicapped programs, new procedures have been developed for conducting comprehensive compliance reviews, including procedures for evaluating contractor affirmative action programs in an effort to reduce systemic discrimination. Five cases involving violations of the handicapped worker regulations are at the point of administrative hearing. Another 30 cases are in preparation. In the 4 years of the handicapped worker program, there have been 4,400 complaints filed, with nearly 2,500 having been received in the past year. In addition, under the Vietnam era veterans program, 500 individual complaints have been received and most have been concluded. Also, another 2,000 violations have been alleged for failure to meet the mandatory job listing requirement for veterans.

More importantly, we have implemented a new enforcement policy of directed compliance reviews across the country involving violations of the veterans and handicapped requirements. A total of 300 directed reviews are underway. Under this new enforcement policy, the Labor Department will continue to investigate individual complaints but will also conduct compliance reviews of randomly selected contractors and subcontractors.

Nevertheless, our ability to "manage" the efforts of the compliance agencies has been encumbered by fragmentation, and lengthy and cumbersome channels of communication. Our experience has been that such a division of responsibilities simply does not work. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; produce more effective law enforcement through unification of planning, training and sanctions and, as concluded by the Paperwork Commission, reduce paperwork and improve management information systems. We are convinced the consolidation of the enforcement of the Executive order into the Department of Labor will contribute greatly to the overall success of the President's plan.

In summary, Mr. Chairman, the comprehensive reorganization of the Federal EEO effort will go far in promoting equal employment opportunities for our citizens. The Department of Labor is totally committed to a smooth transition and to a vigorous effort in the years ahead. My colleagues and I will now be happy to answer any questions you may have.

STATEMENT OF JAMES T. MCINTYRE, JR., ACTING DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, BEFORE THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, MARCH 7, 1978

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you today. I would like to summarize a statement which I am submitting for the record.

On February 23, 1978, the President announced his plan to reorganize and improve this Nation's equal employment enforcement efforts. This plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions the President will take by Executive order to merge the contract compliance program into the Department of Labor, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified coherent Federal structure to combat job discrimination in all its forms. The President has stated that one of the prime objectives of this administration is improvement in the management and enforcement of the Nation's civil rights laws. This plan represents a step in that direction.

The Government's equal employment programs have had only limited success. They have been beset by problems. My testimony on pages 2–5 provides examples of the burdens which the present enforcement structure has imposed both on

employers and the persons these laws were intended to protect. Let me mention two of the examples:

—In 1977, a district office of the EEOC duplicated an investigation of the Department of Labor's Wage and Hour Division on a sex discrimination charge against a large refrigerator manufacturer. The EEOC investigator was not made aware of the DOL investigation until the EEOC's investigation was nearly complete.

—In a case involving a coal company, the EEOC found no probable cause for an individual charging party but did find cause on issues of denial of employment to blacks as a class. In 1977, while attempting conciliation, it was discovered that the Department of the Interior had already approved the company's affirmative action plan and the goals and timetable it had set for the employment of blacks.

Many studies have verified these problems. For example, in April 1977, the Commission on Federal Paperwork made this observation about Federal equal employment opportunity programs:

"[I]t has been apparent that the welter of confusing laws, regulations, policies and practices of a multitude of Federal agencies has militated against effective enforcement and informed public policy."

Similar findings and conclusions were reached by the Commission on Civil Rights in reports issued in 1975 and 1977 and by the House Subcommittee on Equal Opportunities last year.

The Office of Management and Budget's analysis identified several problems related to organizational deficiencies in the present equal employment enforcement program. These problems, which I recount on pages 6–8 of my testimony include:

—Overlapping jurisdiction.
—Application of inconsistent standards.
—Duplicative investigations.
—Waste of resources.
—Confusion over procedures.
—Inadequate attempts at coordination.
—Poor management.
—Conflict of interest between program and equal employment responsibilities.
—Lack of accountability.

Many of these problems can be attributed to piecemeal development of the Federal equal employment enforcement effort over a period of more than 30 years. The time is ripe for bringing order and effectiveness to our equal employment programs.

The plan proposed by the President takes steps toward consolidating major equal employment functions. Various components of the plan are phased in over a period of time to allow for management improvements and avoid unnecessary disruption.

The plan assigns to the EEOC the role of principal Federal agency in fair employment enforcement. The EEOC was chosen for this responsibility for two reasons. First, it is the only existing agency whose paramount mission is combatting employment discrimination. Second, its size, experience, and scope of activities are consistent with undertaking such a role. Although the agency has suffered from image and management problems, such occurrences are not uncommon in a young agency administering a highly controversial and complex program. More important, the EEOC has initiated a major internal reform program which already has generated substantial progress, and is likely to improve the agency's performance quite sharply in the long run.

The major elements of this reform program are a streamlined field structure consisting of 22 district and 37 area offices, a new training program, a new charge-intake process, a rapid-charge processing system, and the creation of separate backlog units in each of its district offices.

The Office of Management and Budget has been monitoring EEOC's reforms closely and will take steps to ensure that timetables are adhered to and periodic evaluations of new systems and procedures are conducted. (Details on the initial impact of the EEOC reforms appear in appendix B of the report entitled "Reorganization of Equal Employment Opportunity Programs" which I request be included in the record.)

The reorganization plan authorizes the following transfers of program responsibilities:

—On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council and transfer its duties to the EEOC.

—On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the Civil Service Commission to the EEOC.
—On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC.

These transfers are explained on pages 15–22 of my testimony. Let me summarize:

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, the plan places the Commission at the center of equal employment opportunity enforcement. Armed with this new coordinating responsibility, the EEOC will develop substantive equal employment opportunity standards applicable to the entire Federal Government, standardize Federal data collection procedures, create joint training programs, and develop Government-wide complaint and compliance review priorities and methodologies. This transfer will help to limit duplication and inconsistency among the equal employment programs.

The transfer of the Civil Service Commission's equal employment opportunity responsibilities to the EEOC will insure uniform implementation of title VII. Today, the EEOC defines the equal employment rights of private employees and employees of State and local governments. It is the agency that possesses the greatest expertise and experience in dealing with equal employment problems. For Federal employees, however, the function is performed by the Civil Service Commission.

Close coordination between the EEOC and the CSC on Federal personnel matters will be necessary. In order to insure that the transfer in no way undermines the objectives of the civil service reforms which the administration is submitting to Congress, the EEOC and CSC are developing compatible complaint appeals systems. The plan authorizes the EEOC to delegate to the CSC or its successor agency the opportunity to make preliminary determinations on discrimination matters which are raised in conjunction with appeals of adverse actions. The EEOC retains the right to review this determination.

The plan transfers enforcement of the Equal Pay Act to the EEOC. The Equal Pay Act and title VII are essentially duplicative. Transfer of the enforcement of the act to the EEOC, therefore, would minimize overlap, permit better allocation of resources, and centralize Federal enforcement of the prohibitions against sex discrimination in employment.

The plan also transfers the enforcement of the Age Discrimination in Employment Act to the EEOC. There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination.

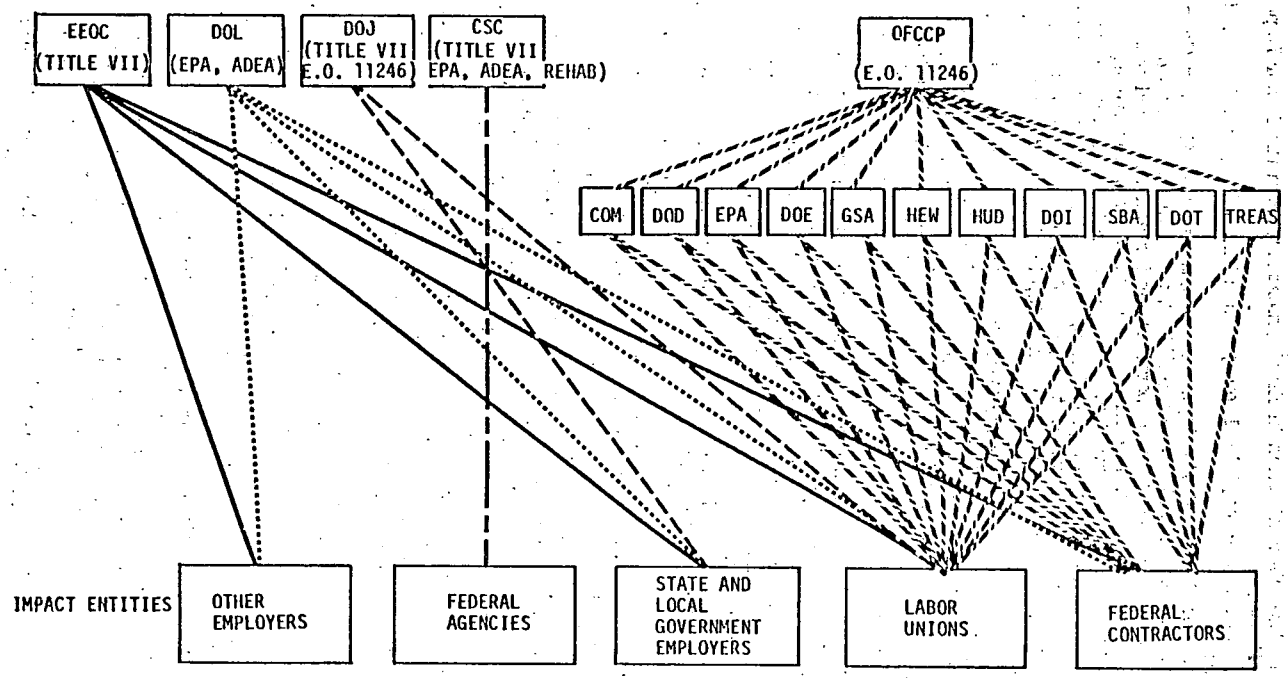
Finally, the plan reinforces the intent of the Congress that the Attorney General may initiate title VII "pattern or practice" cases against State or local governments without the necessity of awaiting the referral of complaints from the EEOC—an issue now disputed in the courts.

In addition to the changes proposed in the plan, the President intends to issue an Executive order, effective October 1, 1978, to consolidate the contract compliance program into the Department of Labor. This consolidation will promote consistent standards, procedures, and reporting requirements, remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training, and sanctions.

While we do not anticipate that the reorganization contained in this plan will result in an overall reduction in expenditures, there will be administrative savings attendant to the creation of a more efficient and manageable enforcement program. Reduction in program overlap, inconsistent data collection systems, and duplicative investigations will mean higher productivity, reduced burdens on employers, and improved services to those seeking relief from discriminatory practices.

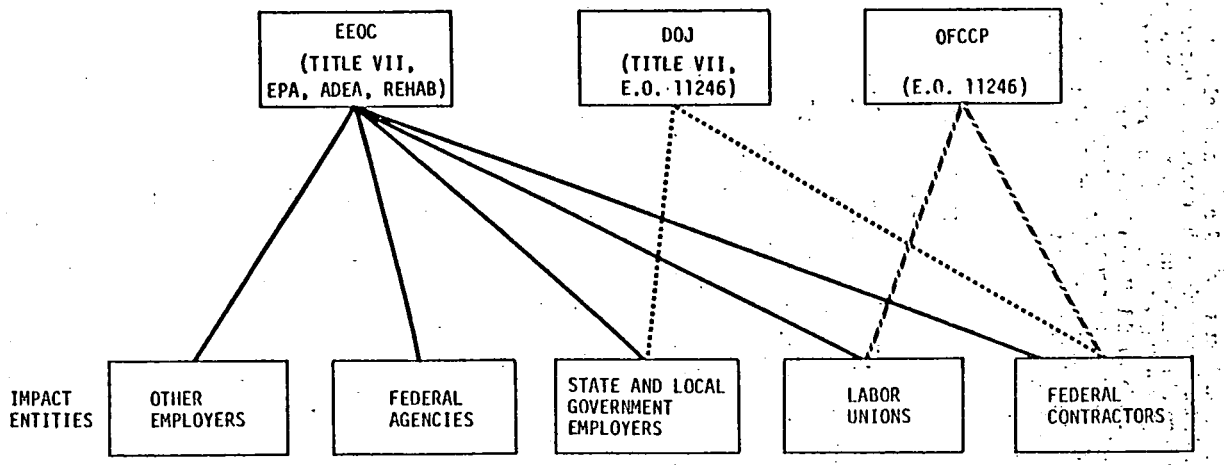
The underlying premise of these changes is that the Federal Government will develop a coherent and unified equal employment program. The inconsistency, duplication, and spinning of wheels which have led to much of the frustration voiced by those the laws are intended to protect and employers and unions attempting to comply with the laws must begin to disappear. We believe that this plan represents a major step in that direction. We hope that you will join the President in moving toward an equal employment opportunity program in which all Americans can place their trust.

PRESENT ENFORCEMENT STRUCTURE FOR MAJOR EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS*



*TITLE VII, EQUAL PAY ACT (EPA), AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA), SECTION 501 OF REHABILITATION ACT (REHAB), EXECUTIVE ORDER 11246

PROPOSED ENFORCEMENT STRUCTURE
FOR MAJOR EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS*



*TITLE VII, EQUAL PAY ACT (EPA), AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA), SECTION 501 OF REHABILITATION ACT (REHAB), EXECUTIVE ORDER 11246

ITEM 3. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH, TO EWAN CLAGUE, LACONIA, N.H., CONSULTANT, AND FORMER COMMISSIONER, BUREAU OF LABOR STATISTICS, DATED JULY 31, 1978

DEAR DR. CLAGUE: Thank you very much for the excellent testimony at our hearing last week. You provided a great deal of perspective, along with your very helpful facts. I appreciate the time and effort devoted to your statement. It will receive careful attention and frequent reference as our study continues.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes.

Sincerely,

FRANK CHURCH,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR FRANK CHURCH

1. Your statement, "At inflation rates of 7 percent or more, the early retiree would receive higher benefits after age 65 than the fellow worker who continued working until age 65 and then draw his benefits," is of great concern to this committee. Would you care to illustrate this point further?

2. Your reference (p. 16) to early retirement as the potential "time bomb" which would upset current retirement income programs is equally worthy of close attention. Can you give tentative projections as to the timespan for such a calamity, if present trends continue?

3. You request "more intensive study of the early retirement problem in order to find out what could be done to bring the situation under control." What factors should be considered in such a study?

4. This committee has reported that persons on retirement income budgets pay proportionately more of that income for items in which the greatest price increases are occurring: food, shelter, utilities, transportation, and health care. Do you agree with that statement? Would you care to supplement your earlier remarks about the need for a special cost-of-living index for older persons?

5. What suggestions would you make for changes in Department of Labor statistical reporting to better reflect problems of middle-aged and older workers?

6. How much would an elderly person's purchasing power be reduced if he retired today on a $10,000 annual pension at the age of 65 if our annual inflation rate would be 6 percent per year for the next 12 pears? What would be the effect under the same circumstances if the annual inflationary rate would be reduced to 4 percent per year?

7. Would the development of new work patterns—such as part-time employment, phased retirement, and others—have any effect at all in moderating inflation?

8. It is my understanding that much of the information about early retirement in State and local governments is quite often unavailable or incomplete. Would you agree with this statement? And if so, is this another reason that you call State and local early retirement a "time bomb"?

9. Today, inflation seems to be more persistent than it used to be. Why is our Nation not obtaining more results in terms of controlling rising prices?

ITEM 4. LETTER AND ENCLOSURE FROM EWAN CLAGUE,[1] LACONIA, N.H., CONSULTANT, AND FORMER COMMISSIONER, BUREAU OF LABOR STATISTICS, TO SENATOR FRANK CHURCH, DATED SEPTEMBER 5, 1978

DEAR SENATOR CHURCH: The attached memorandum provides the committee with my answers to the questions which you raised in your letter following the July hearings.

I have answered each of these question to the best of my ability within the time available. I hope that the answers may provide a basis from which research analysts could develop more and better information.

Yours,

EWAN CLAGUE.

[Enclosure.]

[1] See statement, p. 135.

RESPONSE TO QUESTIONS FROM SENATOR FRANK CHURCH

Question 1. Your statement, "At inflation rates of 7 percent or more, the early retiree would receive higher benefits after age 65 than the fellow worker who continued working until age 65 and then drew his benefits," is of great concern to this committee. Would you care to illustrate this point further?

Response. The statement, as worded, gives the wrong impression and should be modified. A worker drawing benefits at age 62 would have to take a 20 percent reduction from the full benefits due at age 65. Instead of $300 a month, the early retiree would get $240 the first year; at a 7 percent inflation adjustment he would get $257, $275, and $294 a month at age 65. In the meantime, a fully employed worker receiving wage increases of 5 percent a year would obtain benefits higher than $300 at age 65, substantially ahead of the early retiree. For the fully employed worker it is advantageous to postpone retirement until age 65 with full benefits based on somewhat higher average earnings.

However, there are a number of factors which have the effect of stimulating early retirement. These are set forth in several issues of the Social Security Bulletin.[1] The question posed by Karen Schwab in the August 1974 Bulletin is: "How many individuals are encouraged to leave the labor force because of the availability of early benefits?"

One potent factor is loss of a regular job with little hope of getting another. With the reduced benefits cited above, the early retiree would draw over $9,200 in benefits in years 62–64, and then draw over $3,500 in benefits at age 65. An individual waiting until age 65 to obtain the regular benefits would require at least several years to equal the early benefits obtained by the retiree at age 62.

Anothr factor of greater importance is the growing number of workers retired from private industry at ages 62, 60, 55 and even as early as age 50. Assuming that man such workers have already retired before age 62, they have plenty of incentive to take social security at the earliest available date. There is not much advantage (and some possible disadvantage) in waiting three retired years to get social security at age 65.

Another case would be a husband retired at $300 a month with a wife aged 62 eligible for $200 a month, with a reduction to 80 percent for early retirement. The couple could draw immediately a joint benefit of $460 a month, a loss of only $40 a month, or 8 percent.

Additional examples could be cited, but these should be sufficient to show that for many elderly, men and women both, early retirement at moderately reduced benefits is preferable to a 3-year wait. Another advantage is that the purchasing power of the benefit is protected by the cost-of-living adjustment of the benefits each succeeding year. The statistics of early retirement demonstrate the extent to which the workers are purposely making what to them is a favorable choice.

All the above is now history. An entirely new situation has been created by the 1977 amendments which provide for indexing the workers' earnings in past years by the Consumer Price Index. This results in an entirely new calculation of retirement benefits for individual workers. It is not possible at this time to judge the impact that this new system might have on early retirement.

Question 2. Your reference (p. 16) to early retirement as the potential "time bomb" which would upset current retirement income programs is equally worthy of close attention. Can you give tentative projections as to the timespan for such a calamity, if present trends continue?

Response. The reference to a "time bomb" referred to the delayed impact of a retirement system during the early years when the system is expanding rapidly. When a retirement system is first established there are vast numbers of contributors and no retirees. Contributions come first, pensions later. When social security started in 1936, elderly persons were permitted to qualify with only six quarters of coverage. That basic requirement was increased year by year until the standard 10 years, or 40 quarters, was reached in 1946. Congress also limited the contributions during the war years (1941–45), since the reserve fund expanded rapidly, despite the low contribution rates. Then in 1950, with a growing reserve fund, Congress changed the rules and established only a five-year reserve.

The railroad retirement system in the United States was established on an entirely different basis. When the private railroad company systems were nationalized in 1935, all railroad workers (whether previously insured or not)

[1] November 1972, "Retirement History Study: Introduction"; August 1974, "Early Labor Force Withdrawal of Men"; September 1974, "Labor Force Status of Non-Married Women on the Threshold of Retirement."

were brought into the new program. What a worker needed was proof that he had been employed on the railroads for a long enough period to qualify for benefits. The result was that benefit payments constituted a substantial fraction of the incoming contributions. So the system began as a full-fledged retirement program. This was possible because the railroads had the necessary employment records (for the most part).

But for social security this would have been impossible; there were no such detailed past work records available. So social security had to undergo a long growth period before the system reached maturity; that is, when expanding coverage and benefit payments came into reasonable balance.

The civil service retirement system in the Federal Government began about World War I. It expanded during the 1930's and the war years and then became stabilized in the 1950's. There has been only moderate growth during the last 25 years. Since Federal retirement benefits are escalated twice a year by the Consumer Price Index, the result would be a doubling of the benefit payments for each individual by 1990, with nearly another doubling by the year 2000. Contribution rates of 14 percent (worker and Government 7 percent each) will not provide sufficient funds to pay the benefits. Some additional contributions will be necessary.

State and local government employees totaled about 4 million in 1950, but the number tripled in the next quarter century. That group has constituted the most rapidly growing segment of the U.S. labor force. In the earlier years, a considerable proportion of such workers were moderately or even highly political. A continuity of party control within the State or city insured job security; a political overturn could result in monumental dismissals, accompanied by new hirings. Well-established groups, such as police, firefighters, and teachers, became organized and were able to develop retirement systems for themselves. But the other State and local employees groups were not highly organized. Many of the clerical workers were women, of whom amoderately high proportion became married and dropped out in order to rear a family.

It was in the 1960's that these relatively unorganized workers began joining unions and putting pressure on State and local governments for higher pay and better retirement. This is the most rapidly growing segment of organized labor in the United States.

The Nation's retirement problem in this area is that the rapid expansion of employment conceals the emerging financial problem. Statistics in this whole field are difficult to obtain. For the past, few adequate statistical records are readily available. For the future, new wages and salary scales, as well as new benefits, are being negotiated every year.

Perhaps the District of Columbia (on its way to becoming the 51st State) can serve as an example of this emerging situation. The following table shows annual employment in the D.C. government from the early 1950's to the present.

TABLE 1.—EMPLOYMENT IN THE DISTRICT OF COLUMBIA GOVERNMENT

Year	Employment (thousands)	
	Average	Increase
1951	19.5	
1956	22.1	2.6
1961	26.9	4.8
1962	28.7	.9
1963	29.1	1.3
1964	30.1	1.0
1965	32.1	2.0
1966	35.0	2.9
1967	37.2	2.2
1968	40.4	3.2
1969	43.4	3.0
1970	46.6	3.2
1971	49.0	3.4
1972	48.6	−.4
1973	48.1	−.5
1974	49.9	1.8
1975	[1] 51.4	1.5
1976	[1] 52.3	.9
1977	[1] 50.0	−2.3
1978 (June)	[1] 48.3	−1.7

[1] Including Metro.

D.C. Government employment grew slowly at first—only 2,600 in the 5 years, 1951–56, or about 500 employees per year. In the next 8 years through 1964, the average increase was about 1,000 employees per year. Then the rate multiplied. In the 7 years, 1965–71, D.C. employment increased by almost 19,000 (30.1 to 49.0)—a gain of nearly 63 percent. Then employment stabilized except for the expansion in Metro employment (the new underground transit system).

The important point here is that the retirement systems covering the above government employees are not funded, being paid for out of annual appropriations. Present benefit costs are moderate, based on the relatively small number of retirees from the recruits of the 1950's. But the 1965–71 recruits will become eligible in the 1990's. The combination of expansion and inflation will explode at that future time.

Some reccent congressional hearings have highlighted this retirement problem. In February 1978, the Senate Subcommittee on Governmental Affairs and the District of Columbia (chairman, Senator Thomas F. Eagleton) held hearings on proposed legislation covering the D.C. retirement systems of policemen, firemen, teachers, and judges. Senator Eagleton conducted the hearings on those four D.C. retirement systems.

The general conclusions were that D.C. has the most generous pensions of any State or local government in the United States. The disability provisions are practically unlimited. In 1969, nearly all D.C. policemen (98 percent) and firemen (99 percent) retired on disability. Subsequently, the proportions declined to 77 percent and 71 percent; and recently it was 65 and 67 percent. No city in the United States has as generous disability provisions as D.C.

The great significance of the disability decisions is that disability payments are largely exempt from income taxation. Mayor Walter Washington in his testimony emphasized that those provisions were legislated by the U.S. Congress and not by the D.C. government. Senator Eagleton agreed that these generous provisions were the responsibility of the Congress. He then went on to comment:

"The D.C. system is totally nonfunded, police and fire; marginally or meagerly funded for teachers. The time bomb in the District of Columbia ticks at a faster pace than elsewhere." [1]

It is likely that the disability legislation now under consideration for D.C. will be passed by the Senate and the House, thus introducing some moderation into the system. But this revision is only marginally related to the retirement system for other D.C. government employees who are many times as numerous as police and firemen. These other professional, administrative, and clerical employees do not have the same disability experience as police and firemen, nor do they have such liberal early retirement benefits. But the total cost is much higher. The D.C. government is quite in line with other States and localities on the more generalized retirement and disability provisions for city employees. If D.C. is in prospective financial troubles, so are many others.

If State and local government employment continues to expand as rapidly as it has during the last quarter century, the financial crisis will be postponed for a decade or two. But if the California proposition 13 takes hold in other States and localities, the financial problems of the States and localities will become a national problem of major dimensions.

Question 3. You request "more intensive study of the early retirement problem in order to find out what could be done to bring the situation under conrol." What factors should be considered in such a study?

Response. The most urgent need for the analysis and solution of the problem of early retirement is the collection and publication of statistics which would show the dimensions of the problem in future decades. The first question is, at what ages are government and private industry employees retiring and drawing their pensions?

For the Federal Government, the Civil Service Commission as well as other agencies, issue comprehensive statistics on this subject. In State and local governments such data must be available in state and local records, but it is now largely unpublished and uncollected on a national basis. There is a further question as to whether the governments would make such information available to the general public. Would there be any possibility, even on a sample basis, of developing some statistical trends which would make possible the development of some future projections? In private industry systems such information is no doubt available, but it is not collected and published.

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[1] Subcommittee hearings, Feb. 23, 1978, p. 13.

A second problem relates to the combination of retirement and employment. The Federal Government has recently issued some statistics showing the extent to which military retirees drawing military benefits are working at full pay in the civilian agencies of the Federal Government. Furthermore, there are some agencies in which a retired Federal civilian employee can work a limited amount (part-time or part-year) with no reduction in his (or her) regular retirement benefits.

However, it is not known to what extent private industry retirees continue to work while drawing retirement benefits. In the case of the United Mine Workers in the coal industry, the miner can draw benefits at age 55. He can't work anymore in the coal industry without losing his coal benefits. But he could work in any other industry and keep whatever earnings he makes. In the case of State and local governments, there are numerous examples of early retirement, at age 50 or earlier, in which the retiree can draw his local government benefits while holding a full-time job in private industry. The key question here (for the future of the retirement system) is the extent to which employees choose early retirement coupled with regular work in another industry. Such information could only be obtained by matching that retirement with social security employment records.

There is another aspect of the work-retirement relationships which requires further study. That could be the effect of the social security permissible work earnings upon private or other government retirement benefits. A retired social security beneficiary can now earn up to $4,000 in annual earnings without any loss of benefits, with $1 reduction in benefits for each $2 of additional earnings. A retiree drawing $3,600 in regular benefits could receive $7,000 from both. If he earned $6,000 on the job, he would get a total of $8,600, losing $1,000 of his pension. At earnings of $11,200 he would lose his pension altogether (as long as he earned that much income from work).

As is evident from the above analysis, there are a number of aspects of early retirement with full benefit payments which should be explored in order to find out what action, if any, should be taken.

Question 4. This committee has reported that persons on retirement income budgets pay proportionately more of that income for items in which the greatest price increases are occurring; food, shelter, utilities, transportation, and health care. Do you agree with that statement? Would you care to supplement your earlier remarks about the need for a special cost-of-living index for older persons?

Response. When basic subsistence costs are high, the elderly retired persons will be paying a larger proportion of their benefits for such necessities. This points to the need for a special index for elderly couples, with possibly an adjustment for singles.

Such an elderly couple's cost-of-living index did receive some attention in 1964–65, when the Consumer Price Index revision had gone into effect in 1964. The study of family expenditures had shown that the pattern of expenditure of the elderly did not match closely the patterns for the standard four-person family represented in the CPI.

However, the needs of the "great society" programs plus the outbreak of the war in Vietnam knocked out the possibility of establishing continuing family expenditure studies, which would have been required to construct the indexes for the elderly.

Now that the CPI has just been revised, this is a most appropriate time to consider the establishment of an elderly couple's index, with perhaps separate single's indexes for men and women.

Question 5. What suggestions would you make for changes in Department of Labor statistical reporting to better reflect problems of middle-aged and older workers?

Response. This question raises the issue of additional information which might be collected by the Bureau of Labor Statistics. That bureau is opening up some areas of research that are germane. There is now in preparation an article in the Monthly Labor Review on the "Employment Characteristics of Older Men," by Philip L. Rones, an economist in the Office of Current Employment Analysis. This will appear in a near-future issue of the Review. The following is a brief quotation from the Introduction:

"This article focuses on those older persons who do continue to work. The discussion includes the major factors which contribute to the older worker's decision to remain on the job and how these factors are reflected in their employment characteristics. Particular emphasis is placed on the reasons behind the industry and occupational employment patterns of older workers."

A preliminary draft of this paper indicates that it will provide significant information on work versus retirement for older workers. One of the significant findings of the report is the growing importance of part-time and part-year work for older workers.

Another aspect, which is not a part of this BLS study, but which requires more research, is the relationship of work and benefits. How many middle-aged or elderly fully employed workers are also drawing retirement benefits? There might be early retirees from local government working in private industry. Or conversely, an early retiree from private industry might find a government job—Federal, State, or local. Or again, a worker retired from one private industry might find employment in another, at least combining wage and retirement income and possibly acquiring a second private pension.

Another angle which might be explored is the extent to which professionals and retirees with administrative skills become self-employed workers while they are drawing full retirement benefits.

There is one aspect of retirement systems which could usefully be explored. That is the benefit experience of workers in industries and occupations in which there is much labor turnover. This might stem either from the worker constantly seeking better jobs or from business failures, especially of small and medium-sized firms. Examples have been cited of workers with a lifetime of work experience but without earning any retirement benefit except social security.

There have been some valuable studies focusing upon the age groups 62–64, 60–64, and 58–62. The age groups which have not been adequately surveyed in these older worker studies are those 50–54 and 55–59. What is urgently needed is some knowledge of the extent to which workers, men and women both, combine work and retirement—at what ages and at what income levels.

Question 6. How much would an elderly person's purchasing power be reduced if he retired today on a $10,000 annual pension at the age of 65 if our annual inflation rate would be 6 percent per year for the next 12 years? What would be the effect under the same circumstances if the annual inflationary rate would be reduced to 4 percent per year?

Response. A retired worker drawing benefits of $10,000 a year would have the purchasing power cut in half with a 6 percent inflation rate over a period of 12 years ($5,057). The following table shows the shrinking purchasing power of that pension. For this calculation the results are rounded to the nearest dollar.

Year:	*Purchasing power*
1	$10,000
2	9,400
3	8,836
4	8,296
5	7,798
6	7,330
7	6,890
8	6,477
9	6,088
10	5,723
11	5,380
12	5,057

At the end of 6 years, the retiree would lose over one-fourth of the value of his pension ($7,330). In 9 years, its purchasing power is almost down to 60 percent of the original benefit.

At an inflation rate of 4 percent the retiree comes out much better.

Year:	*Purchasing power*
1	$10,000
2	9,600
3	9,216
4	8,847
5	8,493
6	8,153
7	7,824
8	7,514
9	7,213
10	6,925
11	6,648
12	6,382

At the end of 6 years, the retiree is down about 19 percent ($8,153), and at 9 years about 28 percent ($7,213). In the 12th year, the loss has been over 36 percent.

However, these mathematical calculations do not show the full extent of the readjustments that such a worker would have to make. Clothing, for example, is seldom a heavy expense to elderly people in their retirement. Housing can be a major problam, both for renters and for many homeowners. But it is the basic necessities of food and utilities which become dominant with a shrinking income.

Furthermore, for early retirees 12 years may be far too low an estimate. With increasing longevity, those retiring at 62 have a reasonable prospect of about 16 years. That would result in the following shrinkage of retirement income in a period of 6 percent annual inflation.

Year:	*Purchasing power*
13	$4,754
14	4,468
15	4,200
16	3,948

The additional years would bring a shrinkage of purchasing power to less than $4,000 in the 16th year. The retiree would by that time be approaching the poverty level.

Question 7. Would the development of new work patterns—such as part-time employment, phased retirement, and others—have any effect at all in moderating inflation?

Response. New work patterns could have some effect in moderating inflation, but they might also have areverse effect. The result will depend upon the impact of the earnings upon the retirement benefits. My original testimony cited the example of the retired woman who worked over the summer from April to October and then drew unemployment insurance during the autumn and winter months, when no work was available in that community. The combination of $3,000 of earnings plus perhaps $2,000 in unemployment insurance would generate more purchasing power than would be covered by the output of goods resutling from her earnings.

Steady part-time work throughout the year could contribute to reduction of inflation. At the new 1978 earnings rate of $4,000 a year, a steady worker earning more than $80 a week could be making a contribution to lower inflation, if his productive output was worth more than $4,000, as it would have to be if his employer kept him regularly on the job. The result here would be the opposite of the above example.

Phased retirement might also reduce costs. Take the example of the worker who gradually retired by vacationing two more months each additional year from age 65 through 69, with full retirement at age 70. Substantial retirement money would be saved for the fund by that method of gradual retirement.

There is a need for more exploration of the combination of work and earnings which would benefit the worker and at the same time help the retirement funds.

Question 8. It is my understanding that much of the information about early retirement in State and local governments is quite often unavailable or incomplete. Would you agree with this statement? And if so, is this another reason that you call State and local early retirement a "time bomb"?

Response. Early retirement statistics for State and local governments are generally unavailable or incomplete. Unavailable means that, while the State or local government may have in their records a substantial volume of information, these data are not regularly published in documents available to the public. Incomplete means that such data as are published may not be analyzed and interpreted for the general public in the way that the Social Security Administration presents its annual reports and predictions for the future.

Perhaps equally important is the fact that many State and local governments are actively engaged in developing and expanding their retirement systems. Some of these are late comers in retirement programs, which means that they are primarily interested in catching up with their neighbors. Such government organizations, State or local, are more likely to be interested in improving the benefits rather than analyzing future costs.

That is the reason for calling such a program for a State or locality a "time bomb." As previously noted, the early stages of an expanding retirement program are always easy and pleasant—receipts far outrun the payments. It is only when the actuaries and analysts project far into the future that the financial

problems become readily apparent and prospectively alarming. The trouble is that State and local legislators are more interested in the next year than in the next decade.

Question 9. Today, inflation seems to be more persistent than it used to be. Why is our Nation not obtaining more results in terms of controlling rising prices?

Response: The problem with inflation is that there is no agreement among businessmen, labor leaders, or government officials on how to control it. Even among some professional economists there is no agreement as to its cause and cure. The only practical approach is to assess each contributing factor to see what its impact is on costs and prices.

In terms of its size and weight, the most dominant factor is wages and salaries, which comprise about 75 percent of the gross national product. Wage and salary increases are usually negotiated (or awarded by nonunion employers) at a level sufficient to cover the persistent rise in the Consumer Price Index. In addition, it has been the custom to give a further wage increase to reward labor for the rise in productivity. With a cost-of-living increase of 6 percent plus a productivity increase of 3 percent, a 9 percent wage increase (average for the economy as a whole) would just balance costs and prices.

Wage (and salary) increases that exceed the cost of living plus productivity (for example, 10 or 12 percent a year) will guarantee further inflation. Of course, highly productive industries with a 5 or 6 percent productivity improvement can pay wage increases of more than 3 percent without raising prices. But the major part of the problem is that industries with negligible or declining productivity find their workers asking for the same wage increase that the more productive industries are obtaining. That situation forces a substantial rise in those prices and stimulates further inflation.

Two additional factors are now operating to increase labor costs and thus to generate price increases. One is the establishment by law of higher health and safety standards within industry. This is already having an economywide effect in that productivity gains are now under 2 percent (national average), not the former 3 percent. It is necessary to emphasize strongly that when improved standards lower productivity and raise labor costs, then wage increases have to be restrained, if further inflation is to be prevented.

The second factor is the legislated minimum wage. That applies to the unskilled, the uneducated, and other handicapped who are at the bottom of the wage pyramid. Congress and the State governments periodically take action to raise this minimum. When no action is taken for several years, which has recently been the case, that minimum still applies to many employed workers. Then when revision legislation is passed, there is a substantial jump in the amount—from $2.35 an hour to $2.65 in 1978, and to $2.90 in 1979. That is an overall increase of over 23 percent in 2 years. The immediate effect will be a major increase in labor costs in those industries with large numbers of unskilled workers, followed by a substantial rise in the prices of their goods and services.

There will be two subsequent results. One will be a rise in unemployment of the unskilled. The papers are already reporting stories of employers economizing on labor. There will be more cafeterias and fewer restaurants. Mechanization will take place wherever it is possible. In the District of Columbia there is a proposal for a minimum wage of $3,25, which would assure some additional unemployment in the District, since both Maryland and Virginia will have lower minimums.

The other result will be a sharp upward movement of wages just above the minimum. Workers who have been making $3 an hour, nearly 30 percent higher than the $2.35 unskilled, will make demands for the establishment of a larger differential above $2.90, one more appropriate to their higher skill. So up through the wage structure there will be some rising wage adjustments to restore, in some degree at least, a significant differential for the higher-skilled workers.

For the future, the present wage program provides for annual adjustments in the minimum. This will produce more gradual increases and avoid the heavy impact of the 1978–79 increases. For the present, however, the outlook is for rising labor costs and higher prices in 1978–79.

BUSINESS PROFITS

After wages and salaries have absorbed 75 percent of gross national product, there remains 25 percent, which consists of perhaps 10 percent for rent, interest, and capital replacement, leaving about 15 percent in profits to the businessmen.

Out of that, with a 25 to 50 percent tax on profits, there is left about 8 to 9 percent available for business investment. That item is what provides for economic growth and expansion.

Some of these profits are distributed to the stockholders, who then have to pay income tax on their dividends. So profits are taxed twice, which limits the funds available for new investment. In many European countries, business profits which are reinvested immediately in the enterprise are not taxed, thus encouraging profitable businesses to expand. In the United States, there have been occasions when Congress has exempted some reinvestment from profits taxation, but the total amount has not been large.

The difficulty with public understanding of profits is that a reported 10 percent increase in business profits seems spectacular, whereas in fact it amounts to only 1.5 percent of GNP. Furthermore, such an increase, if not taxed away, could result in significant increases in capital investment. This is the only way that the economy can expand—a larger volume of capital investment.

There are some economic data which point directly to what people in the United States are doing with their savings, namely, investing in land and homes. The spectacular increases in the price of land and private homes are clear-cut evidence of people putting their savings into something which will insure their protection against inflation.

It is of some interest to note that the two advanced nations which have done well in protecting their economies from inflation are Germany and Japan. The German people have had two disastrous experiences with inflation—World War I and World War II. The Japanese experienced the second. The labor movements in those countries are willing cooperators with the government in checking inflation.

INTERNATIONAL

The U.S. dollar, which since World War II has been the world's basic currency, is falling in value. One major factor in this situation has been the enormous cost of oil imports. Recent figures indicate that these comprise about 50 percent of the U.S. adverse balance of trade. The ominous outlook for the future is that the weakening of the dollar is already giving rise to a proposal for another increase in the world price of oil. That would result in a still larger U.S. deficit in foreign exchange and a further weakening of the dollar.

Meanwhile, domestic oil prices (for oil wells in current production) are being held down to less than half the world price. The United States is the only Western industrial nation which is not economizing on oil consumption. Gasoline prices are less than half of those in Western European countries. If domestic oil production could be increased and imports decreased, the dollar would be strengthened. Furthermore, U.S. self-dependence would be increased at a time when the world economic outlook is becoming more uncertain.

The same point can be made about natural gas. It is the best of all fuels. It should be the highest priced, not the lowest; and the price should be high enough to promote more domestic exploration.

Finally, the continuing decline in the purchasing power of the dollar will stimulate further inflation in the United States. Many imports (materials) are necessary for the growth of the U.S. economy. Such purchases abroad will cost more in dollars and will raise the U.S. prices of the final products.

In summary, the best solution to reduce U.S. inflation is to increase U.S. production and strengthen the dollar as a world currency. There is some risk of a business recession, but this could be mild if action is taken soon. It is imperative to avoid a financial crisis of the 1929 variety.

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RETIREMENT, WORK, AND LIFELONG LEARNING

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 1—WASHINGTON, D.C.

JULY 17, 1978

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Retirement, Work, and Lifelong Learning:
Part 1. Washington, D.C., July 17, 1978.
Part 2. Washington, D.C., July 18, 1978.
Part 3. Washington, D.C., July 19, 1978.
Part 4. Washington, D.C., September 8, 1978.

CONTENTS

	Page
Opening statement by Senator Frank Church, chairman	1
Statement by Senator Pete V. Domenici	4

CHRONOLOGICAL LIST OF WITNESSES

Califano, Hon. Joseph A., Secretary, Department of Health, Education, and Welfare	6
Sheppard, Harold L., Ph. D., Washington, D.C., director, Center on Work and Aging, American Institutes for Research	54

APPENDIX

Correspondence related to hearing:

Item 1. Letter and enclosure from Senator Frank Church, chairman, Senate Committee on Aging, to Hon. Joseph Califano, Secretary, Department of Health, Education, and Welfare, dated July 31, 1978	69
Item 2. Response of Secretary Joseph Califano to questions submitted by Senator Frank Church	70
Item 3. Letter and enclosure from Senator Frank Church to Harold L. Sheppard, Ph. D., director, Center on Work and Aging, American Institutes for Research, Washington, D.C., dated July 31, 1978	83
Item 4. Letter and enclosure from Dr. Harold L. Sheppard to William E. Oriol, Senate Committee on Aging, dated August 7, 1978	84
Item 5. Excerpts of report entitled "Research and Development Strategy on Employment-Related Problems of Older Workers," by Dr. Harold Sheppard	87

RETIREMENT, WORK, AND LIFELONG LEARNING

MONDAY, JULY 17, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 6226, Dirksen Senate Office Building, Hon. Frank Church, chairman, presiding.

Present: Senators Church, DeConcini, Domenici, and Percy.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; David A. Rust, minority professional staff member; Alison Case, operations assistant; and Theresa M. Forster, fiscal assistant.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. Today, the Senate Committee on Aging begins an examination of the many issues related to our three general themes: Retirement, work, and lifelong learning.

A subtitle to these hearings might well be: Should the United States be dismayed or even fearful over a process so often described as the "graying" of our population?

My personal answer to that question is "no," as you might expect. It would be a sad day indeed for this Nation if the older persons among us were to be regarded as a drain, rather than a rich reservoir of experience, wisdom, and creative energy. But my answer would also include a caveat—one which has caused these hearings to be called—a warning that we must look deeply into issues which have concerned the Senate Committee on Aging for some time, but which now take on new urgency.

Contributing to the urgency is the debate over social security financing and the deepening concern over the high cost of public and private pensions. Do we know what we are committing for future retirement income, and are we proceeding in the wisest way? It has become common to say that the United States has no retirement policy. Federal, State, and local governments establish pension or annuity plans as if each one existed in a vacuum. Some private plans are loosely related to public sector plans; others are not; and complexity and misunderstanding abound.

What is all this costing us? How much more can we afford? And who really benefits from the current scheme of things?

Is there already a "pension elite" who benefit from several sources of income support while those most in need of a genuine supplement to social security income are the very ones least likely to enjoy it?

And one of the most crucial questions: How is inflation compounding the cost of retirement as it is practiced today?

We have chosen a broad title for these opening hearings and all those which will follow. We want to examine retirement, work, and lifelong learning in some detail, and we want to show that each of these three broad subjects cannot stand alone, especially now.

Retirement Policy

We are concerned about retirement for many reasons, the most immediate of which is new legislation which deals a major blow at traditional mandatory retirement practices.

I am referring, of course, to the raising of the upper age limit in the Age Discrimination in Employment Act from age 65 to 70. This victory won't alter current habits and injustices overnight, but it is historically important because it helps to establish the principle of keeping work options available throughout the lifespan. It also will challenge employers—and employees—to work cooperatively to make the most of the new condition which will generally take effect next January.

Retirement is also on our minds because of a swelling tide of concern about the clear and persistent trend toward earlier retirement. Does this make sense in the face of: increased longevity; inflation's inroads on retirement income; and the growing realization that this Nation now needs, and will need even more in the future, the full use of the talents and knowledge of all those who wish to work for as long as they care to work?

Employment Issues

But what good does it do to delay or even ban retirement if employment opportunities for the older persons are unsatisfactory or even nonexistent? We have put "work" in the title of our hearings because for some years now the Senate Committee on Aging has tried to alert the Nation to the fact that older workers are often called "retired" when in fact they can't get a job to replace one they have lost or one that has been swept aside by technological change. We have issued reports pointing out that so-called recovery for the general economy does not necessarily mean good times for workers in the 50's and 60's who encounter a distinct lag in return to jobs with insidious and far-reaching results: Denied work and often discouraged to the point of not even seeking it, the older worker seizes upon the earliest possible sustained assistance which of course is reduced social security benefits at age 62; the social security trust fund then must pay out instead of receiving payroll taxes from those who want to work, but can no longer find employment.

Our interest in work isn't limited to those past age 50. We also want to know what happens to persons whose job skills become outmoded at any age. And we will take special interest in experimental work arrangements, including flexitime, which could change fundamental thinking about the role and purpose of working the lifespan.

Lifelong Learning

And so we come to the third theme of these hearings, lifelong learning.

The 1971 White House Conference on Aging called education a basic right for all age groups, "continuous and henceforth one of the ways of enabling older people to have a full and meaningful life, and as a means of helping them develop their potential as a resource for the betterment of society."

Now that the end of mandatory retirement is in sight, isn't educational opportunity in later years even more important, not only as a means of adapting to new work demands and making one's self a continuingly valuable employee, but also as a way of adjusting to new interests when work hours decrease or, at an agreed-upon date, end entirely?

Many of the issues which will come before this committee at these and future hearings will be overshadowed by concern about social security financing. My own personal view is that the payroll tax is too high, too regressive, and in need of help from other sources. Important as this issue is, however, I hope that it will not dominate center stage. More important, it seems to me, are our goals for social security in terms of adequacy of benefits the contributions it makes to our society as well as its costs, and its relationship to other programs providing retirement income.

This committee is, of course, also concerned about problems facing the private pension system. Fortunately, the Senate Committee on Human Resources is preparing for hearings next month on amendments to the Employee Retirement Income Security Act of 1974, and we have been in close touch with Chairman Williams on matters of mutual concern.

We are also aware that there are no fewer than six federally authorized studies related to social security, retirement systems, and national retirement policy. We have made contact with representatives of each and will follow their progress closely. The same is true of the Federal Council on Aging, national organizations on aging, and other agencies. Nelson Cruikshank, counselor to President Carter on aging, has promised his personal attention to our hearings, studies, and findings.

In short, we are casting a wide net for information and ideas and perspective. Only in this way can we seek the most helpful answers in our search for what we want retirement, work, and lifelong learning to be in this country. We have been aided considerably by consultation from Harold Sheppard, whose recent book anticipates a growing crisis in this Nation's retirement age policy. Herman Brotman, demographer, and former assistant to the U.S. Commissioner on Aging, has once again contributed significantly to preparations for a hearing by this committee. To them and to others who have helped, and who will help in the future, we want to give our special thanks.

Our first witness, Secretary Califano, is quoted in the latest annual report by this committee as saying in a recent speech:

> We should remind ourselves that support for older Americans is support for all Americans. When medicare pays an older citizen's hospital bill it protects that family's savings to pay for college tuition, or a new house, or their own retirement.
>
> And "the elderly," we must remember, are ourselves—and our children. When we discuss the elderly in 2025, we are discussing the high school seniors of today.

That kind of perspective, Mr. Secretary, will guide us throughout these hearings.

Our ranking Republican member, Senator Domenici, is here this morning. I invite you to make whatever opening remarks you would like to make, Senator.

STATEMENT BY SENATOR PETE V. DOMENICI

Senator DOMENICI. Thank you very much, Mr. Chairman.

First, I agree with you, Mr. Chairman, that the whole issue of the changing times and the graying of America and the graying of the world makes the hearings that we are going to start today most important. I have a rather detailed statement which analyzes the three or four major areas that I am sure we are going to cover.

Suffice it to say that the witnesses that we have will address a variety of topics. Today, the Secretary will give us his suggestions on how we might improve the delivery of social services to provide for opportunities to our graying population.

I do believe that the kind of hearings we are undertaking are most important because we do tend to try to package and compartmentalize the problems that are coming down the line, and I believe they cross the entire structure in America. If we can provide some thinking and thought process as to where we are going and how these changes are going to impact upon what we must do and what the private sector must do, what the educational system must do, and what the social delivery system must do, then I think we will have contributed immensely here in these 3 days.

I ask the chairman to make my prepared statement a part of the record. I welcome the distinguished Secretary today.

Senator CHURCH. Thank you very much. Your full statement will appear at this point in the record as though fully read.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, the enactment of the Age Discrimination in Employment Amendments of 1978 reflects a number of fundamental changes in long-standing social and economic policies. These far-reaching changes necessitate a comprehensive reassessment of our traditional policies in many areas. Longer life and work spans pose a host of interrelated challenges. These challenges encompass income maintenance, adequate housing, proper nutrition, safety in our homes and on our streets, education, social services, and so forth. During the next 3 days, our witnesses will address a variety of topics. Today, we will hear Secretary Califano's suggestions as to how we might improve the delivery of social services to our "graying" population.

Postponed retirement may have a significant impact upon our social security program. Patchwork attempts by the Congress to ensure the continued viability of the program will not be effective in the long run. While the Social Security Financing Amendments of 1977 may help to guarantee the immediate and medium-range soundness of the system, the long-term stability of the social security program is still in doubt. In the months and years ahead, we will assess the merits and drawbacks of several possible solutions to the social security funding dilemma. Universal social security coverage and a rise in the eligibility age for social security recipients have been proposed. We also need to know how we can achieve a better integration of private and Federal pension plans with social security. Proposals to address these issues have, for the most part, generated much debate and controversy. Perhaps Secretary Califano can provide us with a clearer and more definitive analysis of these social security problems and proposals.

Rising medical costs impact on all Americans, but older Americans living on fixed incomes are hardest hit by the inflationary rise in health care costs. If hospital expenses continue to rise, it is estimated that a 1-day hospital stay could cost as much as $450 by 1980. Needless to say, something must be done to bring medical costs back within an affordable range for all Americans. While I realize that the present administration has committed itself to controlling the cost of health care, we are still a long way from a truly cost-effective health care delivery system. As the proportion of senior citizens continues to rise, restraint in the area of medical costs will become increasingly important.

Since the incidence of infirmity tends to increase in later years, more and more elderly individuals will face the possibility of long-term hospitalization or institutionalization in the years ahead. These prospects are not pleasant ones for our elderly to face. When possible, they prefer treatment in familiar surroundings, with friends and family members nearby. Fortunately, the Congress is beginning to look into this matter, and many members now recommend increased home health care services as an alternative to the sterility of institutional care. Legislation I have introduced, along with Senators Brooke and Percy of this committee, the Home Health Care Services Bill (S. 2009), will enable many elderly to obtain the medical services they need in their own homes. I hope that we will see a dramatic expansion of home health care services in the coming years.

Very little change in the distribution of education has occurred in America from 1900 to 1970. Work activity is primarily concentrated in the mid-life period, while education is stressed during the youthful years. We are witnessing a growing emphasis on adult and continuing education programs, but more concentration in this area is needed. The Office of Lifelong Learning, established by the Higher Education Amendments of 1976, is an important attempt to extend educational fulfillment to all generations. I commend the Department of Health, Education, and Welfare for its success in implementing this program, and would like to hear from Secretary Califano about other present or future initiatives in the area of lifelong learning.

I understand that many Federal agencies have implemented some form of preretirement counseling. I am anxious to learn about the extent and effectiveness of these programs within the Department of Health, Education, and Welfare.

Other innovative arrangements have been proposed, such as gradual and trial retirement. I hope Secretary Califano will comment on the desirability and workability of proposals such as these.

Mr. Chairman, another pertinent subject is the prospect of including employment for the elderly within a comprehensive welfare reform proposal. Present proposals exclude seniors from placement in jobs which would be created if welfare reform were implemented. Important questions which need to be addressed are: Can welfare reform open up new job opportunities for the elderly who want to work? Can we have a truly comprehensive welfare reform program without fully including older Americans? I will be interested to hear both Secretary Califano and Dr. Sheppard speak to this issue.

We are also fortunate to have with us today, Dr. Harold Sheppard, who is a distinguished author and scholar and, I might note, a former staff director of this committee. As an industrial gerontologist, Dr. Sheppard can give us a completely different perspective on the forces which are at work in our society. Mr. Chairman, I opened this statement by noting that the enactment of the Age Discrimination in Employment Amendment of 1978 reflects a number of fundamental changes in our social and economic structures. If we are going to come to grips with these forces, and shape realistic policies that will meet the needs of our people in the years to come, we must fully understand the changes that are occurring in the American work place. What are the attitudes of older workers toward retirement? How do middle aged and older workers perceive the need for second career training? What are the expectations and attitudes of younger workers toward their job? Their employer? Retirement? Social security? Inflation? Social services? Productivity? Taxes, and so forth?

I believe Dr. Sheppard is uniquely qualified to address these issues and I look forward to receiving his testimony and hearing his responses to questions posed by the committee members.

In closing, Mr. Chairman, let me state that I believe that our work in the area of "retirement, work, and lifelong learning" can, if carried to fruition, produce valuable data not only for our committee, but for the entire Congress. Our ability to look at the "big picture" regarding employment, retirement, and continuing education should enable us to develop a hearing record that will benefit other

committees, executive agencies, State and local governments, as well as the private sector. America will meet and overcome these challenges, which is the mark of a great civilization. Secretary Califano noted in his "Four Generations" speech: "Our democracy has proven itself both creative and resilient; capable not only of surviving social change, but of dealing with it imaginatively and generously."

We are fortunate indeed to live in a society resourceful enough to meet these demanding responsibilities and challenges.

Senator CHURCH. Senator DeConcini, do you have any opening remarks you would like to make at this time?

Senator DECONCINI. No, sir.

Senator CHURCH. Very well.

Mr. Secretary, welcome to the committee. As our leadoff witness, we are very happy to have you. You may proceed as you wish.

STATEMENT OF HON. JOSEPH A. CALIFANO, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Secretary CALIFANO. Mr. Chairman, thank you very much for a perceptive opening statement.

Mr. Chairman, members of the Special Committee on Aging, I'm glad to be here and grateful to you for inviting me to take part in these important hearings.

Your inquiry, with its theme "retirement, work, and lifelong learning," takes on increasing urgency when we consider that the number of older citizens in America is growing, that the number of years spent in retirement is growing, and that because of advances in health and nutrition, many older citizens are more vigorous and youthful than their predecessors of a generation ago. Mr. Chairman, we are on the dawn of the first four-generation society in the history of civilization.

Because we are a nation devoted to the fulfillment of the individual, we need to consider the aging of the American population with clear eyes, a realistic grasp of the facts, and a determination to plan, as prudently and thoughtfully as we know how, our programs for enriching the lives of our older citizens.

I think it is appropriate to begin with some facts about aging in America. So today, I want to describe briefly the dramatic aging of the American population and, equally dramatic, its impact on the Federal budget and our national economy. I want also to raise some questions that should be on the minds of all who shape the institutions and programs of America: The Congress and the executive, State and local officials, scholars and social planners, business and opinion leaders, and the American people.

The past four decades have seen a steady growth in the number of older citizens, a demographic change both large and striking. This growth—along with recent trends such as inflation, slow growth, and problems in health care delivery—presents some formidable challenges to programs serving the elderly.

FOUR DRAMATIC TRENDS

Let me describe four dramatic and seemingly inevitable trends about aging in America:

First, life expectancy has increased almost 10 years since 1940. In 1940, the average life expectancy at birth was about 63½ years—

lower than social security's retirement age of 65. Today, life expectancy is 69 for men, 77 for women. Three-quarters of the population now reaches age 65; once there, they live, on the average, for another 16 years, to age 81. As we contemplate the year 2050, we are told that life expectancy will increase only another 3 years for men and 4 for women. And we must remember that biomedical advances have consistently rendered recent projections of life expectancy much too low.

Second, the postwar "baby boom" will reappear early in the 21st century as a "senior boom." In 1940, roughly 7 percent of the total population was 65 or over; today, the proportion is 11 percent, more than 24 million people. After 2010, the elderly percentage will not just increase, it will soar, as the childeren of the "baby boom" become the adults of the "senior boom." By the year 2030, nearly one on five Americans—55 million citizens—will be 65 or older. And the composition of the older population is changing also. In 1940, only 30 percent of older citizens were 75 or older; by the year 2000, they will comprise 45 percent of the elderly—more than 14 million people.

Third, ironically while people are living longer, they are retiring earlier. Thirty years ago, nearly one-half of all men 65 and over remained in the work force. Today, among people 65 and over, only 1 man in 5, and 1 woman in 12, are in the work force. There is no indication that this trend to earlier retirement will cease. This confronts us with some serious questions concerning not only the cost of providing retirement income, but the quality of life for many citizens who may spend 20 years or even longer in retirement.

Fourth, the ratio of active workers to retired citizens will change dramatically over the future: From 6 to 1 today to only 3 to 1 in 2030. This ratio is important because it suggests how many active workers are available to support programs for the elderly. We can estimate this ratio by comparing the number of citizens 65 and over to those 20 to 64. This is rather crude, since some persons over 65 are not retired and many people age 20 to 64 are not workers. But the historical changes in this ratio are extraordinary nonetheless: In 1940, there were 9 citizens age 20 to 64 for every citizen 65 or over; today, it is 6 to 1; by 2030, it will be only 3 to 1.

These four demographic trends have already had significant impact on the Federal budget. Programs for the elderly are claiming an increasing share of our resources.

This year, six major programs for which HEW has responsibility—old age insurance, survivors and disability insurance, medicare, medicaid, supplemental security income, and black lung benefits—will pay out more than $94 billion to persons 65 and over. Another $14 billion will be paid to this group under the civil service, railroad, and military retirement programs. Still another $4 billion will go to the elderly under other programs providing housing subsidies, food stamps, social and employment services.

"Whopping" Budget Increase

This adds up to $112 billion—5 percent of the gross national product and 24 percent of the Federal budget for fiscal year 1978.

This is a whopping increase. Real spending under these programs in 1978 will be four times what it was 18 years ago, in 1960, when we spent only 2.5 percent of GNP on programs for the elderly. And from only 13 percent of the Federal budget in 1960, the percentage has

nearly doubled—largely due to the enactment of such major programs as medicare and medicaid, real benefit increases in social security, and other program expansions.

These expenditures, Mr. Chairman, large as they are, are expected to grow even more. Under the major programs I have mentioned, estimating benefits only for recipients age 65 or older, we expect real spending to more than triple—to $350 billion by the year 2010, just a little over 30 years from now. Between 2010 and 2025, when the "baby boom" becomes the "senior boom," real spending will escalate from more than $350 billion to around $635 billion. It will constitute more than 10 percent of gross national product, more than 40 percent of total Federal outlays.

Beyond the impact on the Federal budget, there are other striking financial implications of the aging of America. Last year, Congress enacted increases in payroll taxes that will insure the fiscal integrity of the social security system into the next century, although, as you on this committee know so well, these changes are hardly free of controversy. But the integrity of employer pension plans is open to serious question.

In 1976, Federal pension plans had unfunded liabilities between $243 and $425 billion.

Senator CHURCH. Do Federal pension plans refer to the civil service and the military pension system?

Secretary CALIFANO. Yes; they are the largest elements of that number. Almost all of it, Mr. Chairman.

MASSIVE UNDERFUNDING?

Senator CHURCH. You are telling us that they are massively underfunded?

Secretary CALIFANO. They are massively underfunded. For State and local pension plans, the estimate is between $100 and $270 billion. The estimate for private plans is roughly $200 billion. Together, these unfunded liabilities may well exceed the national debt of more than $600 billion. Ten of the largest industrial corporations in America have unfunded pension liabilities equal to a third or more of their net worth; seven of them have unfunded liabilities which exceed the aggregate market value of the common stock.

Senator CHURCH. Mr. Secretary, if I may interrupt at this point, I would like to ask whether you are going to tell us in your testimony the reasons that in 1976 Federal pension plans, State and local pension plans, and private pension plans, including those of the largest American corporations, are all in the same condition; namely, being underfunded to this astonishing degree?

Secretary CALIFANO. Mr. Chairman, I do not know the answer why. You note that I used the term in my testimony, unfunded. I use that term because obviously they all represent conscious decisions to rely on current income from whatever sources they are getting. I do think those numbers raise very serious questions about the extent to which this committee should look at the need for legislation in these areas in order to provide the protection. I realize ERISA was passed by the Congress a couple years ago, but I think, and I would urge that among the things this committee looks at, it look at the extent to which the protection may be needed in order to assure that individuals

who are relying on those unfunded pension plans for their retirement years will indeed be placing their reliance with security.

Senator DOMENICI. Would the chairman yield?

Senator CHURCH. Yes, of course.

Senator DOMENICI. Would you tell me, Mr. Secretary, what you mean in the use of the word unfunded?

Secretary CALIFANO. I mean the funds are not there today to pay out for the liabilities that those systems have incurred.

Senator DOMENICI. As of today, or as of some future date?

Secretary CALIFANO. As of today, they incur a certain amount of liability and the funds are not there today to pay for the liability. The people may still be on the work force, but they will all retire 10 or 20 years from now. This is the extent to which that has not been funded. The social security system, by the action of the Congress last year, however controversial, the Congress did take the step of providing that the necessary income will be there over the next 25 years roughly to pay for the social security liabilities that have been and will be incurred over that period of time.

Senator Domenici, you will note that there is a large spread in those numbers.

Senator DOMENICI. Yes.

Secretary CALIFANO. Part of that is because our numbers are so inadequate, and most of those numbers come from studies that were done here in the Congress, and some of them from studies that were done in the Social Security Administration; but also the spread is because we still have a lot to learn about the extent of unfunded liabilities in both the State and local governments, and in our large employers. We don't keep statistics, and the numbers as well, as we should in those areas.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator DECONCINI. Mr. Chairman.

Senator CHURCH. Yes, Senator DeConcini.

Senator DECONCINI. With regard to Senator Domenici's question, are you going to suggest, Mr. Secretary, how you would arrive at a formula that will fund "unfunded" liabilities of private pension plans?

Secretary CALIFANO. No; I do not suggest that, Senator. As you see in my statement, I have gathered all the numbers as best we can gather them from our own sources and studies that have been done here on the Hill, to lay them out before this committee I do not come today with specific recommendations in those areas or in other areas.

Senator DECONCINI. I am concerned, Mr. Secretary, that your testimony may leave the impression among American workers that their pension funds are not funded, and are not going to be available through the balance of their lives. I hope you are in the position to substantiate your information, because that is a very threatening prospect for an autoworker who is planning on his pension from the United Auto Workers Pension Fund, for example.

Secretary CALIFANO. Let me say, Senator, I do not believe that among the pension funds I am mentioning is the United Auto Workers Pension Fund.

Senator DECONCINI. What about some of the others?

Secretary CALIFANO. I will be happy to submit the support, for all those numbers to this committee. There are studies at HEW and studies that have been done by the labor committees here in the Cong-

ress. As I emphasize in the very next paragraph of my prepared statement, I do not cite those numbers to alarm people, for they are subject to all the hazards of estimating, particularly, the State and local numbers and the numbers with respect to private pension plans, because we have not been collecting statistics systematically as we should in those areas.

Senator DECONCINI. I would like to see this background material.

Secretary CALIFANO. I do think, Senator, it is very important that as a nation we focus early on these problems and what is happening to our country, because as a nation, and as a people, we obviously have an obligation to take care of our people in their older years.

Senator DECONCINI. Thank you, Mr. Chairman.

Senator CHURCH. Certainly, Senator.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

Information on unfunded pension liabilities is taken from a paper by Alicia H. Munnell and Ann M. Connolly.[1] The paper is cited in a footnote in a copy of the galley proofs of a chapter from the House Task Force on Pension Plans. The estimates, which Munnell and Connolly warn against interpreting with more precision than they deserve, are in the following table:

Estimates of Civil Service, State-local, and military unfunded pension liabilities (in billions) [2]

Civil service	$164
State-local	270
Military	195
Total	629

The total unfunded pension liability, they claim, is an estimated $629 billion, a total of the Civil Service, State-local, and military pensions. Munnell and Connolly do not state the dates for their figures, but other data in the article lead to the conclusion that they are referring to 1975 figures for their calculations.

Secretary CALIFANO. As I mentioned, these figures, I should emphasize, are subject to the hazards that afflict all estimates. I cite them not to alarm, simply to inform. What I have just described is a shift in the age of our population; the shift in resources that has followed is both inevitable and natural.

Indeed the presence in our society of a growing elderly population is as much a blessing as a cause for concern. It speaks to the success we have had as a Nation in improving the health and well-being of all our citizens, in making the advances of the medical sciences more broadly available, and in being able to respond to the changing needs of citizens of all ages. If we are spending more on behalf of older Americans, that is only as it should be. It is one mark of the respect in which society holds the older generation.

TODAY'S YOUTH: THE FUTURE ELDERLY

Nor is the effort we make on behalf of the elderly unrelated to our own lives. The taxes that younger American workers pay on what they earn today not only assure their own futures, they make possible a better future for all generations. With medicare paying for the medical needs of elderly parents, the earnings of the young can be used for

[1] "Funding Government Pensions: State-Local, Civil Service, and Military" in Funding Government Pensions: Issues and Implications for Financial Markets.

[2] Ibid., pp. 73–74.

education or the down payment on a home. We may, as family members, choose to live with different generations under different roofs, but we remain members of our families wherever we may live; the economic choices made by any one generation affect all generations.

Indeed, as Senator Church noted, "the elderly" are ourselves—and our children. The commitments we make to the elderly of tomorrow are no less than the commitments which we all make to ourselves.

As our population 65 and older grows, the proportion of dependent children will decline. In 1960, 40 percent of our population was under 20. Today, the figure is about 33 percent; by 2025, it will fall to 27 percent. Although public programs for the elderly are expensive, to some extent the reduced burden of caring for younger citizens can offset rising expenses for the elderly.

We are a compassionate society. And a compassionate society faced with such facts must make sure it has the capacity to meet future obligations.

How shall we deal with the fiscal pressure that has been building up—and will continue to build up—within our system caring for of older citizens?

We must first ask some difficult and searching questions: Questions that go beyond immediate problems and quick fixes, for it may be that the old assumptions upon which we have based our programs for the aging are no longer adequate.

Today, let me raise four such questions: Questions that must form part of our national agenda for the remaining years of this century.

The first is this: How adequate are our definitions of "old age" and "retirement"?

What, after all, is old age? In 1900, when only 4 percent of Americans were 65 or over, 65 was clearly old. Today, the advance of health and life expectancies may make 65 a benchmark more arbitrary than reliable.

How to Define "Retirement"?

And how shall we define "retirement"?

At present, we operate with two distinct conceptions of retirement.

The first and more traditional one is support for workers who have reached old age and can no longer work.

The second, more recent conception views retirement as a reward not necessarily related to old age, simply a reward for a certain period of work—typically 20 to 30 years. In the military, for example, a pension is available after only 20 years of service, regardless of age. Workers in the Federal civil service, and in many State and local governments, can retire on full pension at age 55 with 30 years of service. This second conception of retirement is more expensive; it is born of the rich choices that affluence without inflation seemed to offer in past years.

There are reasons to wonder aloud whether the trend toward even earlier retirement is a trend in the right direction. A 1974 poll, for example, indicated that 4 million people 65 and over wanted to work, but were not doing so. With increased life expectancy, improving health, and steady increases in the education level of the elderly, this attitude could doubtless spread.

In 1940, the median educational attainment of persons 60 and over was 8 years; a dozen years from now it will have risen to 12 years.

Although in 1977, only 18 percent of persons in the 65 to 69 year age group had been to college, the proportion will rise to 45 percent by the year 2017.

It makes little sense—social, economic, or commonsense—for the skills and talents of millions of healthy older citizens to be wasted.

Thus, if we rethink our retirement policy, one place to start is with existing incentives for early retirement. Social security is now available, on an actuarially reduced basis, at age 62. Many pension plans provide benefits at that age or earlier with no reduction in benefits. Indeed, in 1978, the Federal Government will pay more than $19 billion dollars in retirement benefits to persons under 65, reduced benefits under social security. Some people almost feel compelled to retire early.

Incentive for Later Retirement

Perhaps we ought to consider different kinds of incentives; for example, like those provided in last year's social security amendments which increase a worker's retirement benefits by 3 percent each year of work past 65.

Or we might explore new kinds of work arrangements that might accommodate greater numbers of older Americans in the work force, such as phased retirement and increased part-time work. One study suggested that as many as four out of five workers would prefer to reduce their years of retirement and redistribute more leisure in the middle years of life, and this highlights the need for more flexible career patterns.

Some have objected that moving toward later retirement will mean fewer jobs for younger workers, an understandable argument in a time of high youth unemployment. But it is an argument that loses some force in a time of steady economic growth, or as the job market tightens. We must remember that when older citizens work, they create new jobs, and that the job market is not a confined space with a precisely limited number of jobs. The jobs that elderly Americans might retain are not necessarily the same jobs that youth would seek.

We should approach the issue with caution. Any shift in retirement age must not come overnight; it cannot come by the sudden act of any one person or institution. But we should focus national debate on whether—and how—to effect a gradual change in our system of incentives and expectations concerning retirement.

Let me suggest a second question for the future: Should we restructure our existing, uncoordinated mechanisms, private and public, for providing income security to older citizens?

The social security system dominates the pension landscape not simply in size but in reliability. Unlike most employer pension plans, it covers almost the entire population. It provides more effective protection against inflation than pension plans or savings. It is, quite simply, probably the grandest and most successful social experiment of our age. Without it, the number of older Americans in 1976 with incomes below the proverty line would have more than tripled—to a total of 10 million people.

One-Quarter Poor or Near-Poor

Even today, however, about one-quarter of the elderly are either poor or "near poor"; that is, their incomes are less than 125 percent of the poverty line. For minority elderly and women living alone, escape from proverty has been the most difficult. So we cannot become complacent about the elderly poor, but neither should we overlook the progress we have made. Twenty years ago, more than one person in three, age 65 or over, was below the poverty line; today, due in large part to social security, the fraction has fallen to one in seven.

Senator Church. Mr. Secretary, may I ask at this point, why have we been unable to eliminate poverty altogether? It is true that we have made progress, but there are still large numbers of retired people living in poverty; particularly, as you point out, among minority groups and women;

Social security has been in existence for more than 40 years. It was intended to provide a retirement income for our citizens sufficient to cover at least the necessities of life. But, as you have testified, about one-quarter of the elderly are either poor or near poor. Now, we have tried in various ways to reach them. The whole effort in the Congress to establish a supplemental security income program was to reach down to those people who are living in poverty and getting so little in the way of retirement income. Yet, we never seem to get the job done. Is there a way?

Secretary Califano. Mr. Chairman, in the context of providing adequate funds or services, yes; there is a way to provide them with those funds and services, but it would cost more money. The supplemental security income program, insofar as the Federal contribution is concerned, provides an amount of money that is not sufficient to raise someone out of poverty. The extent to which people on supplemental security income are receiving that money, on the basis of age, or above the poverty line, becomes a function of the extent to which States match those benefits and function where they live in rural or urban areas.

I mean we can do it. If you just take social security alone, it gives you a sense of how many people we can reach. In 1976, if we had not had the social security system, 60 percent of our senior citizens would have been below the poverty line in terms of their income, so it has had a phenomenal impact, but it is a function of providing additional funds, and it is a function of whether or not we are willing to make the judgment as a country to do that.

Senator Church. But if we were to modify the supplemental security income program in such a way to bring everyone within the social security system to a level of retirement income that at least equaled or exceeded the poverty line as defined by the Federal Government, then we would pretty well eliminate poverty among the elderly in this country, would we not?

Secretary Califano. Yes, Mr. Chairman, we would, providing at the same time we do have medicare and medicaid benefits.

Deterring Welfare Costs

Senator Church. Yes, of course. That bundle of benefits plus a retirement income supplemented to take care of those who otherwise live in poverty could eliminate this problem. You speak of the cost of it, but wouldn't the cost at least in part be mitigated by the elimination of the need to pay these people welfare and other special benefits?

Secretary Califano. Yes; it would. To the extent that we picked up what State and local governments are now doing, yes; that is correct, it would. There might still be that net cost, but you cannot take the gross number. You are absolutely right about that.

Senator Church. I wish that your Department would furnish this committee with an estimate of the cost—that is, the net cost—taking into consideration the savings that might be realized on the welfare side if we were to increase the supplemental payment sufficiently to bring everyone within the social security system above the poverty line. Would you do that?

Secretary Califano. Yes, Mr. Chairman.

Senator Church. Thank you.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

Under the SSI program, States spend approximately $1.5 billion each fiscal year in supplementation costs. Raising the Federal SSI guarantee to the poverty level would reduce State expenditures by about 70 percent.

The 1978 nonfarm poverty line for a head of household age 65 or older is $3,080. Estimates of the minimum cost—the cost for people already receiving SSI—and the maximum cost—the cost for everyone eligible to receive SSI payments—if the Federal SSI guarantee for an individual were raised to the $3,080 amount for the period July 1, 1977, through June 30, 1978, are shown below:

Minimum estimate:	
Program costs (billion)	$8.3
Beneficiaries (million)	4.2
Maximum estimate:	
Program costs (billion)	12.2
Beneficiaries (million)	9.3

Raising the Federal SSI Guarantee to the Poverty Line

Several questions arise in raising the Federal SSI guarantee to the poverty level: (1) What year should be used? and (2) which poverty line should be used?

First, the poverty line is published on a calendar year basis while the SSI guarantee is changed every July 1 and is in effect until the following June 30th. Because changes in the poverty line and the current SSI guarantee do not occur at the same time, if one selects, say, the 1977 poverty line, then from July to December 1977 people would have incomes at the poverty line; for the next 6 months their incomes would be below the poverty line. On the other hand, if one starts with the 1978 poverty line, people's income would always be at the poverty line or above. However, for the 6 months July to December, their income would be above the poverty line.

Second, "the poverty line" can be numerous different levels. The levels differ according to the age of the head of the household, the sex of the head of the household, family size, and nonfarm/farm settings. Therefore, the poverty line selected would affect the objective of eliminating poverty for the SSI population. If a new SSI guarantee were established which would equal the poverty line for an aged head of household, then all disabled people would have incomes below the poverty line; if the guarantee were equal to the poverty line for a nonaged head of household, then aged people would have incomes above their poverty level.

Finally, there is a difference in the relationship between singles and couples. While the Federal SSI guarantee for a couple is one and a half times the guarantee to an individual, the poverty line for a couple is less than 30 percent more than the poverty line for an individual.

For this request, one option has been provided—a Federal guarantee equal to the estimated 1978 poverty line for aged heads of households—$3,080 a year. The nonfarm poverty line was used since no one in a metropolitan area would be at or above poverty using either the farm or the average poverty level. For the same reason, the poverty line for a male-headed household was used. Also, a guarantee that replicates the poverty lines for individuals and couples was used.

One final point should be made. Even with a Federal guarantee equal to the poverty line, not all SSI beneficiaries would appear in subsequent census surveys as having income at or above the poverty line. Due to the payment variations in the program, people living in another's household or in an institution still would be classified as below poverty.

Secretary CALIFANO. The social security program does not, as important as it is, work in isolation. As you know, Mr. Chairman, there is the supplemental security income, and last year it reached 2.3 million aged beneficiaries, about 70 percent of whom also received social security.

There are 68 different retirement plans in the Federal Government, more than 6,000 State and local pension plans, and thousands of private plans. Jointly, they pay out close to $50 billion each year in benefits. Of all new social security retirees, fully half have other pension income.

Senator DOMENICI. How many?

Secretary CALIFANO. Half.

Senator DOMENICI. Of all the new social security retirees?

Secretary CALIFANO. Yes.

Senator DOMENICI. Would you have any information, Mr. Secretary, on the broader question of what percentage of social security recipients have other income?

Secretary CALIFANO. We have some information. I can provide that in detail for the committee. It increases as we get newer retirees; it is fewer in the older retirees.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

As table 2 (submitted to the current Social Security Advisory Council) shows, most beneficiaries have other income; e.g., 57 percent had income from assets, 24 percent with earnings, about 30 percent with a second pension. However, it must also be brought to the committee's attention that for significant proportions of beneficiaries, social security provides more than half their income—over half of the married couples and three-quarters of the non-married. Earnings were the major source of income for only a third of aged units in 1976 and only about 1 in 10 of recipients were majorly dependent on income from assets or private pensions. The survey of newly entitled retired workers (conducted 1968–70) indicated that, at least for the married couples where the man was the sample person, the proportion receiving another pension at age 65 may be increasing.

TABLE 2.—INCOME SOURCE BY YEAR, PERCENT OF AGED UNITS 65 AND OLDER WITH MONEY INCOME FROM SPECIFIED SOURCES, BY MARITAL STATUS AND BENEFICIARY STATUS

Income source	All units				Married couples				Nonmarried persons			
	1962	1967	1971	1976	1962	1967	1971	1976	1962	1967	1971	1976
Total (in thousands)	14,176	15,779	15,637	17,321	5,445	5,989	6,300	6,799	8,731	9,789	9,336	10,522
Percent of units with—												
Reitement pensions	74	89	90	92	84	90	92	93	67	89	88	92
Social security [1]	69	86	87	89	79	87	89	90	62	85	85	88
Railroad retirement	4	4	(2)	3	4	5	(2)	4	3	3	(2)	3
Government employee pension	5	6	6	9	7	7	8	12	4	5	5	8
Private pension [3]	9	12	17	20	16	19	23	28	5	7	12	14
Earnings	36	27	31	25	55	46	49	41	24	15	18	16
Income from assets	54	50	49	56	63	60	58	66	48	44	43	49
Public assistance	13	12	10	11	8	6	6	6	17	15	13	15
Veterans' benefits	10	10	8	6	14	12	8	6	8	9	8	6
Beneficiaries [4] (in thousands)	8,647	12,446	12,760	15,340	3,743	4,913	5,323	6,175	4,904	7,533	7,437	9,215
Percent of units with—												
Retirement pensions	100	100	100	100	100	100	100	100	100	100	100	100
Social security [1]	100	100	100	100	100	100	100	100	100	100	100	100
Railroad retirement	2	2	(2)	2	2	2	(2)	3	2	2	(2)	2
Government employee pension	5	6	5	9	6	7	8	12	4	5	4	7
Private pension [3]	13	13	18	21	20	21	25	31	7	8	13	15
Earnings	36	26	27	24	50	43	43	38	26	16	16	14
Income from assets	59	52	50	57	65	60	58	67	55	47	45	51
Public assistance	8	8	8	10	6	5	6	5	9	11	9	12
Veterans' benefits (in thousands)	11	11	8	6	14	13	9	6	8	10	8	6
Nonbeneficiaries (in thousands)	4,466	2,146	2,082	1,981	1,120	720	663	674	3,346	1,426	1,419	1,307
Percent of units with—												
Retirement pensions	16	24	(5)	33	25	25	(5)	34	12	27	(5)	32
Social security												
Railroad retirement	8	16	(2)	13	12	17	(2)	15	6	15	(2)	13
Government employee pension	6	9	11	14	11	8	11	14	5	10	11	14
Private pension [3]	2	3	8	7	3	2	7	8	1	3	8	7
Earnings	31	29	45	39	64	65	81	58	19	13	28	24
Income from assets	43	39	39	47	62	57	52	64	37	31	33	38
Public assistance	27	31	26	24	14	11	9	8	31	41	35	31
Veterans' benefits	9	8	7	5	14	7	6	4	7	8	8	5

[1] The 1971 figure is an estimate based on information from the CPS and MER combined.
[2] Unknown.
[3] For 1971, includes private annuities.
[4] Excludes beneficiaries who received their first benefit in February of the survey year or later, transitionally insured, and special age 72 beneficiaries. Beneficiaries may be receiving retired worker benefits, dependents' or survivors' benefits, or disability benefits.
[5] Receipt of retirement pensions is not reported for nonbeneficiaries in 1971 because the inability to separate out railroad retirement benefits from social security has a large effect on this small group.

Source: March 1977 Current Population Survey, and Income of the Population Aged 60, and Older, 1971 (staff paper No. 26). Social Security Administration, table 10.

Senator DECONCINI. Mr. Chairman, may I ask the Secretary a question?

Senator CHURCH. Yes, of course.

GOVERNMENTAL RETIREMENT SYSTEMS

Senator DECONCINI. Mr. Secretary, would you care to express an opinion about the large number of governmental retirement systems? Do you believe there ought to be some consolidation of the 68 different retirement plans in the Federal Government?

Secretary CALIFANO. When the Congress voted the Social Security Act last year, it ordered a series of studies, one of which would go to making the social security system universal. If you did that, you would have to integrate these other retirement plans. The President also, a year of so ago, suggested the creation of a Presidential Commission on Retirement Systems, and I think we should look at that.

Senator DECONCINI. When do you think you will have something on that?

Secretary CALIFANO. We are beginning the study on integration. I have just found someone to take that study on. The Social Security Advisory Committee, which the Congress set up, is already functioning and their report will be finished by the end of next year. Their report will include some attention to the integration of the social security system, but obviously in terms of efficiency, in terms of the realities of the situation, and in terms of making sense, there should be some consolidation of these 68 retirement plans.

Senator DECONCINI. When will your study be finished? Do you have any tentative date?

Secretary CALIFANO. The study will be finished by the end of next year; and we would like the other study to be finished at that time as well so we can have intelligent recommendations before the Congress by that time.

Senator DECONCINI. Thank you.

Secretary CALIFANO. There are some areas, Senator DeConcini, in which I think hearings will be held independently, such as the social security disability program. Both Chairman Long and Chairman Ullman, indicate that they want me to come up with recommendations for changes there.

Senator DECONCINI. Thank you, Mr. Chairman.

Secretary CALIFANO. Another way we help support the elderly is through tax expenditures. Tax breaks accorded to pension plans and social security income, and for elderly taxpayers, will total more than $19 billion in fiscal year 1978.

Finally, there are private savings, which provide an estimated $15 to $20 billion in income to retirees.

These sources of support add up to a substantial sum, but they leave us caught between two conflicting needs: The need to keep future costs under control, and the need to increase benefits for people whose income is inadequate. Resolving this problem depends in part upon the total amount that society is willing to commit for income maintenance, but it depends as well on integrating this patchwork of systems more effectively, and managing the resources we do provide so that they do the most good.

A basic question, then, is what the ratio should be between income earned before retirement and income thereafter. For new retirees aged 65, this ratio today stands at about 47 percent.

But beyond this ratio lie questions of how the overall system treats those at the top—and at the bottom—of the scale.

Today, social security benefits are wholly exempt from taxes. It seems at least open to discussion whether a wealthy lawyer, doctor, or business executive with a $50,000 pension should receive tax-free social security benefits.

Senator DeConcini. Mr. Secretary, since social security is exempt from taxes, what justification is there for not exempting other pension plans when they are not supplemented by social security?

Secretary Califano. Some pension plans are exempted in greater or lesser degree, depending upon the tax laws, which become very complicated and sophisticated in this area, and it is beyond my area of knowledge or expertise.

Senator Church. We do have a tax credit for the elderly that is intended to give comparable tax treatment for Government pensions, with little or no social security benefits.

Senator DeConcini. It does not equal.

Senator Church. No; but that is the intent.

Senator DeConcini. It does not equal the nontaxation of social security.

Senator Church. No; but this is because we have failed to perfect the formula sufficiently to keep it working at that level.

Senator DeConcini. Do you think that the tax-exempt benefits are any incentive to keep people in the social security system?

Secretary Califano. Part of the reason for those being tax exempt is that they are taxable income to individuals who are paying those benefits while they are working. Now, I raise that question in this larger context of our current needs, and those people who have substantial outside pensions from other places. It seems to me all of this is part of the need for this country to look at the whole income maintenance area with respect to our elderly citizens, as one area, and get a much better handle on the relationship between one system and the other.

There are portions of social security now, people who receive social security benefits, who are getting far more proportionately than they paid into it, and in that sense your point about the private pension plan in a comparable situation as a private pension plan has to be taxed.

Senator DeConcini. Thank you.

Higher SSI or Social Security Benefits?

Secretary Califano. At the other end of the scale, we have to consider the plight of those for whom social security benefits are the sole source of income, and whose earning record may not entitle them to the greatest amount. Today, the ratio between contributions and benefits is not fixed: For low-income workers, the ratio is 61 percent, to help make benefits more adequate; for high-income workers, it falls to 35 percent. This is one strategy for helping to reduce poverty among older Americans. But are we doing enough? And should we do more? Is this the best way to bring people out of poverty, or is a system

like supplemental security income—which focuses income only on those at the low end of the income scale—a more efficient method? How do we compare the value of efficiency and the resources it frees for serving unmet needs against the genius of the social security system—that it brings independence to many people who would otherwise be poor, and does so with dignity, with no means test?

Senator CHURCH. In asking the question, Mr. Secretary, can you furnish us with your answer?

Secretary CALIFANO. Mr. Chairman, I am not certain of the answer to this question. I have specifically asked these questions of the Social Security Advisory Committee, because I think one thing that should be looked at is the relationship between the supplemental security income program and the social security program.

Senator CHURCH. Well, I do, too, because if you could increase the ratio of the pension as the income level falls, you have a built-in system of adjustment which does not require the kind of administrative cost and the constant policing that goes on in the supplemental security income program. Every SSI recipient must disclose how much he has in the bank and other assets. It is a cumbersome and costly procedure, requiring a good deal of governmental interference in one's private affairs. If there is a better way of doing it, I think we ought to explore it.

Secretary CALIFANO. It is also more prone to error when all those computations have to be made.

Senator CHURCH. Yes.

Secretary CALIFANO. A critical question that affects persons all along the income scale is the relationship between private and public pensions. Private pensions have spread so that they now cover about 45 percent of the work force, but that growth occurred in a period when inflation was persistent.

If the capacity of private pension plans to assume a major role in providing retirement income is called into question, do we wish to continue to encourage the creation of this layer on top of social security? At present, we do just that by providing substantial tax benefits for contributions to pension plans.

Are we comfortable with a system in which some retirees pile up the maximum social security benefits on top of generous pensions, while other retirees have no pension income and find social security barely enough to get by on? Or would it make more sense to recoup those tax benefits and apply them to more generous and widespread social security coverage?

Senator CHURCH. Are you suggesting here that it might be advisable to scrap the private pension system?

Secretary CALIFANO. No, Mr. Chairman. What I am suggesting is that when we look at the social security system, which has now become such a large part of the landscape of retirement, that we really have to look at all the other retirement systems at the same time. I am simply raising the question as to whether or not what we once perceived to be a very good relationship between the social security system and the private pension system is the right relationship for today and for the future, in the context of the large numbers of people we will have in this country who will be retired.

I don't know the answers to these questions. Again, they are part of what will be done and the studies are being done by the HEW.

Universal Social Security?

A final income security issue that deserves consideration—and one we are examining in a congressionally mandated study—is whether social security coverage should be extended to all employees, including public and nonprofit workers. About 45 percent of civil service annuitants receive social security in addition to their Federal pensions, and many receive a second pension as well. When workers move in and out of covered employment, many obtain a handsome combination of pensions and social security. Some may fail to qualify for substantial benefits either in pension plans or under social security. Income maintenance policy should not be a game with complex rules, winners who get windfalls and losers who get nothing; it should be a rational system for meeting definable human needs. If universal social security coverage is not the answer, we must find another method of filling the gaps and eliminating abuses.

Beyond the questions of retirement and income security, a third question of policy arises: How shall we deliver the services older citizens need—particularly health care—more compassionately and efficiently? This is a matter that has been of concern for the chairman and the committee for some time.

The passage of medicare and medicaid 13 years ago was a major step forward, particularly for older people who are poor or in need of acute care. Yet these programs face some serious problems, notably, inflation in the cost of health care. Between fiscal years 1976 and 1978, for example, costs were up 40 percent in these programs, with little increase in the covered population or in benefits.

Between this year and the year 2025, we estimate that expenses for persons over 65 under the medicare and medicaid programs will increase, in real terms, more than 10 times—twice as fast a pace as the increases in social security. The inflation that these figures reflect is especially harsh on the elderly, given their great needs and their reliance on fixed incomes. Containment of health costs is thus of especially urgent importance to the elderly population.

While we should be concerned about costs, we must be at least equally concerned about the shortcomings of this expensive system. For all the money we spend, major needs remain unmet. As the elderly population increases—especially those 75 and over, who are especially likely to have serious health problems—these needs will increase. Even with medicaid and medicare, many older citizens today must pay large amounts out-of-pocket for health care. In 1976, these out-of-pocket expenses averaged over $400—virtually the same in real terms as they were before medicare and medicaid arrived. We must build a more rational, comprehensive, efficient, and human system for delivering health services.

Out-of-Pocket Health Costs

Senator Church. Now let's stop there for just a minute, Mr. Secretary. I have been aware of a figure that you mentioned. Today, out-of-pocket expenses for the elderly for medical care exceed what was paid out by the elderly for medical care prior to the enactment of the medicare and medicaid programs. But I have never been told, and perhaps you can inform the committee, concerning what these out-of-pocket expenses consist of. Are these out-of-pocket expenses for drugs

that must be purchased, dental care, eyeglasses, or foot care, or medical examinations which are not covered by medicare, and the like——

Senator PERCY. Hearing aids are another item on that list.

Senator CHURCH. Another expense has been mentioned. Or do they come mainly from the doctors' fees that must be paid by the elderly over and above the fee authorized by medicare?

Secretary CALIFANO. Mr. Chairman, in addition, also, of course, a part of it comes from the premium that must be paid under medicare.

Senator CHURCH. Yes.

Secretary CALIFANO. I can't give you the portion of those expenses. I will submit that for the record.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

The following chart shows a breakdown of health care expenditures by age groups for fiscal years 1974–76. As you will note, for the 65-and-over group, medicare covered 40 percent of the amount spent on physician services, and none of the expenditures for dentists' services, eyeglasses and appliances, and drugs. In fiscal year 1976, the per capita expenditures for the elderly for these last three categories were estimated at approximately $32, $19, and $21, respectively.

ESTIMATED AMOUNT AND PERCENTAGE DISTRIBUTION OF PERSONAL HEALTH CARE EXPENDITURES FOR THE AGED, BY TYPE OF EXPENDITURE AND SOURCE OF FUNDS, FISCAL YEARS 1971–76

Type of expenditure	Amount (in millions)						Percentage distribution					
			Public						Public			
	Total	Private	Total	Medicare	Medicaid	Other	Total	Private	Total	Medicare	Medicaid	Other
1976[1]												
Total	$34,853	$11,248	$22,605	$14,953	$5,589	$3,063	100.0	33.2	67.7	42.0	16.0	8.8
Hospital care	15,775	1,425	14,360	11,179	523	2,618	100.0	9.0	91.0	70.9	3.3	16.8
Physicians' services	3,863	2,487	3,478	3,318	214	44	100.0	40.7	59.3	54.9	3.7	.7
Dentists' services	722	679	43	----------	31	12	100.0	94.1	5.9	----------	4.3	1.7
Other professional services	534	193	341	365	74	2	100.0	36.1	63.9	49.8	13.9	.4
Drugs and drug sundries	2,777	2,385	302	----------	389	4	100.0	85.9	14.1	----------	14.0	.1
Eyeglasses and appliances	432	423	8	----------	----------	8	100.0	98.1	1.9	----------	----------	1.9
Nursing home care	8,032	3,731	4,301	291	3,885	125	100.0	46.4	53.6	3.6	48.4	1.6
Other health services	717	24	683	----------	472	221	100.0	3.4	96.5	----------	65.9	30.8
1975[2]												
Total	29,832	9,550	20,281	12,723	4,771	2,787	100.0	32.0	68.0	42.6	16.0	9.3
Hospital care	13,611	1,087	12,427	9,547	453	2,428	100.0	8.0	92.0	70.6	3.3	18.0
Physicians' services	4,880	1,910	2,930	2,703	187	40	100.0	40.1	59.9	55.3	3.8	.8
Dentists' services	640	643	37	----------	38	11	100.0	94.2	5.8	----------	4.9	1.8
Other professional services	417	187	274	214	56	2	100.0	41.4	56.6	45.8	12.4	.4
Drugs and drug sundries	1,818	2,214	325	----------	321	3	100.0	87.2	12.8	----------	12.7	.1
Eyeglasses and appliances	389	308	8	----------	----------	8	100.0	97.9	2.1	----------	----------	2 1
Nursing-home care	6,501	3,091	3,800	259	3,433	106	100.0	44.9	55.1	3.8	49.8	1.6
Other health services	503	21	481	----------	294	187	100.0	4.2	95.7	----------	58.6	37.1
1974[2]												
Total	24,179	6,282	15,927	9,856	3,706	2,361	100.0	34.1	65.9	40.8	15.0	9.8
Hospital care	10,501	315	9,756	7,322	308	2,066	100.0	7.7	92.3	69.3	3.5	19.5
Physicians' services	3,811	1,511	2,802	2,190	158	34	100.0	38.8	61.2	56.3	4.1	.9
Dentists' services	641	542	30	----------	20	10	100.0	94.4	5.6	----------	3.7	1.9
Other professional services	381	313	178	134	42	2	100.0	53.3	46.7	35.2	11.1	.1
Drugs and drug sundries	2,315	2,000	273	----------	271	3	100.0	88.2	11.5	----------	11.7	.1
Eyeglasses and appliances	304	379	7	----------	----------	7	100.0	98.1	1.9	----------	----------	1.9
Nursing-home care	5,600	3,701	2,008	212	2,083	93	100.0	49.0	31.0	3.7	45.7	1.6
Other health services	412	30	383	----------	246	147	100.0	4.8	95.2	----------	59.6	33.0

[1] Preliminary estimates.

[2] Revised estimates

Secretary CALIFANO. Every expense you have mentioned is part of it. My own experience, when I am traveling outside Washington, and if our mail is any indication, drugs are a significant part of this, as are doctors' fees, above and beyond what we are paying, this whole issue of assignment of doctors' fees. Those are the two items on which we receive a tremendous amount of mail.

Of course, I have had doctors, for example, tell me that they have put elderly patients in the hospital in order to provide them with drugs that we will pay for in the hospital, particularly expensive drugs, like some of the anticancer drugs, because the doctors simply do not want to subject their patients to the burden, and some of their patients could not afford to purchase those drugs if they were being treated on an outpatient basis, even though they should be treated on an outpatient basis.

Senator CHURCH. Well, it is clear that some of the rigidities that exist in the present system greatly and significantly contribute to the increased cost, unnecessary costs.

No "ALTERNATIVES" SYSTEM

Secretary CALIFANO. I agree, Mr. Chairman. Such a system would include: Adequate, supervised residential facilities for those who lack families but want to live in their communities; a range of alternatives between the hospital and the nursing home, including a system of home health care; innovative and compassionate ways of caring for the terminally ill outside the traditional hospital or nursing home.

Such a system is easy to describe, but it is nowhere to be found. We have, instead, a confusing, as you have indicated, and expensive patchwork of financing systems that spawn an even more inadequate delivery system.

The medicaid program, for example, has given great impetus to one industry—the nursing home industry. Between 1965 and 1976, total spending for nursing homes increased more than fourfold. Nearly 40 cents of each medicaid dollar goes to nursing homes, although these homes serve only 6 percent of medicaid beneficiaries. We know that nursing home care is not the most appropriate way to treat all those patients; in some cases it is also not the least expensive. Home health care might be a worthwhile alternative in many cases, yet less than 1 percent of medicaid money is used for this purpose.

And, in part because of medicare's focus on acute care, we have not yet developed an adequate system of community and home health care. In Sweden, for example, there is one home health aide for every 120 people; in this country, one for every 5,000. Providing care in the home setting can itself be therapeutic. We need to expand these services. But in doing so, we must find ways to manage them, so that their costs and quality remain under control. Home health services are delivered by a variety of providers throughout the community, and we will need to insure that services billed are in fact delivered; that services delivered are needed, appropriate, and of high quality. Serious questions are already being raised; we will have to be particularly watchful of this new industry as it develops.

I might add that we are doing surveys for home health care in Florida and in other States now, and finding that it is very difficult to measure what it is, what the services are, that the doctor is ordering

and providing. For instance, what the client thinks he should be receiving. So it will not come overnight to this country.

Senator DOMENICI. Mr. Secretary, on that issue, are you merely surveying the home delivery of home health care, or are you trying to find out whether some of the arbitrary conditions—for instance, is there really any reason that you can only have home health care if you have been in the hospital prior to delivery?

Secretary CALIFANO. No.

Senator DOMENICI. To me that is absolutely ridiculous. That is what you are administering now. I am not saying it is your fault, but that is what the present law says. Are we going to get some suggestions as to whether those kinds of requirements are counterproductive? I don't mean today, but are you doing that kind of thing?

ASSESSING HOME CARE

Secretary CALIFANO. Yes, Senator. Obviously any national health plan would eliminate a lot of those incongruities in the current system, one of the most notable ones of which you mention. The assessment we are doing is looking at what home health care is now being delivered. We are interviewing the doctors, the clients that are receiving it, and those who are providing it. We are asking the doctor, "What do you want to provide for this client in home health care?" We are asking the providers what they think they are providing. We are asking the clients what they think they are receiving, or think they should receive. We are finding out that in many cases they have different views.

The second point is, we have to find a way to administer this in a fair way that will prevent the abuse and fraud on the one hand, and on the other hand, it will not create a monumental papermill. In terms of administration, it is easier if you have an institution, a building with 300 rooms, that you go and visit every day. It is more difficult when you have individuals visiting the homes. Many States are looking at this, too, in the context of their own licensing procedures. That is the survey I was mentioning. In addition to that, yes, particularly in connection with the national health insurance work we are doing, we are looking at the variety of the rational portions of existing law and existing regulations; but as you point out, Senator, much of it is in the statute itself, and there is not as much flexibility in terms of regulation as one would wish.

Senator DOMENICI. I just want to ask—with the chairman's permission—with reference to the arbitrariness of certain of the conditions for home health care, if you would look at Senate bill 2009 and give us your opinion as to whether or not it would eliminate some of the rigidity. Would you try to answer the question that we get from the Finance Committee regarding the additional costs of such an approach? You know, it seems to me we are never going to create flexibility and a broadened delivery short of national health insurance, which I don't think we ought to hold refinements to hostage for, but the answer always is to look at the changes separately and say, "that is going to pose 300 million more."

No one seems to tell us, on the other hand, "you won't go to the hospital as much." Doctors might prescribe home health care, whereas now we must hospitalize people in order for them to qualify for it. We need some of that kind of information in order to help promote the

better delivery of some tools we already know exist. Could you do that for us?

Secretary CALIFANO. Yes, I will, Senator.

Senator DOMENICI. I would appreciate that.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

A major consideration in the recent deliberations surrounding the question of expanding home health benefits has been whether such expanded benefits can serve as a suitable alternative for otherwise required institutional care. While we do not dispute the argument that home health care can, under certain circumstances, provide a cost-effective alternative to institutional care, under other circumstances it is more cost-effective for a patient to enter an institution. Available evidence tends to be contradictory in supporting home health care as a cost-effective alternative to institutionalization. The Department believes that home care programs should be considered in terms of their own merit and not in relation to anticipated savings.

S. 2009 would remove the present 3-day hospitalization requirement for home health benefits under part A of medicare. We do not believe that such a liberalization, by itself, would lead to a decline in hospital admissions. There is no evidence that physicians hospitalize their patients to make them eligible for home health benefits or that they have any reason to do so. Home health benefits are also provided under the supplementary medical insurance program (part B), without the hospitalization requirement, and only 5 percent of the medicare beneficiary population do not have part B coverage.

Senator PERCY. I join Senator Domenici in requesting that information. After receiving your testimony and seeing the ratio of the retention of personnel assigned to home health care, we can better judge the potential for that alternative. We took our committee out into the field, across the country, and investigated the scandalous conditions in the nursing homes, and reported on the terrible conditions found in some of the places visited.

We have not made the kind of progress in nursing home reform I had hoped we would make. I am more and more inclined, as I listen to testimony, to believe that the more we can do for home health care, meals-on-wheels, and other associated programs which keep people in their own neighborhoods, the lesser will be the costs. These programs seem more germane.

The answers must be found. The statistics you presented to us today ought to be one of the highest priority items to which we put our attention.

Thank you.

ACCESSIBILITY: THE CHALLENGE

Secretary CALIFANO. Beyond developing the right kinds of services, there is the problem of making them accessible. At present, an older person faces a bewildering maze that must be negotiated even to learn what services are available, much less to obtain the right kind and mix. How can we end the fragmentation of services for the elderly?

How can we insure that the needs of the elderly are properly identified, that people are not denied the care they need—and not given inappropriate or unduly expensive care? How can we create financial incentives that will discourage overuse of costly facilities?

Unfortunately, for too many of these questions, the only answer that our society can give is "We don't know yet."

It is time for all of us to begin considering the alternatives available for us as we seek to provide better services, more efficiently.

Shall we expand the coverage of existing programs? We could revise medicare and medicaid to create uniform home health benefits, relaxing restrictions that currently permit only skilled nursing services in certain situations. We might permit nonmedical personnal care services for the chronically ill. Or we could develop a financing system that covers an even broader range of health and social services—well beyond those currently covered by medicare and medicaid.

But we need to consider the problems as well as the attractions of such an approach. Extensions of benefits could seriously aggravate health inflation, while leading to the same kind of overuse of chronic care that we often see today for acute care. It could also reduce incentives for families to provide services on their own.

Alternatively, we could seek a major role for new delivery systems, such as special health maintenance organizations for the elderly. Conceivably, such organizations could provide a broader range of services than conventional HMO's; they would have incentives to carefully determine the health needs of participating patients and to find the most economical ways of treating them.

Senator CHURCH. Mr. Secretary, in that connection you have testified earlier that between now and 2025, the cost of medicare and medicaid is projected to increase more than 10 times, or twice as fast as the pace of increases in social security retirement benefits—in other words, twice as fast as the general inflation. At the same time, you are talking about national health insurance extending this kind of program to everybody. For the life of me, I never understood how we could possibly provide national health insurance for everybody when we cannot effectively manage the spiraling costs of present programs that are limited to the people who need them most—the elderly, the indigent, and the dependent.

Unless you can provide me with an answer, I assume there is none. The present medical delivery system in this country is so expensive. Doctors, on the whole, are among our most affluent citizens. For the taxpayer to pay all this and to extend it to everybody seems to me to be utterly unrealistic. So we look for some kind of improvement in the medical delivery system in this country. One of our experiments has been the health maintenance organization.

What has experience shown with this organization? Does it, in fact, reduce the cost of adequate medical treatment for those who participate? What do we know about it? Is it a successful experiment to date, based upon experience, or is it just still a theoretical proposition?

HMO'S AND THE FUTURE

Secretary CALIFANO. Mr. Chairman, we believe that the health maintenance organizations have a substantial role to play in the medical care system. We believe that they have demonstrated that they can substantially reduce costs. The well-run health maintenance organizations have medical costs that are anywhere from 15 to 30 percent below comparable populations on the traditional fee for service basis. Second, they reduce hospitalization and surgery very substantially, by anywhere from 25 to 50 percent or more. So we look upon them not as the only institutions we should have.

One of the things they can provide is some competition in the system. There is no incentive to be efficient in the current system,

because the patient who is getting the service is not paying, in most cases, particularly where hospitalization is concerned. Some third party pays for it, so the customer does not pay. The customer is not ordering the service, in the sense that the doctor is ordering the service that is provided, whether it is surgery, or pills, or drugs, or some course of therapy, and the person ordering the service—namely, the doctor—is not paying. So, it is all the things that make American industry so great in terms of competition, and that makes the relationship between buyer and seller so good in the commercial market that are all absent here. We remember the HMO's as one means of providing some competition and some creative economic tension in a system that desperately needs it.

Senator CHURCH. What percentage of our people today receive their medical treatment through HMO?

Secretary CALIFANO. A very small percentage, Mr. Chairman. We are taking steps to increase it. I would hazard a guess from 2 or 3 percent, but I would like to submit the exact number for the record.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

The percentage of people receiving treatment through HMO's is 3.3 percent or 7 million people.

Secretary CALIFANO. We have sharply increased the number of people being served by qualified HMO's in the last year, largely by qualifying the entire HMO system. Once an HMO is qualified today in their community, then any employer in that community of significance must offer an HMO as an alternative. I have also gone to the large corporations.

We invited the Fortune 500 or 800 in here about 6 months ago, and many of them are interested in HMO's, and in starting them, because they are being so pressed now by this phenomenal increase in health care cost. I think the automobile industry is going to create an HMO in Detroit, and some of the other large corporations in this country are looking at it. They offer tremendous advantages because they have their own employees, because they have the ability to incur the early capital costs that are necessary in these organizations.

Mr. Chairman, I would like to make just one comment on what you said about national health insurance. Given what will happen to medicare and medicaid, if we do nothing in 1983, this country will spend $313 billion or more on health care using the current CEA projections of inflation.

Senator DOMENICI. Private and public?

Secretary CALIFANO. That is everything, private and public. I believe that as part and parcel of the national health plan, we must bring these costs under control, both by providing containment measures and by providing incentives. There is so much inflation in this system now, the objective of any national health plan should be aided and it would substantially reduce the per unit cost of health care in this country than what it would otherwise be without a health plan.

Second, it would reduce——

Senator CHURCH. Mr. Secretary, that has not been our experience in medicare and medicaid. Unless you are going to really depart from that kind of concept and make fundamental changes in the health delivery system, I don't see how you are going to reduce this.

Cost Containment Proposals

Secretary Califano. I think, Mr. Chairman, it has not been our experience under medicare and medicaid. The issue will be the extent to which both we as the administration have the will, and the Congress, as a branch of government, has the will to impose some of the kinds of cost containment measures. One is pending now on the House side, and it has been passed out by the Senate Human Resources Committee here, with respect to hospital cost containment, and also provides the kinds of incentives that are necessary to bring the rate of inflation down in that system, and that is a very real question.

Can we devise proposals that will hold those costs? Sure we can devise proposals that will hold those costs. Will they be acceptable to our society, as represented by the elected officials in the Senate and the House? That is a very serious question. It is part of what we will, as a part of any national health plan—propose measures that will bring this galloping elephant under some control.

Senator Percy. Mr. Secretary, before we try to solve the whole problem this morning, I wonder if I could just come back to your statement on HMO's. I propose that we might examine data on special health maintenance organizations for the elderly.

I always felt HMO's were worth exploring; it was a new approach that was worthy of experimentation. Are you familiar with the studies of the subcommittee on HMO's?

Secretary Califano. I am.

Senator Percy. As I recall, those studies indicated there are many special problems involved with HMO's taking care of the aging. We found the elderly were reticent to complain about costs, for instance. They pointed out their problems to our investigators, but they said they were reluctant to complain about it to the HMO people. We found they are often taken advantage of. They were not receiving the quality care to which they were entitled.

I am deeply concerned about the treatment of the elderly in HMO's and sensitive to the need for a highened awareness of the danger spot, which studies conclude exists.

Secretary Califano. Senator, we are aware of those studies. Indeed we are vigorously supporting legislation that has grown out of the work of that committee in this area.

Senator Percy. We have had full cooperation from your department in that regard. It has been a joint effort and one of grave concern to this committee. Upon first observation, elderly HMO's looked like a very good idea, but there are ways unscrupulous operators have found to abuse this idea.

Secretary Califano. Because of the high risk population they would serve, these HMO's would be more costly than conventional ones. Nonetheless, we believe the idea is worth exploring; we have already proposed legislation to permit medicaid and medicare funds to be used to pay for participation in more conventional HMO's.

Third, there is the alternative of creating a separate financing and delivery system for long-term care, a new Federal program of long-term care. This means separating home health or other long-term care services from our present third-party payment mechanisms for health care, and possibly integrating long-term care with the delivery of other social services. This could make long-term care more controllable as a budget item, and reduce both the fragmentation of

services and the bias toward institutional care. However, we must insure that any system we create has the capacity to provide services for patients who need them.

I might note that we are in the midst, Mr. Chairman, of a long-term study of long-term care in HEW, which I hope we will complete next year. Your staff is familiar with the work on that.

If health care costs threatened to exceed our capacity to pay for them, we may be forced over the long haul to consider a greater use of coinsurance and other means that would enable citizens to choose and pay for their own services; ways of giving citizens both greater choice and great incentives to economize. This could mean offering persons currently covered by medicare and medicaid either greater additional cash payments, or vouchers, like food stamps, that could be used for health services. This approach also poses great risks, however, that the incentive to economize might become an incentive not to obtain needed treatment.

Research and Training

Finally, as we seek to improve the delivery of health services, we must not forget the critical role of research and training. We need to learn more about the diseases that afflict the elderly, and how these diseases can be treated most effectively. I cite the story in the Washing Post [1] this morning on that subject.

These approaches are not mutually exclusive. Each promises certain benefits—and certain dangers. But it is time to begin debating them; to hammer out a genuine national health and service policy for the elderly: A policy that balances our generosity in meeting critical needs with our ability to pay.

Our ability to deal prudently with these urgent concerns of the elderly—income security and health care—will largely determine how well we are able to do at meeting other vital needs of older citizens, especially social services.

Under the Older Americans Act, the Administration on Aging, the State agencies on aging, and 600 area agencies on aging help insure that a wide range of social, nutrition, and health related services are made available to older people: By serving as advocates for the elderly at Federal, State, and local levels to insure that needs are met; by bringing together public and private agencies which do or should service older persons in order to improve the comprehensiveness and coordination of services delivery; by convincing other agencies to commit local resources—over $440,000,000 in 1977—toward meeting the service needs of the elderly; by the development of community based service centers, over 9,000 nutrition sites, and 1,000 multi-purpose senior centers where older citizens can gather for recreation, information and a host of other needed services.

These are only a few of the vital, urgently needed services that older people require and our programs seek to provide. These efforts cannot be seen in isolation. If we are to do an adequate job of providing social services, we must manage our other programs for older people carefully and responsibly.

[1] See p. 40.

The Role of Families

Because of its special importance, I have reserved until last a final question: What role shall families play in caring for their older members?

Many people contend that the American family is disintegrating, or that it no longer cares for its elderly members.

The reality is, I believe, the opposite. Most families go the limit in providing support. Despite the Nation's vast network of services, for example, 70 to 80 percent of home health care for persons 55 and over is still provided by their families.

Families provide a wide range of services, from escorting the elderly on trips and helping with shopping and household chores, to complicated health and rehabilitative care. Yet, it is also true that the extended family living in a single household is no longer so common. Of persons 65 and over with living children, 36 percent lived with their children 20 years ago; by 1975, that percentage had fallen to 18 percent. We must recognize this change—and build upon it.

Yet, too often in the past, we have designed our programs for the elderly with the individual in mind—but not the family unit. We have failed to tap the strength of the family in caring for the elderly. Our programs for financing chronic care, for example, do little to permit and encourage home care administered by family members.

We need to establish programs that help families care for their aged members. We cannot expect doctors, nurses, social workers, or bureaucrats to be as sensitive and effective in meeting the needs of the elderly as a child or grandchild, brother or sister.

Because families themselves are so various, our approaches must also be varied: For those who do live with relatives, for example, day care or respite service might be available, to give the caring relative the freedom to leave home without worrying about the aged person—a service of growing importance as the proportion of women in the work force increases.

For the majority of the elderly who live on their own, either in couples or singly, we need other kinds of services. Supervised residential arrangements will permit them to remain in the community, where the family can more easily support them. And for those who lack families nearby, we must think of developing surrogates—people who volunteer, or are trained, to give the same kind of comfort, and show the same kind of concern, as family members, who can provide the individualized and personal attention for which there is no substitute.

Mr. Chairman, I am aware that I have provided this committee with more questions than answers. I am sorry for that, but it reflects reality. We have, as a society, more problems that solutions, more questions than answers.

That means we cannot be complacent. To accommodate generously the needs of rising numbers of older citizens will require, first and most fundamentally, a healthy and expanding economy.

Taxing Imaginations as Well as Pocketbooks

Beyond generating the economic means to serve our older citizens, we must build new institutions. Doing that will require that we tax not only our pocketbooks, but our imaginations.

Our democracy has proven itself both creative and resilient; capable not only of surviving social change, but of taking up its challenge with vigor and compassion.

I believe we can do so again, Mr. Chairman. How well we do it, in my judgement, will depend upon how well and how soon we answer the questions I have raised.

These hearings are as important as any hearings the committee has ever conducted, and as timely as any hearings it has ever conducted.

Thank you.

Senator CHURCH. Thank you, Mr. Secretary. You have furnished us a great many questions and challenges to consider. The search for answers will certainly affect all of us.

Early in your testimony, you referred to the fact that the retirement income under the social security system, I believe, averaged 47 percent of the working income. How does that compare with the average retirement income in some of the other industrial nations—in Europe, for example?

Secretary CALIFANO. Mr. Chairman, I will have to provide that for the record.

Senator CHURCH. It is our understanding that our average is lower than that of Canada's income, for example.

Secretary CALIFANO. I would not be surprised if that were the case. It would be typical of all services of this kind.

Senator CHURCH. It may well be true of West Germany as well. I don't know about England and France.

I wish you would supply those figures for the record.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

Earnings replacement rates for 1965-75 for selected countries were published in the January 1978 issue of the Social Security Bulletin. There is no overall figure for Europe as a whole, but the following figures are available for 1975 for individual countries:

PENSIONS AS PERCENT OF PRERETIREMENT EARNINGS BASED ON AVERAGE EARNINGS IN MANUFACTURING

	Single worker	Aged couple
Canada	39	57
France	46	65
Federal Republic of Germany	50	50
United Kingdom	26	39

Comparable figures for other countries are given in table 1 below from the January article.

It should be noted that the 47-percent figure mentioned in the testimony refers to the benefit replacement rate for an average earner under social security who retires at age 65 in 1978.

While replacement rates are commonly used to mean the ratio of the benefit to the covered wages earned in the year preceding retirement, it should be noted that: (a) an individual worker's earnings in the year before retirement may not be representative of earnings in the last several years; (b) the earnings covered by the program may be less than the workers total earnings; (c) the social security benefit formula is keyed to replace a portion of the long-term average covered earnings of the worker; i.e., over the period from age 21 to 62, disregarding the 5 years of lowest earning.

TABLE 1.—REPLACEMENT RATE OF SOCIAL SECURITY OLD-AGE PENSIONS FOR MEN WITH AVERAGE EARNINGS IN MANUFACTURING, SELECTED COUNTRIES [1] (RETIREMENT AS OF JAN. 1 OF YEAR INDICATED)

Country	Years worked	Pension as percent of earnings in year before retirement											
		Single worker						Aged couple					
		1965	1969	1972	1973	1974	1975	1965	1969	1972	1973	1974	1975
Austria	40.0	67	65	63	62	61	54	67	65	63	62	61	54
Canada [2]	40.0	21	22	27	30	31	39	42	39	42	46	48	57
Denmark	40.0	35	29	30	30	30	29	51	42	44	44	43	43
France	37.3	49	42	44	47	44	46	65	56	60	62	60	65
Federal Republic of Germany	40.0	48	56	49	49	49	50	48	56	49	49	49	50
Italy	40.0	60	67	65	67	64	67	60	67	65	67	64	67
Netherlands	30.0	35	36	35	38	37	38	50	51	50	53	53	54
Norway	40.0	25	34	37	39	40	41	38	49	51	51	54	55
Sweden	30.0	31	39	45	45	50	59	44	52	58	57	62	76
Switzerland	(3)	28	26	31	39	35	36	45	42	46	58	53	53
United Kingdom [3]	(4)	23	21	22	22	22	26	36	33	34	33	33	39
United States	(5)	29	29	34	38	35	38	44	44	50	57	54	57

[1] Data are for systems at maturity. For Norway and Sweden, data reflect less-than-mature earnings-related pensions: for Denmark, employment-related pension, which is still not payable in full; and for Canada, pension that reached maturity in 1975.

[2] Since 1948.

[3] Based on April rather than January flat-rate benefits in 1973, 1974, and 1975 for Canada and in 1975 for the United Kingdom.

[4] Since 1961.

[5] Since 1951.

Senator CHURCH. Is that average simply based upon the social security formula? In other words, there are a great many people in this country who get social security benefits, but they may also have the benefit of an additional retirement program. I take it they would receive a much higher percentage from the combined income of the two retirement programs.

Secretary CALIFANO. Mr. Chairman, let me clarify, if I may, the 47 percent figure represents the sum of everything.

Senator CHURCH. The sum of everything.

Secretary CALIFANO. The social security numbers follow that portion of the testimony, and it may not have been clearly stated in the testimony, but for new retirees age 65 that ratio today is 47 percent of their income, but that represents all sources of retiring income.

Senator CHURCH. All sources. What would you regard, Mr. Secretary, as adequate for retirement purposes for the country at large?

Secretary CALIFANO. Mr. Chairman, it is very hard to answer that because so much of this is a function of over what years you are going to measure, what the preretirement income was. There will inevitably be an element of need in there. I think, that at the absolute rock bottom, we are wealthy enough and affluent enough in this country to make certain, as you suggested earlier this morning, that no citizen who is older has income below the poverty line, that every older American should have the income that takes them above the poverty line. That is one piece of the poverty puzzle that we could very easily solve, simply with income and healther services. I agree with you on that.

EARLY RETIREMENT ISSUES

Senator CHURCH. I have just a question or two about early retirement and then I will ask Senator Domenici and Senator Percy to take over. Early in your testimony, you said that there is a clear trend toward early retirement in this country, which places a very large additional burden on the retirement systems. As you know, the Congress increased the legal mandatory retirement limit from 65 years of age to 70 and eliminated the mandatory limit entirely in Federal employment

Do you think that this will have any impact at all upon this trend toward earlier retirement in the United States? You said, at one point in your testimony, that there were an estimated 4 million older Americans who would prefer to work but who are retired presumably because of the mandatory retirement age.

Secretary CALIFANO. Mr. Chairman, I hope it will, and I think it should have some impact, but that alone, which is the move that I applaud, will not deal with the problem. Part of the problem relates to the fact that when we have people in this country retire at age 40, age 38, and when we talk about people being retired like the military—someone in the military went in at age 17, served their 20 years and then retired at age 37——

Senator CHURCH. Nearly all of them that I know then go on to a second job and earn a full income plus their military retirement.

Secretary CALIFANO. Exactly, and they are counted as having retired. As long as there are systems which permit that kind of early retirement, and then moving on to get another job, people will retire

early even though the mandatory retirement age is lifted to age 70; and indeed, that will give some individuals an additional 5 years to gain a second pension or a third pension. So that to predict what will happen is difficult, but I would certainly hope so, because as you know so well, there are also larger benefits to our society from those people working, they are producing and they are increasing purchasing power.

Senator CHURCH. Is there any trend at all in industry or in government toward changing the pattern of employment, to furnish part-time jobs for older people who would like to work part time but who no longer feel able or no longer desire to work full time?

Secretary CALIFANO. I would have to say not of any great significance, although I would also have to note that in my work in preparing for these hearings, upon coming to that issue, I have touched off a study in HEW and asked that we develop a program for flexitime work for older citizens. We have a few in our flexitime program, but I have asked that we now develop a plan and mount an effort to do that, because we are going to begin to urge other people to do that. I think you can prove very, very helpful. In government, particularly, there are so many problems which you need to get studied, or thought through, and which people can work a few hours a day or week.

Senator CHURCH. You have your social security system with the retirement test that may work directly against part-time work. I don't know whether private retirement programs also have similar tests which have the same effect.

Secretary CALIFANO. Mr. Chairman, when we look at this whole pension system, at early retirement, you have to look at that issue. That is another very important part of this problem. I think it is less of a phenomenon in the private sector than it is in the social security sector, and it is not a problem at all in the military sector or civilian life.

Senator CHURCH. Thank you.

Senator DOMENICI. Thank you, Mr. Chairman. Mr. Secretary, may I first congratulate you on your testimony. I think you are talking about one of the most complicated social subjects confronting America, and I personally take no affront at the fact that you asked as many questions as you answered. Because I don't see how anyone can know the answer to very many of them today, when we are talking about such drastic changes and such a long period of time.

Let me say this: I assume, based on some of your answers, that you really do get a lot of communication from the public about the issues at hand, and that you personally read some and talk to the American people about these problems. Now, let me just tell you the kind of example that concerns me most about income maintenance for the elderly.

QUESTIONS FROM YOUTH

I am beginning to feel, in my own State, this kind of question, and it comes up more and more often—a working man or woman between the ages of 25 and 30 will come to a meeting and they will already have in their hands a schedule of what they could buy for themselves with the money they are putting in social security. And they will say, "Now, why do we have to do this when we are going to get x dollars if that fund is solvent, but if I go buy this other plan for $40 a month, I

will get more myself than you are going to assure me through the Federal Government?"

I generally can answer that. The fact is that social security is not an insurance policy, it is a social insurance policy, and we have a kind of risk we are spreading around. But that is becoming a very serious problem with the young workers, men and women, in America, who are tremendously concerned. They want to take care of their elders, but they are suggesting that there is not going to be anything there for them, and that to them it is a very poor investment. I am not suggesting that I agree with that, but do you not see that as a growing concern that we ought to be addressing and concerning ourselves with in society?

Secretary CALIFANO. Yes, I do, Senator. I would note that I think wherever this country goes in the future, in terms of solving the retirement income and maintenance problems, that the social security is clearly the dominant piece of the picture, and that one of the imperatives is that we maintain the viability of that system and the financial integrity of that system. As I indicated here, it may be the grandest program that the National Government has ever put into place; it works, it has a very, very low error rate—1 percent perhaps. It is ingenious in its conception. It is almost self-enforcing, because you want to make sure you get the benefits credited to your number so you make sure you report your wages to that number.

How you go about financing it is the problem that you raise, of the extent to which we are now financing it out of the payroll tax. We made some other suggestions, which we thought made more sense than doing that, and we suggested that there be some kind of a countercyclical dip in the general revenues which would have significantly reduced the need for the extent of the payroll tax if unemployment exceeded 6 percent, funds that would have been gained had unemployment been at 6 percent, would have put into the general revenues. There are other ways to do that, but I think this system makes sense for young workers, and I am prepared to try to carry that brief.

Senator DOMENICI. Mr. Secretary, looking down the line to the statistics that you have given us, it appears to me that an income-maintenance program of this magnitude, whether it might be one retiree for three workers compared to 9 to 1, we have got to be talking about what percentage of our productivity can be going to that kind of system at any given point in time. We have to address the issue of the economic growth and inflation, because they are all related, it appears to me. At some point in time we may wish that we could do what you have described here, abolish all poverty at some level for older Americans.

On the other hand, do we have any model of how much of America's productivity can be going to that, as contrasted with other needs to be taken out of productivity? Do you have some economic feeling for that, or anyone looking at that?

INFLATION'S DRASTIC IMPACT

Secretary CALIFANO. No; we have no model for it. We are looking at it. With all the demographic numbers that I provided for the committee which raises those questions, I think that the most serious threat to the achievement of what I mentioned here, and what the

chairman suggested, is inflation. That is what makes it so incredibly expensive, and that is what has changed the pension landscape by taking a big brush or big wide brush of paint and putting it across the paint. That is, inflation is having a dramatic impact on this whole landscape.

Senator DOMENICI. Especially when the growth is so much smaller than inflation, growth in the overall GNP. When you relate the two, the disparity is getting very big. That is what you are referring to.

Secretary CALIFANO. Yes; that is correct. You can just take the health care part of the problem and we have the problem of productivity in our economy. Productivity is rising at an annual rate of about 1 percent, which is much lower than it has been in the past, so even though 6½ million more people are at work, we are not getting that much more productivity out of them.

In the health care area, it is just phenomenal how inept we are at increasing productivity, for example, the American hospital has 3.6, 3.7 people per patient and rising. In Germany, it is one per patient and rising. We have a fine health care system, but those German hospitals are every bit as good as our hospitals are. We have got to deal with that problem in that sector of our economy that is there, and if we can find a way to deal with it effectively, we can take care of a substantial part of the needs of our older citizens who need those acute expensive care facilities more frequently than other citizens.

Senator DOMENICI. I have just three more questions.

On page 8, at the bottom of the page, you cite a list of conditions, including $350 billion by the end of the year 2010, et cetera.

Secretary CALIFANO. Yes.

Senator DOMENICI. Could you supply us for the record with what assumptions were used to arrive at those conditions?

Secretary CALIFANO. Yes; I will.[1]

Senator DOMENICI. I think they would be very relevant to our thinking in terms of cost.

Secretary CALIFANO. I will. You will note, as you go over them, that there is no cost containment built into those numbers. That assumes the current system discontinues to flow.

Senator DOMENICI. One other question. It strikes me that this country's baby boom, which contributed so much to the growth of our educational facilities, is now on the wane, and we are closing schools in many areas. I wonder if you are doing any studies on the additional needs—for those that are long out of the typical grades 1 through 12—in terms of facilities that might be utilized, and what our educational system ought to be doing in regard to retraining and lifelong education?

Secretary CALIFANO. All through the lifelong learning education I think we asked for $5 million this year and before that to do more studies. There is no question that there will be plenty of excess educational plant, particularly at the higher educational level, which we could inure to the benefit of older Americans. We have to recognize in this country as the higher education population declines, as education becomes more expensive to the higher education level, that there are going to be some very serious questions raised about plant.

We have already seen some colleges close in New England, the small colleges. We at HEW are increasing the number of colleges all the time coming in and are concerned about the viability because there are

[1] See "Assumptions Underlying Social Security Long-Range Cost Projections," p. 47.

increased costs. The older Americans may provide an opportunity for some of those institutions that are stronger to enrich and use their plant productively. Now part of that, of course, for many of our older citizens, is going to be a function of who can pay for it, and that is something to which we and the Congress and many States will have to address themselves.

PRIVATE EFFORTS

Senator DOMENICI. One last question. I personally believe that while we want to pursue the social security system to the utmost in terms of its utilization, I don't see how this society of ours can get by without significant private effort, whether it be individual plans or company plans, or whatever they are. Could you supply us, for the record, with your analysis of what we have done in the last 6 years that has most contributed to alternate systems, the tax incentive programs that we have enacted, such as IRA's and what they are accomplishing? Just what incentives have we built into the system, in terms of preparing for one's retirement? I'd like an analysis of which would work best in moving us in the direction of greater private effort in this area.

Secretary CALIFANO. Senator, I will do that to the extent that we have the capability of doing that. I would suggest that you might also want the staff to get in touch with the Internal Revenue Service to get numbers from them as to the extent to which some of these mechanisms are being used and the cost of them. That is where the numbers that I use in this area came from.

I would like to underline the fact that I agree with you wholeheartedly, we must have private pension plans. We will always have a variety of pension plans in this country. My point is that, I think, we have to look better at the question of integrating these plans, both in raising the issue of what is retirement income and also in terms of the relationship between social security. I see nothing replacing that as the cornerstone of retirement for American citizens in all these other plans.

I see 45 percent of the work force has access to private plans, and I think that is important, and I think it is those plans being funded in an appropriate way, and it is important that they survive. I do believe that we have to relate them to what we are doing with social security and everything else, and that when we look at the size of the population, that we have an obligation to take care of it.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator CHURCH. Senator Percy.

Senator PERCY. Mr. Secretary, first, I would like to join Senator Domenici in his praise of this testimony—it is lengthy, and you raise a lot of questions, but in my many years on this committee, it must be cited as one of the most valuable pieces of testimony we have ever had. I appreciate the attention you have paid to the facts and figures involved. It is a herculean task, and I compliment the staff in preparing this very helpful guide for us.

Second, I would like to say that today we will be marking up and reporting out the education bill. With all the abuse HEW takes, and with all the mismanageable bureaucracy, still the testimony about Head Start makes me glad that it is in HEW and not going into a new Department of Education. I have never heard such glowing testimony

about the administration of a program as I have about that one and we voted unanimously, I believe, to keep the Head Start program in HEW.

Secretary CALIFANO. Every time Mary Helen calls me, I cite that testimony.

VALUE OF SENIOR CENTERS

Senator PERCY. I find it very interesting that on page 35 of your statement you point out the fact that 18 to 36 percent of the elderly population live with relatives, and that this puts a substantial amount of pressure on the public sector. You then comment that "day care or respite service might be available." I have recently visited more senior citizen centers, and I am very impressed with what is being done, much of it with Federal money.

Many communities have obtained revenue to build senior citizen centers and now offer programs from 9 in the morning until 5 or 6 in the evening, sometimes 10 o'clock at night. I have visited two outstanding centers in the city of Chicago. Do you feel that senior citizen centers are a possible aid to the increasing number of working mothers or working women, who simply are unable to take care of the father, mother, grandmother, grandfather at home during the day? Do you think this would encourage relatives to keep our senior citizens in the family home rather than sending them away to one of these institutions?

Secretary CALIFANO. Yes; I think there is. I have seen that wonderful place in San Francisco that does that. I think it is very helpful. I think we also have to find a way to provide some situations in which an individual will have to stay at home, in which there are two couples still together, or what have you, and in which one member of the couple should be able to get out once in a while, and the way we have our laws and our tax laws skewed, to have the relative do that, it becomes very difficult. I note that what you have seen is rare. Not many senior citizen centers provide that kind of a day care service, so the more of it that we can get, the better off we will be.

Senator PERCY. But you do feel that the senior citizen day care center idea is well worth exploring?

Secretary CALIFANO. Yes; I do, Senator.

Senator PERCY. Hopefully, it can prove itself a cost effective way to assist in health.

I would like to turn to the nursing home situation again, because it has preoccupied our committee for so many years. We had hoped that we were making progress in making these places fit to live in. I think there have been changes made, but I think it is primarily in the physical appearances. We have removed the urine-stenched hallways; they are now painted, they are now more attractive looking. At least there have been cosmetic changes.

I would like to point out that lead stories on the Better Government Association, under the presidency of Marjorie Benton and Terry Brunner as executive director, appear today, in both the Chicago Tribune and the Chicago Sun Times. They sent their investigators into eight homes where they worked in a variety of positions, for anywhere from a week up to as long as a month, and they also studied

carefully 75 State construction reports. I am quoting the Sun Times article:

The civic watchdog group concluded that despite numerous reform attempts, Chicago area nursing homes are still characterized by neglect, patient abuse, and financial mismanagement.

Nursing Home Abuse

Among the recommendations that they have made is the idea that nursing home abuse could be cured many times if the homes themselves were eliminated or the need for them. They say, "There's obviously no substitute for loving family care at home, and we should be making that easier to do."

They recommend that the statement, analysis, and study of other tax incentives cannot be offered or anything done to reverse this trend of more and more people being farmed out to what are called warehouses for the dying, as they have been characterized in Chicago, rather than the better than one-third 30 years ago that were cared for in the home.

We not only have a big job ahead of us in improving conditions in nursing homes, but also finding alternate methods of care for the aging. Is this the conclusion of HEW at this stage?

Secretary Califano. Yes; I think I agree on both scores. We still have a long way to go to improve conditions in nursing homes, although we are making progress there, and we do have to find ways to provide the resources for more home care for the aging, and more day care of the kinds you are talking about in the senior centers, there is no question about that.

Senator Percy. I ask unanimous consent that the article in the Chicago Sun Times be inserted in the record, and also the front page article in the Washington Post this morning, labeled "Dementia Label Mistakenly Applied, Thousands Doomed by False Senility."

[The newspaper articles referred to follow:]

[From the Chicago, Ill., Sun Times, July 17, 1978]

Need New Tack in Nursing Home "Horrors": BGA

(By Brian J. Kelly)

The horrors of nursing homes are sad stories that have been told many times, but Sunday the Better Government Association, after a 4-month investigation, offered some new solutions.

The civic watchdog group concluded that despite numerous reform attempts, Chicago area nursing homes are still characterized by "neglect, patient abuse, and financial mismanagement."

But J. Terrence Brunner, executive director of the BGA, said he was not interested so much in rehashing the stories of abuses as he was in suggesting more substantial reforms.

"What we began to think when we saw the results of this investigation is that maybe more laws, more inspectors and more money isn't the answer. Maybe there's something basically wrong with the system and we've got to start looking for different kinds of solutions," he said at a press conference at the BGA's office, 230 N. Michigan.

Brunner said he came to this conclusion because he saw so little improvement in the homes despite several earlier investigations—including one in 1971 by the BGA—and a raft of new laws. The BGA's latest investigation was conducted with WLS-TV and will feature film of what Brunner called "horror stories" that will be shown on Channel 7 this week.

Among the BGA's recommendations is the idea that nursing home abuses could be cured if the homes themselves weren't necessary. "There's obviously no substitute for loving family care at home," Brunner said, "and we should be making that easier to do."

The BGA suggested that the State experiment with programs to enable the elderly to receive care in their homes with their own families. Specifically, it recommended tax incentives as a means of accomplishing this.

The BGA also recommended:

That nursing home advisory boards composed of the residents' relatives, neighborhood leaders and nursing home personnel—as well as residents of the home—be established. The boards would have complete access to the home, its books and records, and would advise the operators on all matters of policy.

That the State assist senior citizens groups in providing voluntary care for the elderly.

That the Illinois Department of Public Health evaluate all nursing homes and that its reports be made public.

That existing rules and regulations pertaining to nursing homes be more stringently enforced.

David L. Protess, the BGA's research coordinator, said many of the previous reform efforts have proved to be merely cosmetic, dealing primarily with the physical conditions of the homes. "We found that the new laws have forced the homes to be cleaner and a lot of the gross violations are gone."

But in many cases, he said, this has deceived people wishing to place relatives in homes. "It just makes it harder to tell if the home is any good or not. We found that for the most part, patient care is still marked by an attitude of cruelty and indifference on the part of the staff."

Protess also said that many State inspection reports were found by BGA investigators to be inadequate, often failing to cite numerous violations—particularly as they pertained to patient care.

"I think it's significant to note that not one home has had its license revoked in the last year and our investigators found numerous violations that could have resulted in revocation," Protess said.

Brunner said the BGA expected to reveal evidence of financial irregularities in the near future. "We've concluded that the nursing home business, which gets $225 million a year in medicaid money, is an extraordinarily profitable business."

The BGA and WLS-TV sent investigators into eight homes where they worked in a variety of positions for from 2 weeks to a month. Brunner said his investigators also reviewed 75 State inspection reports.

[From the Washington Post, July 17, 1978]

DEMENTIA LABEL MISTAKENLY APPLIED; THOUSANDS DOOMED BY FALSE SENILITY

(By Victor Cohn, Washington Post Staff Writer)

Ten to 20 percent of the elderly senile do not really suffer from dementia—progressive loss of memory and brain function—but from other conditions and diseases that could be treated if doctors only recognized them, a group of experts on aging agreed last week.

This means, it was agreed, that 300,000 to 600,000 of the estimated 3 million Americans who show symptoms of brain failure are mistakenly labeled as "senile," and, as a result, often go untreated in nursing homes and mental hospitals.

"The prospect of 300,000 doomed people in the United States today who could have been restored to useful life by appropriate evaluation and treatment is staggering and demands action," said Dr. Richard Besdine of Harvard Medical School and the Hebrew Rehabilitation Center for the Aged in Roslindale, Mass.

Besdine was author of a draft report made by a six-member task force for discussion by the 30 specialists who attended a 2-day Conference on Treatable Diseases in the Elderly at the National Institutes of Health in Bethesda.

One of the largest single causes of false senility, it was agreed, is drug intoxication: that is, reactions to medications. The most commonly guilty medications are tranquilizers, and among these the most common is Valium, the Nation's most often used prescription drug.

Among treatable and often unspotted physical diseases that can cause brain dysfunction and mimic truly irreversible senility are heart disease, strokes, infections (including pneumonia), anemia, nerve diseases, brain tumors and blood clots, kidney or liver failure, metabolic diseases such as diabetes or thyroid prob-

lems, nutritional deficiencies (sometimes caused by faulty diet), reactions to chemicals and alcoholism.

The experts' consensus on all these points was reached at the conference, which ended last Wednesday.

The gathering was one of a new series of NIH "consensus meetings" that assemble specialists to make recommendations to the medical world in newly emerging, often puzzling areas.

The idea for the meetings—the creation of Dr. Donald Fredrickson, NIH director—came from a 1977 conference on mammography, or breast X-raying. Because such X-rays may sometimes trigger as well as find cancers, the experts recommended limiting mammography to women with a far greater chance of benefiting than suffering any harm, meaning women over 50, women 35 to 49 who have had one breast cancer already and women 40 to 49 who have had mothers or sisters with breast cancer.

The breast conference was one NIH was virtually forced to hold to reassess the controversial X-ray method that NIH itself was widely funding.

But NIH has also been under the fire of critics, including members of Congress, for not doing enough to translate research findings into everyday care. The consensus conferences are one reply.

The specialists on aging and related fields gathered by NIH's National Institute on Aging included Dr. Ernest Gruenberg, chairman of mental hygiene in the Johns Hopkins School of Hygiene and Public Health; Dr. Robert Katzman, neurology head at Albert Einstein Medical College, New York; and Dr. James Baker, the Veterans Administration's associate chief for mental health treatment.

The discussions will be translated into recommendations in coming months. But there was general agreement to tell practicing doctors that:

There are indeed irreversible causes of "chronic brain syndrome," or dementia, such as repeated blood vessel blockages and various brain and nerve diseases.

They would be well advised, however, to spend more time thoroughly and aggressively examining and testing their confused or disoriented patients to exclude reversible causes.

Deep psychological depression, too, can be classed as a common and often treatable, reversible cause of apparent senility.

It is "amazing," said one doctor attending the conference, how often even a heart attack can occur in silence with no outward physical sign other than mental confusion.

"We're talking about a large group of underlying, unrecognized diseases that are usually improvable, often reversible and sometimes completely cureable," said Besdine.

To say that 10 to 20 percent of the supposed senility cases have potentially reversible causes does not mean other forms of senility shouldn't be treated too, said Dr. Robert Butler, director of the National Institute on Aging.

"In all cases," he said, "the earlier the treatment, the better. The brain doesn't do very well when it is ignored over a long period of time."

Dementia is not a reason "for locking up the patient and throwing away the key," said Dr. Carl Eisdorfer, University of Washington psychiatry head.

The treatment may sometimes be as simple as withdrawing a drug or giving a drug. But often, said conferees, it must mean finding family or other "societal support" for the patient. Doctors and other health workers must themselves get out of their offices into patients' homes before they can understand their problems, the conferees agreed.

"People fear few things more than losing their minds and being 'put away' in a nursing home," said another National Institution on Aging report. Yet too many conditions are "mislabeled as 'senility' " simply because the patient is old, it said.

Senator PERCY. Did you happen to see that article in the Washington Post this morning?

Secretary CALIFANO. Yes, I did, Senator, and I think it kind of capsulizes and dramatizes the need for further research in this area and further investigation in this area and may also indicate the need for better training of the primary care physicians, particularly in terms of the handling of the older population. It may be that we escalate the care of the older population into more expensive levels just the way we are escalating the psychiatrist all the time because he is not adequately trained to recognize and treat some of these things.

Senator PERCY. This staff, under the direction of members of the committee, went to Chicago, New York, and other cities on the nursing home problem. We subpenaed records and found a tremendous percentage of total cost going into medication and one-third of that was spent on tranquilizers. In Illinois, we have a system which I had long trusted, a point system where the nursing home gets paid by points—points accrued if a person is bedridden and has bedsores, on the assumption that this person requires more care, but the incentive these investigators found was to give tranquilizers and sleeping bills to keep them bedridden and help them develop bedsores. Then the patients don't have to go down to dinner, and can be fed just enough food to keep them going.

This article pointed out something I had not taken into account, which is that many of the people I had seen in these nursing homes, just sitting around looking as though they are in a state of stupor or senility, are in fact overmedicated. This article in the Washington Post says that 300,000 to 600,000 of the estimated 3 million Americans who show symptoms of brain failure are mistakenly labeled as senile. One of the largest single causes of false senility is drug intoxication, and they claim the most commonly used medications are tranquilizers. This is the estimate of Dr. Richard Besdine of Harvard Medical School and the Hebrew Rehabilitation Center for the Aged in Roslindale, Mass.

They conclude by saying, "People fear few things more than losing their minds and being 'put away' in a nursing home." This idea was also stated in a National Institute on Aging report.

I would think that this committee, working in cooperation with you, Mr. Secretary, ought to give top priority to the study of this area. We were suspicious years ago about nursing homes and possible abuses occurring there. Again, I say there are some absolutely outstanding nursing homes that I have been in which give fine care, wonderful people running them. I have also seen some unscrupulous operators in this business. They are out solely to make money on the poor, particularly if they are aged poor.

JOB NOT FINISHED

Our job is not finished, according to these reports. We have gone back to one of the cities where we had the greatest difficulty, and cosmetically the problem has been solved, but I think we ought to restudy this business, particularly when we consider 300,000 to 600,000 lost Americans who have useful lives ahead of them if they can only receive some of our attention. It is evident that dreadful things are happening to them. I think we have got to get to the bottom of this.

I want to express appreciation to the Washington Post for reporting so thoroughly on this, and to the medical people who have been conducting these studies.

I commented earlier that I doubt we have ever passed legislation where we knew less about the end result than the bill raising to age 70 the mandatory retirement age. What impact, if any, so far has raising the mandatory age limit to 70 for many workers in the private sector had on the social security system?

Secretary CALIFANO. It is hard to tell. To the extent that it encourages people to continue to work and not draw social security until they

are 70, it will undoubtedly be in that plus for the social security system, although the extent to which it will be a plus is a function of what wage they are working for and how long they have been under the system.

I think much more likely to encourage people to work beyond age 65 and not feel the social security benefits is an incentive the Congress passed last year, which would increase the amount of social security payment to which an individual is entitled by 3 percent for each year that individual continues to work and not draw social security beyond 65 to age 70. It is just very hard to assess what that change in the law will mean, Senator, and I don't think anyone really knows. If you look upon it as something that will stem the trend toward earlier retirement, that is not the only factor in the order of retirement. There are systems in which one can retire after 20 years of work or 30 years of work, and those people retire and draw retirement pay. In fact, they cannot be mandatorily retired at age 65. If you raise the age to 70, it is not going to have much impact.

Senator PERCY. I agree the social security system has been a tremendous help, and I don't know what we would have done without it. On the other hand, in the 3 years that I spent researching the book I put together on aging, I found that many people look upon social security as a program adequate to cover all their retired needs. They assumed the Government was going to take care of them somehow, so they didn't put away enough, and consequently three out of four widows today are living below the poverty line.

How can we spread the word that social security is an assist, a help, a supplement—that it does not remove the responsibility for an individual to somehow provide for their own retirement? Is there any rule of thumb that we can use to delineate for the average person what proportion social security should be able to supply for their financial needs after retirement and what proportion they should be providing on their own through a company, through savings, through whatever other means they possess. Not enough people today are cognizant of the fact that they must provide part of their retirement income. The pressure to continually increase social security benefits comes from people who discover these benefits are simply inadequate for them to maintain themselves after retirement. It is going to pose a terrible load on young working people if we continue this trend.

NEEDED: FACTS ON SOCIAL SECURITY

Secretary CALIFANO. Well, in terms of as variation of mistakes and that is what creates a significant amount of problem to which you allude but there are over 2 million people on social security who are also getting supplemental security income to bring them up to the poverty line. The extent to which we provide adequate information between the social security system is something I will take a look at when I go back, and I will be happy to provide what we do and don't do in response to your question.

Senator PERCY. I appreciate that very much. Part of our job is supplying public information. This mistaken impression about social security is similar to the one about medicare and medicaid; as Senator Church has aptly pointed out, the dollars put out for health care are much as they were before medicare and medicaid, with about 43 per-

cent of costs being covered. Most people assume that medicare is going to cover everything, and they are shocked when they discover there is a huge gap in coverage which they must pay.

I think we have got to find a way to inform the public on which benefits they are going to receive and which they are not. Some rule of thumb needs to be designed for social security so that it is not looked upon as adequate retirement income; otherwise, the unfortunate disillusionment will continue.

[Subsequent to the hearing, Secretary Califano supplied the following information:]

Informational materials produced over 10 years stress that social security benefits are meant to be only a partial replacement of preretirement income. For example, the attached leaflet "Social Security in Your Financial Planning" was first published in the late 1960's. Its primary message is the need to supplement social security benefits.

One of the primary means we have of informing the public is through a monthly package of materials for all media. Included with the materials distributed for use in August 1978 was a draft by-line column (copy attached) on the subject of planning retirement income. The need for supplementing social security benefits is emphasized.

Currently in the early stages of production is a leaflet on the general subject of the value of social security to today's worker. One of the leaflet's primary messages will be the need to provide additional retirement income to maintain one's standard of living.

[Attachment]

[From "Your Social Security" column, August 1978, No. 1]

PLANNING RETIREMENT INCOME

(By Social Security District Manager)

People concerned about having sufficient income to maintain their lifestyles through their retirement years should remember that only earnings after retirement, but not other forms of income, may affect receipt of their social security checks.

This means that the wise planner looking ahead should be considering whatever available resources he or she has that can be used to generate nonwork income in the future. Such sources depend on one's current financial situation, but may include savings, investments, insurance, or rental income. Income from renting rooms to college students, for example, would usually not affect a retirement check, while the same amount of money earned by working at a part time job could.

The fact that there is a limit on the amount of earnings a person may have and still draw social security benefits is confusing to many people. And when they discover that the limitation does not include nonearned income, it becomes even less understandable. There are several reasons for the earnings limitation and the manner in which it is applied.

First of all, social security benefits are designed to partially replace earnings lost through retirement, death, or disability. If there has been no such reduction in earnings, then the individual is not considered retired, disabled, or dependent on the earnings of a retired, disabled, or deceased person.

Second, social security was never designed to replace all of a person's earnings, only part of them. The benefits are supposed to provide a base upon which people can build their own level of financial security through their own initiative and enterprise. There would be less incentive to save and invest for the future if by doing so an individual risks losing the floor of protection provided by social security contributions.

If you do plan to work after retirement, you'll find that you can increase your income without losing all of your social security benefits. In 1978 the annual exempt amonut of earnings is $4,000 for individuals 65 and over, and $3,240 for those under 65.

After reaching the earnings limit, social security benefits are reduced $1 for every $2 in excess earnings. At age 72 the earnings limit does not apply.

The annual exempt amount is scheduled to continue to rise in future years. For a 65-year-old it will be $4,500 in 1979, and for those under 65, the rise will parallel increases in average wage levels.

One thing to remember is that the monthly earnings test no longer applies except during the year in which a person starts receiving social security benefits. Before the 1977 Social Security Amendments, a person could receive a full social security check for any month in which he or she did not earn one-twelfth of the annual exempt amount ($334 for a 65-year-old in 1978) no matter how much he or she earned for the year.

Most of the 10 percent of those current beneficiaries whose benefits are reduced because of the retirement test have substantial earnings. They include people who for one reason or another continue to work—the self-employed, professionals, and others whose work is not too physically taxing. The added income provides for the lifestyle they wish to maintain.

But if the prospect of working after retirement does not appeal to you, consider the ways in which you may build nonwork income. Talk to your banker, accountant, or some other person whose financial advice you can trust. It could pay off for you in your retirement years.

Question. I married late and have two children both under 18. I understand that they'll be entitled to benefits, too, when I retire at age 65. Will their earnings affect my social security check?

Answer. No. Their earnings will only affect their social security benefits.

Question. Why doesn't the retirement test apply to people who are 72 and over?

Answer. If there were no age limit, people who work to a very advanced age would not receive any social security benefits even though they had paid into the system all their working years. For that reason the upper age limit is set to provide equity to such workers. In 1982 the age limit is scheduled to drop to age 70 under present law.

Question. How does social security keep track of a beneficiary's earnings?

Answer. A beneficiary who expects to earn more than the annual exempt amount in a year should notify social security in advance so benefit payments may be adjusted. A report of earnings must then be filed by April 15 of the following year. In addition, employer reports of wages are automatically screened against beneficiary records at Social Security headquarters.

Senator PERCY. One final question, Secretary Califano. You did make a comment on page 16 that I would appreciate some expansion on, either now or for the record. You said:

We must remember that when older citizens work they create new jobs and that the job market is not a confined space with a precisely limited number of jobs.

This is a very important concept, worthy of expansion, if you would care to do so.

Secretary CALIFANO. I will expand in some form and provide details for the record, the point simply being, as they work they earn money which, in turn, gives them purchasing power which creates jobs for other people. I think they would like to give you a more elaborate explanation of that point, but I think it is an important point because of this great tendency to grossly oversimplify the issue. There are x number of jobs in the country and if the older Americans take some proportion of them, the younger Americans will not get them. That is just not the case.

Senator PERCY. I think it will help us remove some of the resentment held by those entering the job market, for people who decide to stay on to 70 and be on. They need to know that older workers' purchasing power creates jobs and contributes to a higher standard of living for all Americans. It is a way of stimulating the economy, not depressing it.

[Subsequent to the hearing, Secretary Califano submitted the following information:]

The notion that more jobs for older workers will mean fewer jobs for younger workers is a fallacy. The fallacy is in thinking that the number of jobs in the Nation is fixed in size. In fact, the size of the national output depends upon the input of factories of production: labor, natural resources, and produced capital goods. The larger the input of each of these factors of production, the larger will be the national output.

Whenever there are new entrants into the employed labor force—whether from population growth or increased participation by minorities or women or older workers—the same natural resources and capital stock can produce a larger national output. The increment of output produced by these additional workers provides the source of payment to these workers: each worker earns his keep.

To elaborate, firms hire additional workers as long as the value of output added by these workers covers their wages. The wages of the workers in turn provide income which is spent for goods and services. Thus in the circular flow of goods and income, hiring new workers simultaneously creates more goods and the income to buy the additonal output of the economy.

There are several qualifications which should be noted. First, aggressive monetary and fiscal policies must be pursued to maintain aggregate demand. Second, for any given level of capital (factories, machines, inventory etc.) the absorption of additional workers would tend to lower the real wage. It is therefore essential to vigorously pursue policies to expand capital formation and stimulate technological progress. Finally, there may be problems for particular groups of workers due to specialized skills (or lack thereof), location, industry, etc. These structural problems must be dealt with.

Senator PERCY. Thank you very much indeed, Mr. Secretary.

Thank you, Mr. Chairman.

Senator CHURCH. Senator Percy, I agree with you. We must develop a clearer conception of just what social security is meant to be in our society. I think that there is a continuing argument among us concerning what the role of the social security system should be. Originally, it was intended to cover bare necessities that would enable people to live decently in retirement, but to do more. It was also originally intended to be a retirement program, thus the retirement test. We have seen that change a good deal through the years. At age 70, social security becomes an annuity program, beginning in 1982. And the benefit is available whether or not the person continues to work.

THE RETIREMENT TEST

We have seen the retirement test increased. I myself have favored that. Nevertheless, as it continues to increase, less and less retirement is required in order to qualify for the benefits. So I think we need to define for ourselves what the role of social security should be. If we can come to an agreement among ourselves, perhaps the public conception can be clarified. The confusion stems at least in part from an inability to decide among ourselves just what the role of social security should be in our society.

Mr. Secretary, I want to join, with both, the Republican members of the committee in expressing my appreciation for the testimony you have given us. It seems to me that the testimony will be a rich source book for us. It contains some very important information that I hope will give us guidelines for the balance of our hearings. I am grateful to you for coming here and spending the morning with us. We wish to express appreciation for the entire committee.

Secretary CALIFANO. Mr. Chairman, thank you very much. It has been one of the most thoughtful hearings and questions that I have encountered since I have been the Secretary, and I appreciate the opportunity to come here.

Senator CHURCH. Thank you. You have the least enviable post in the Cabinet, but probably the most important in terms of its impact upon our own people.

Senator DOMENICI. Mr. Chairman, might I ask the Secretary a question? I don't want you to answer this, but I wonder if you might

present the committee with some kind of chart on the issue of inflation as it impacts upon these kinds of income maintenance programs that we are discussing.

I think what I have gathered from this testimony today, is that the best thing that could happen to these programs is for inflation to significantly diminish and be somewhat more controlled. I am not asking that you suggest how we do that, but I think it would be interesting to have some kind of chart showing the impact of various inflationary levels with assumed GNP growth levels on the programs that now exist and the dollar impact in terms of our budget. Do you think you could put that together in some manner for us to see?

Secretary CALIFANO. Yes, I think we can, Senator Domenici. I cannot resist the opportunity to just take hospitals alone and point out that in their costs, if their charges grow by only one and a half times as much as the rest of general inflation in the economy over the next 5 years, we would save $57 billion as a country and $20 billion in Federal expenditures just on that piece of the problem.

Senator DOMENICI. I would very much appreciate such an analysis in an objective chart.

Secretary CALIFANO. We will do that.

Senator DOMENICI. Thank you.

[Subsequent to the hearing, Secretary Califano submitted the following information:]

ASSUMPTIONS UNDERLYING SOCIAL SECURITY LONG-RANGE COST PROJECTIONS

The official cost projections for the social security program (OASDI and Medicare) are based upon assumptions and methodology explained in detail in the 1978 Annual Reports of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund, Disability Insurance Trust Fund, Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.

Because the future cannot be predicted with certainty, long-range projections are made on the basis of alternative assumptions in order to determine how the social security programs would operate under future conditions that might reasonably be expected to develop. The alternative II, or "intermediate," set of assumptions from the 1978 Trustees Reports include assumptions that:

Mortality rates will decline overall by about 19 percent from 1977 to 2050;

The fertility rate will increase from its estimated level in 1977 of 1.79 children per woman, gradually reaching 2.1 children per woman by 2005 and remaining level thereafter;

Disability incidence rates will continue increasing, reaching an ultimate level in 1997 that is 25 percent greater than the estimated 1977 level;

Female labor force participation rates will increase to an ultimate level 19 percent greater than the 1977 level;

After 1984, the Consumer Price Index will increase by 4 percent annually (greater increases are assumed between 1978 and 1984);

After 1999, average wages in covered employment will increase by 5¾ percent annually (greater increases are assumed between 1978 and 1999);

The unemployment rate for the total labor force will be 5 percent after 1984;

Hospital costs will increase by 15–17 percent annually for the next 5 years; after 10 years, the annual increase is assumed to be about 10–12 percent.

Assumptions were also made concerning other variables such as the timing pattern of fertility, migration levels, insured status, disability termination rates, marital status, administrative expenses, and interest rates.

EFFECT ON OASDI TRUST FUND OPERATIONS OF VARIOUS RATES OF INFLATION AND ECONOMIC GROWTH[1]

Period	Low inflation, fast growth	Intermediate inflation, intermediate growth	High inflation slow growth
1978–82 (in billions of dollars):			
Total tax income	$614.2	$609.2	$598.6
Total expenditures	597.9	598.9	609.5
Difference	16.3	10.3	−10.9
1978–2052 (as pecentage of taxable payroll):			
Average tax income	12.16	12.16	12.16
Average expenditures	13.23	13.55	13.96
Difference	−1.07	−1.39	−1.80

[1] The economic assumptions underlying the 3 models of economic growth are shown in the attached table 10 from the 1978 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds. "Economic growth" refers here to increases in the real (i.e., inflation adjusted) gross national product in the near future, and gains in real wage levels in the long-range future. Inflation is measured by the Consumer Price Index. The low inflation/fast growth, intermediate inflation/intermediate growth, and high inflation/slow growth patterns correspond to the alternative I, II, and III sets of assumptions in the 1978 trustees reports, respectively.

[Excerpts from the 1978 Annual Reports of the Boards of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund]

* * * The rate of growth in real GNP is a measure of growth in the real level of economic activity, reflecting changes in employment levels, average earnings, etc., all of which affect total earnings taxable under the OASDI program.

The values assumed for the economic and demographic factors after the early years are intended to represent the average experience for those years and are not intended to be predictions of year-by-year values, which are expected to vary because of possible future economic cycles.

TABLE 10.—VALUES OF SELECTED ECONOMIC AND DEMOGRAPHIC FACTORS ASSUMED IN ALTERNATIVES I, II, AND III, BY CALENDAR YEAR

Calendar year	Percentage increase in average annual— Real GNP[1]	Wages in covered employment	Consumer Price Index (CPI)	Real wage differential[2]	Average annual unemployment rate	Total fertility rate[3]
Alternative I:						
1977	4.9	7.7	6.5	1.2	7.0	1,789.5
1978	4.7	7.2	6.1	1.1	6.3	1,764.6
1979	5.1	8.4	6.0	2.4	5.9	1,793.8
1980	5.5	8.1	5.5	2.6	5.3	1,822.9
1981	5.5	7.6	5.0	2.6	4.9	1,852.1
1982	5.1	7.4	4.5	2.9	4.3	1,881.2
1983	4.0	7.1	4.0	3.1	4.0	1,910.4
1984	2.7	6.0	3.5	2.5	4.2	1,940.0
1985	3.0	5.5	3.0	2.5	4.5	1,970.5
1986	3.3	5.5	3.0	2.5	4.5	2,002.5
1987	3.3	5.5	3.0	2.5	4.5	2,036.0
1988	3.3	5.5	3.0	2.5	4.5	2,070.2
1989	(1)	5.5	3.0	2.5	4.5	2,104.3
1990	(1)	5.5	3.0	2.5	4.5	2,137.3
1991	(1)	5.5	3.0	2.5	4.5	2,168.3
1992	(1)	5.4	3.0	2.4	4.5	2,196.3
1993	(1)	5.4	3.0	2.4	4.5	2,220.7
1994	(1)	5.4	3.0	2.4	4.5	2,241.1
1995	(1)	5.4	3.0	2.4	4.5	2,257.6
1996	(1)	5.3	3.0	2.3	4.5	2,270.6
1997	(1)	5.3	3.0	2.3	4.5	2,280.5
1998	(1)	5.3	3.0	2.3	4.5	2,287.8
1999	(1)	5.3	3.0	2.3	4.5	2,292.8
2000	(1)	5.25	3.0	2.25	4.5	2,296.1
2001	(1)	5.25	3.0	2.25	4.5	2,298.0
2002	(1)	5.25	3.0	2.25	4.5	2,299.1
2003	(1)	5.25	3.0	2.25	4.5	2,299.6
2004	(1)	5.25	3.0	2.25	4.5	2,299.9
2005 and later	(1)	5.25	3.0	2.25	4.5	2,300.0

See footnotes at end of table.

TABLE 10.—VALUES OF SELECTED ECONOMIC AND DEMOGRAPHIC FACTORS ASSUMED IN ALTERNATIVES I, II, AND III, BY CALENDAR YEAR—Continued

Calendar year	Percentage increase in average annual— Real GNP [1]	Wages in covered employment	Consumer Price Index (CPI)	Real wage differential [2]	Average annual unemployment rate	Total fertility rate [3]
Alternative II: [4]						
1977	4.9	7.7	6.5	1.2	7.0	1,789.5
1978	4.7	7.2	6.1	1.1	6.3	1,758.4
1979	4.8	7.9	6.1	1.8	5.9	1,775.1
1980	4.8	7.9	5.7	2.2	6.4	1,791.7
1981	5.1	7.4	5.2	2.2	5.0	1,808.4
1982	4.1	7.4	5.0	2.4	4.8	1,825.1
1983	3.5	7.1	4.7	2.4	4.6	1,841.8
1984	2.5	6.1	4.1	2.0	4.8	1,858.
1985	3.0	6.0	4.0	2.0	5.0	1,876.9
1986	3.0	6.0	4.0	2.0	5.0	1,896.7
1987	3.1	6.0	4.0	2.0	5.0	1,918.2
1988	3.0	6.0	4.0	2.0	5.0	1,941.1
1989	(1)	6.0	4.0	2.0	5.0	1,964.5
1990	(1)	6.0	4.0	2.0	5.0	1,987.8
1991	(1)	6.0	4.0	2.0	5.0	2,009.9
1992	(1)	5.9	4.0	1.9	5.0	2,030.0
1993	(1)	5.9	4.0	1.9	5.0	2,047.5
1994	(1)	5.9	4.0	1.9	5.0	2,062.0
1995	(1)	5.9	4.0	1.9	5.0	2,073.7
1996	(1)	5.8	4.0	1.8	5.0	2,082.7
1997	(1)	5.8	4.0	1.8	5.0	2,089.5
1998	(1)	5.8	4.0	1.8	5.0	2,094.3
1999	(1)	5.8	4.0	1.8	5.0	2,097.4
2000	(1)	5.75	4.0	1.75	5.0	2,099.2
2001	(1)	5.75	4.0	1.75	5.0	2,100.1
2002	(1)	5.75	4.0	1.75	5.0	2,100.3
2003	(1)	5.75	4.0	1.75	5.0	2,100.3
2004	(1)	5.75	4.0	1.75	5.0	2,100.1
2005 and later	(1)	5.75	4.0	1.75	5.0	2,100.0
Alternative III:						
1977	4.9	7.7	6.5	1.2	7.0	1,789.5
1978	4.7	7.2	6.1	1.1	6.3	1,745.9
1979	4.1	8.2	6.3	1.4	6.0	1,737.6
1980	.8	7.4	7.1	.3	7.0	1,729.2
1981	4.0	8.0	7.0	1.0	7.0	1,720.9
1982	4.0	8.3	6.5	1.8	6.6	1,712.6
1983	4.0	8.0	6.0	2.0	6.2	1,704.3
1984	4.0	7.0	5.5	1.5	5.8	1,696.4
1985	3.5	6.5	5.0	1.5	5.5	1,689.6
1986	2.8	6.5	5.0	1.5	5.5	1,684.9
1987	2.8	6.5	5.0	1.5	5.5	1,682.6
1988	2.7	6.5	5.0	1.5	5.5	1,682.7
1989	(1)	6.5	5.0	1.5	5.5	1,681.9
1990	(1)	6.5	5.0	1.5	5.5	1,688.6
1991	(1)	6.5	5.0	1.5	5.5	1,693.0
1992	(1)	6.4	5.0	1.4	5.5	1,697.3
1993	(1)	6.4	5.0	1.4	5.5	1,701.0
1994	(1)	6.4	5.0	1.4	5.5	1,703.9
1995	(1)	6.4	5.0	1.4	5.5	1,705.8
1996	(1)	6.3	5.0	1.3	5.5	1,706.9
1997	(1)	6.3	5.0	1.3	5.5	1,707.3
1998	(1)	6.3	5.0	1.3	5.5	1,707.1
1999	(1)	6.3	5.0	1.3	5.5	1,706.5
2000	(1)	6.25	5.0	1.25	5.5	1,705.4
2001	(1)	6.25	5.0	1.25	5.5	1,704.1
2002	(1)	6.25	5.0	1.25	5.5	1,702.8
2003	(1)	6.25	5.0	1.25	5.5	1,701.6
2004	(1)	6.25	5.0	1.25	5.5	1,700.5
2005 and later	(1)	6.25	5.0	1.25	5.5	1,700.0

[1] Based on GNP expressed in 1972 dollars (i.e., total output of goods and services adjusted for inflation since 1972). Not projected beyond 1988.
[2] Defined to be the difference between percentage increases in average annual wages and average annual CPI.
[3] Average number of children born per 1,000 women in their lifetime.
[4] As explained in the accompanying text, the economic assumptions for the years 1978–81 are similar to the assumptions underlying the President's 1979 budget.

The real level of economic activity is assumed to grow at differing rates under the three sets of assumptions. The economic recovery from the recession that began in 1974 is assumed to continue at a moderate rate under the intermediate assumptions (alternative II) and at a somewhat faster rate under the optimistic assumptions (alternative I). Under the pessimistic assumptions (alternative III), a pronounced slow-down in economic growth is assumed to begin in 1979 and to continue through 1980, accompanied by increased rates of inflation, with higher rates of economic growth resuming in 1981.

After 1979, under the intermediate assumptions, the assumed annual rate of growth in the real GNP rises to 5.1 percent in 1981 and then declines to about 3 percent by 1985. At the same time, the unemployment rate is assumed to decline to less than 5 percent in 1982 before rising by 1985 to the ultimate assumed rate of 5 percent. It is further assumed that the annual rate of increase in average wages in covered employment will fall to about 6 percent by 1984, remaining at 6 percent through 1991, and declining gradually thereafter until it reaches an ultimate level of 5¾ percent in the year 2000. The rate of increase in the average annual CPI is assumed to decline to 4 percent by 1985, under the intermediate assumptions.

Also under alternative II, the total fertility rate is projected to rise slowly from its assumed 1978 level to its assumed ultimate level of 2.1 children per woman around the year 2005. The effect of future fertility experience on short-range and medium-range projections in based on estimates of workloads and approved budgets for intermediaries and the Health Care Financing Administration. In the long range, administrative cost increases are based on assumed increases in workloads, primarily due to growth and aging of the population, and on assumed unit cost increases of 2 percent less than the increases in average wages shown in table A1.

FINANCING

In order to analyze costs and to evaluate the financing of a program supported by payroll taxes, program costs must be compared on a year-by-year basis with the taxable payroll which provides the source of income for these costs. Since the vast majority of total program costs rclates to insured beneficiaries and since general revenue appropriations and premium payments are available to support the uninsured segments, the remainder of this report will focus on the financing for insured beneficiaries.

Taxable payroll

Taxable payroll increases can be separated into a part due to increases in covered wages and a part due to increases in the number of covered workers. The taxable payroll projection used in this report is based on assumptions used in projecting experience under the OASDI program. Increases in taxable payroll assumed for this report are shown in table A2.

Relationship between program costs and taxable payroll

The single most meaningful measure of program cost increases, with reference to the financing of the system, is the relationship between program cost increases and taxable payroll increases. If the rates of increase in both series are the same, a level tax rate over time will be adequate to support the program. However, to the extent that program costs increase more rapidly than taxable payroll, a schedule of increasing tax rates will be required to finance the system over time. Table A2 shows the resulting increases in program costs relative to taxable payroll over the 25-year projection period. These relative increases fluctuate somewhat during the 1978–80 period, due to the ad hoc increases in the maximum earnings subject to taxes. After 1980, the relative increases reduce gradually to an ultimate level of approximately 3 percent per year.

The result of these increases over the duration of the projection period is a continued increase in the year-by-year ratios of program expenditures to taxable payroll, as shown in table A3.

SENSITIVITY TESTING OF COSTS UNDER ALTERNATIVE ASSUMPTIONS

Over the past 20 years, aggregate inpatient hospital costs for all patients have increased substantially faster than increases in average wages and prices in the general economy. As indicated in table A1, the 10-year period preceding Medicare was characterized by an average 10.4 percent increase in hospital costs, nearly 7½ percent higher than the increase attributable to general wage and price increases. The 1966–71 period experienced substantially higher increases in total hospital costs, averaging 16 percent per year. Of this increase, general economic factors accounted for only 5½ percent; the remaining 10½ percent reflected increases in the volume of services provided and in unit input intensity. Even during the 1972–74 period of economic stabilization program controls, hospital costs increased at an average rate of about 12½ percent, over 5½ percent higher than the amount attributable to increases in average wages and in the CPI. Experience for the fully decontrolled years 1975–76 shows an average annual increase in hospital costs of nearly 17 percent, of which about 9 percent is in excess of increases in general economic factors. Preliminary indications for 1977 show hospital cost increases remaining about 8½ percent higher than wages and prices in the general economy.

The sustained, high rates of hospital cost increases in the past raise serious

questions concerning future cost increases which might be anticipated. Under conventional economic widsom, the hospital industry would not be expected to sustain indefinitely the same rate of growth, relative to the general economy, experienced during the last 20 years. However, the growth pattern has persisted for a long period of time and shows no indication of halting. The most reasonable pattern of cost increase assumptions for the future, then, would fall between the two extremes of (1) an indefinite continuation of the past levels of excess of hospital cost increases over general economic factors and (2) a decline in the near term to hospital cost increase levels approaching those for the economy as a whole.

In view of the uncertainty of future cost trends, projected costs for the hospital insurance program have been prepared under three alternative sets of assumptions. A summary of the assumptions and results is shown in table A3. The set of assumptions labeled "Alternative II" forms the basis for the detailed discussion of hospital cost trends and resulting program costs presented throughout this report. It represents an intermediate set of cost increase assumptions, compared with the lower cost and more optimistic alternative I and the higher cost and less optimistic alternative III. Increases in the economic factors (average wages and CPI) for the three alternatives are consistent with those underlying the OASDI report.

As noted earlier, the single most meaningful measure of hospital insurance program cost increases, reference to the financing of the system, is the relationship between program cost increases and taxable payroll increases. The extent to which program costs increases exceed increases in taxable payroll will determine how steeply tax rates must increase to finance the system over time.

Under alternative II, program costs are projected ultimately to increase approximately 3 percent faster than increases in taxable payroll. Program expenditures, which are currently about 2 percent of taxable payroll, increase to a level in excess of 5 percent by the year 2000 under alternative II assumptions. Hence, if all of the projection assumptions are realized over time, hospital insurance tax rates by the end of the 25-year period will have to be substantially higher than those provided in the present financing schedule (2.9 percent of taxable payroll, for 1986 and later).

Alternatives I and III contain assumptions which result in program costs increasing, relative to taxable payroll increases, approximately 2 percent less and 2 percent more rapidly, respectively, than the results under alternative II. Under alternative I, programed costs ultimately increase 1 percent more rapidly than increases in taxable payroll. By the year 2000, program expendutures under this alternative would be slightly greater than 3½ percent of taxable payroll. Hence, hospital insurance tax rates required by the end of the valuation period would be greater than those currently scheduled, even under the optimistic alternative I assumptions. Under alternative III, program costs ultimately increase nearly 5 percent more rapidly than increases in taxable payroll. The result of this differential is a level of program expenditures in the year 2000 which is slightly over 7 percent of taxable payroll, more than 4 percent higher than the 2.9 percent tax rate currently scheduled.

TABLE A2.—RELATIONSHIP BETWEEN INCREASES IN TOTAL HI PROGRAM COSTS AND INCREASES IN TAXABLE PAYROLL [1]

(In percent)

Calendar year	HI benefit costs				HI administrative costs [3]	Total HI program costs [3]	HI taxable payroll	Ratio of costs to payroll [4]
	inpatient hospital [2]	Skilled nursing facility [2]	Home health agency [2]	Weighted average				
1978	18.2	15.8	30.5	18.4	9.6	18.2	11.0	6.5
1979	17.6	16.0	26.0	17.7	10.3	17.6	16.3	1.1
1980	17.1	15.1	19.4	17.1	9.9	17.0	11.9	4.6
1985	13.6	10.2	10.8	13.5	7.8	13.4	7.2	5.8
1990	11.7	8.9	8.9	11.6	7.2	11.5	6.5	4.7
1995	10.8	8.4	8.4	10.7	6.7	10.7	6.4	4.0
2000	9.8	7.9	7.9	9.8	6.0	9.7	6.5	3.0

[1] Percent increase n year indicated over previous year.

[2] This column differs slightly from the last column of table A1, since table A1 includes all persons eligible for HI protection while this table excludes noninsured persons.

[3] Costs attributable to insured beneficiaries only. Benefits and administrative costs for noninsured persons are financed through general revenue transfers and premium payments rather than through payroll taxes.

[4] Percent increases in the ratio of programs expenditures to taxable payroll. This is equivalent to the differential between the increase in program costs and the increase in taxable payroll.

Note: Taxable payroll is adjusted to take into account the lower contribution rates on self-employment income, on tips, and on multiple-employer "excess wages" as compared with the combined employer-employee rate.

TABLE A3.—SUMMARY OF ALTERNATIVE COST PROJECTIONS FOR THE HOSPITAL INSURANCE PROGRAM

[In percent]

Calendar year	Increases in aggregate inpatient hospital costs [1]				Changes in the relationship between costs and payroll [2]			Expenditures as a percent of taxable payroll
	Average wages	CPI	Volume and Intensity	Total	Program costs [3]	Taxable payroll	Ratio of costs to payroll	
Alternative I:								
1978	7.2	6.1	8.7	15.7	18.2	11.0	6.5	2.06
1979	8.4	6.0	7.3	14.8	17.2	16.8	0.4	2.07
1980	8.1	5.5	6.3	13.8	16.1	12.2	3.5	2.14
1985	5.5	3.0	5.4	9.6	11.3	6.6	4.4	2.62
1990	5.5	3.0	3.9	8.0	9.1	6.1	2.9	3.10
1995	5.4	3.0	3.4	7.4	8.0	5.8	2.1	3.49
2000	5.2	3.0	3.1	7.0	7.2	6.1	1.0	3.69
Alternative II:								
1978	7.2	6.1	6.7	15.7	18.2	11.0	6.5	2.06
1979	7.9	6.1	6.3	15.7	17.6	16.3	1.1	2.09
1980	7.9	5.7	6.2	15.3	17.0	11.9	4.6	2.18
1985	6.0	4.0	6.9	12.0	13.4	7.2	5.8	2.86
1990	6.0	4.0	5.3	10.8	11.5	6.5	4.7	3.65
1995	5.9	4.0	5.3	10.2	10.7	6.4	4.0	4.47
2000	5.8	4.0	4.6	9.4	9.7	6.5	3.0	5.20
Alternative III:								
1978	7.2	6.1	8.7	15.7	18.2	11.0	6.5	2.06
1979	8.2	6.8	8.4	16.3	18.1	16.4	1.4	2.10
1980	7.4	7.1	8.2	15.9	17.6	9.4	7.5	2.26
1985	6.5	5.0	8.4	14.3	15.3	8.6	6.1	3.04
1990	6.5	5.0	7.7	13.5	13.8	7.1	6.3	4.22
1995	6.4	5.0	7.7	13.3	13.1	7.0	5.7	5.58
2000	6.2	5.0	6.9	12.5	12.0	6.9	4.8	7.08

[1] Percent increase in the year indicated over the previous year. Includes hospital costs for all patients.
[2] Percent increase in the year indicated over the previous year.
[3] Includes cost attributable to insured beneficiaries only.

Note: Taxable payroll is adjusted to take into account the lower contribution rates on self-employment income, on tips, and on multiple-employer "excess wages" as compared with the combined employer-employee rate.

MONTHLY ADEQUATE ACTUARIAL RATE FOR DISABLED ENROLLEES

The monthly adequate actuarial rate for disabled enrollees applies to persons eligible to enroll because they have been entitled to disability insurance benefits for not less than 24 consecutive months or because they are suffering from end stage renal disease. Projections for disabled enrollees (other than those suffering from end stage renal disease) are prepared in a fashion exactly parallel to projections for the aged, using the same actuarial assumptions. Costs for the end stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for the year ending June 30, 1979, is $24.34. The monthly adequate actuarial rate of $25.00 provides an adjustment for interest earnings and a small margin for contingencies.

TABLE 4.—DERIVATION OF PROMULGATED MONTHLY RATE FOR DISABLED ENROLLEES, YEARS ENDING JUNE 30 OF 1976–79

	1976	1977	1978	1979
Total benefits	$13.85	$16.82	$19.78	$22.60
Administrative expenses	1.57	1.45	1.66	1.74
Incurred expenditures	15.42	18.27	21.44	24.34
Value of interest on fund	−.31	−.41	−.53	−.68
Margin for contingencies and to amortize unfunded liabilities	3.39	1.14	4.09	1.34
Promulgated monthly rate	18.50	19.00	25.00	25.00

SENSITIVITY TESTING

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy under alternate assumptions of the rates promulgated here. The most unpredictable factors which contribute significantly to future costs are outpatient hospital costs, physician

utilization (measured indirectly and reflecting the use of more visits per capita, the use of more expensive services, and other factors not explained by simple price per service increases), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. All assumptions not shown in Table 5 are the same as in Table 3.

Table 5 indicates that, under the assumptions used in preparing this report, the promulgated monthly rates will result in an excess of assets over liabilities of $1,212 million by the end of June 1979. This amounts to 12 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic produce a deficit of $68 million by the end of June 1979, although the balance in the trust fund remains positive allowing the program to continue paying claims as presented. Under fairly optimistic assumptions, the promulgated monthly rates will result in an excess of assets over liabilities of $2,169 million, which amounts to 25 percent of the estimated total incurred expenditures for the following year.

TABLE 5.—PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS YEARS ENDING JUNE 30 OF 1978–79

	This projection		Low assumption		High assumption	
	1978	1979	1978	1979	1978	1979
Projection factors (in percent):						
Physicians' fees [1]	1.8	7.9	7.3	6.4	10.3	9.4
Utilization of physicians' services [2]	2.0	3.0	.5	1.0	4.0	50.0
Outpatient hospital services per capita	25.0	25.0	15.0	15.0	40.0	40.0
Home health agency services per capita	25.0	25.0	15.0	15.0	40.0	40.0
Actuarial status (in millions):						
Assets	$3,320	$3,939	$3,522	$4,711	$3,059	$2,917
Liabilities	2,314	2,727	2,242	2,542	2,415	2,985
Assets less liabilities	1,006	1,212	1,280	2,169	644	−68
Ratio of assets less liabilities to expenditures (in percent) [3]	11	11	15	23	6	−1

[1] As recognized for payment under the program.
[2] Increase in the number of services received per capita and greater relative use of more expensive services.
[3] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

STANDARD PREMIUM RATE

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

(*a*) The adequate actuarial rate for enrollees age 65 and older; or

(*b*) The current standard monthly premium, increased by the same percentage that the level of old-age survivors, and disability insurance (OASDI) benefits has been increased since the May preceding the promulgation (and rounded to the nearer dime).

The standard monthly premium rate for the 12-month period ending with June 30, 1978, is $7.70. The OASDI benefit table was increased 5.9 percent in June 1977. The $7.70 rate increased by 5.9 percent, and rounded to the nearer ten cent multiple, is $8.20. Since this is less than the adequate actuarial rate, the standard premium rate is $8.20 for the twelve months ended with June 1979.

Federal SSI cost estimates for fiscal years 1978–82 using Older Americans Act assumptions on inflation and economic growth: Low inflation, fast growth, $28.2 billion; intermediate inflation, intermediate growth, $28.9 billion; high inflation, slow growth, $29.4 billion.

Senator CHURCH. Thank you, Mr. Secretary.

Secretary CALIFANO. Thank you, Mr. Chairman.

Senator PERCY. Mr. Chairman, I ask that my prepared statement be incorporated in the hearing record.

Senator CHURCH. The prepared statement of Senator Percy will be entered into the record at this time.

[The prepared statement of Senator Percy follows:]

PREPARED STATEMENT OF SENATOR CHARLES H. PERCY

"For the first time in history, the ordinary worker now has a life after work," states Andrey Freedman, a labor economist. But all too often this anxiously awaited time of relaxation is plagued with anxiety stemming from financial worry. After spending many years productively employed, a retired person may become bored and frustrated. In short, many things may prevent the retirement years from being golden.

I read an article in this morning's Washington Post which cited a Harvard Medical School study as finding that 10 to 20 percent of elderly persons which are classified as senile are not senile at all. The study found that "One of the largest single causes of false senility . . . is drug intoxication: that is, reactions to medications." This study points out a crucial aspect of the issue at question in this hearing: What happens to the elderly after retirement? More often than not, they are discarded and forgotten. They are shut off in nursing homes, where often they are kept in a state of constant sedation. We construct a world for them, a world separate from the rest of society, a world in which they fit our concept of what a elderly person should be and how he or she should act. How much of the senility which we perceive in the elderly is either nonexistent or is caused by anxieties, ofars, and lack of a sense of accomplishment brought on by retirement? This is ene of the issues which I hope we address in these hearings.

Sometimes the older worker is in his or her 40's or 50's and, having served 20 or 30 years with one company, becomes eligible for private pension retirement benefits. That worker may want to retire and live on a pension, or may want to switch careers and needs more education, or may want to continue working but only part time. Other older workers, retiring at age 62, 65, or later hope to live on social security, private pension, savings, or some combination of these. But inflation often takes its toll, and retirement funds that provided for plenty 5 or 10 years ago demand strict budgeting today. For these people, returning to work or continuing to work part time becomes necessary.

It may become a national necessity for people to work longer as we approach the turn of the century. At that time the "baby boom" will become the "senior boom," greatly increasing the number of social security beneficiaries while, due to declining birth rates, fewer workers will be available to support them. This will put on enormous strain on the social security system. Private pension funds, which will also suffer from more beneficiaries per worker, will be in tough financial straits. There have been predictions that there will be a need to encourage workers to stay in the labor force and to reverse the current trend of early retirement. Older workers often have the experience and desire to continue working. In most places of employment they have good attendance records. But they may need or desire a more flexible work schedule. Imaginative plans should be developed and implemented which will answer those needs.

We are holding these hearings to get an early start on developing ways of providing choices to the older person that will be beneficial to both him or her and to the economy. We must plan carefully and creatively for the future, rather than wait for the problem to directly confront and overwhelm us. We must consider the many innovative ways to make jobs retirement and education fit people's lifestyles.

Senator CHURCH. Our next witness is Harold L. Sheppard, director, Center on Work and Aging of the American Institutes for Research.

Mr. Sheppard, we are happy to have you back again with us. Mr. Sheppard was a former researcher for this committee and has considerable knowledge about the role of the older worker in our society. We are pleased to welcome you and hear your testimony.

STATEMENT OF HAROLD L. SHEPPARD, PH. D., WASHINGTON, D.C., DIRECTOR, CENTER ON WORK AND AGING, AMERICAN INSTITUTES FOR RESEARCH

Mr. SHEPPARD. I will try to talk over the din of the audience eagerly waiting to hear my comments.

I want to thank the committee and the Senator for this invitation to participate in this type of hearing. It is also an example of why it

was so necessary, in my opinion, to continue this Senate Special Committee on Aging, because it is in the position to deal with broader issues that transcend the jurisdiction of the separate committees.

Most of my remarks today are governed by the tone of the Secretary's testimony here today and his remarks delivered last April to the American Academy of Political Social Science, concerning what seems to be a mounting burden imposed by the increased population of older Americans, especially in the near and long-term future. I want to concentrate on the long-term future and not today's burning issues.

My own view of the issue is, if there is such a burden—and I think we really mean a rising cost level and not necessarily one that we are unwilling to assume—we had better examine the question, what has brought that burden into being, or will potentially bring it into being, and whether those factors need to be inevitable or can be prevented or mitigated or whether they are absolute.

I want to zero in mostly on three of those factors—biomedical, demographic, and economic. That means, therefore, that any new policies designed to resolve that problem has to cut across or transcend otherwise rigid and separate spheres of government and the rest of society. I think many of the things we are talking about today involve programs and policies of not only HEW, but Labor and Commerce.

One of the underlying influences has to do with the policies of government and private institutions concerning the use in the labor force of selected older age groups. I am not going to indulge here in any excruciating detail on the labor force participation trends for people 55 and over.

The New Biomedical Dimension

Another influence is generally labeled as demographic, and we have heard a lot about that today. But it also includes, in my opinion, a new biomedical dimension that I think will be lost sight of if we treat it only within the framework of a conventional demographic point of view. I am referring here, specifically, to the recent sharp drop in mortality rates among older adult Americans. I do not think the implications of this new development have sunken in yet enough in the minds of policymakers and administrators.

The third influence, or factor, is a set of economic variables and developments, some of which are obvious in their relationship to the topic of these hearings, but some factors are not so obvious. The list here includes such matters as inflation, productivity, general employment conditions, and the energy/resource crunch. I am not going to try and elaborate on each one of these separately but I want to try and show how they interrelate with each other, as we try to do in the book that Dr. Sara Rix and I wrote last year, "The Graying of Working America: The Coming Crisis of Retirement Age Policy."

It all comes down to the question: Are we going to have to take another look at the early retirement age trend as the result of the presumed rising costs of supporting a rising very old population? That means it is not enough to use the conventional demographic approach of measuring the so-called dependency ratio in discussing this issue. For one thing, that conventional approach uses an arbitrary and imprecise definition of "working age" population. You will see in a lot of the research literature that it assumes all persons 20 or 21

to 59 years of age, or 16 to 64 are actually working as a support base for the nonworking old and young; second, that they are all working the same amount of hours per year; in other words, no full-time equivalence is taken into consideration when the conventional dependency ratio is used.

To me, the bottom line point is that simply taking a dependency ratio tells us nothing about costs which, after all, is what the fuss is all about. It is quite possible to find, for example, that a dependency ratio goes up over time for nonworking persons per 100 workers, but the costs nevertheless conceivably go down. The dependency ratio might remain the same over the next four or five decades, but the costs could go up. In other words, a simple arithmetic approach tells nothing about costs.

The new biomedical development that I referred to earlier means that we are going to have a far greater number of people, say, 80 and over—greater than we had expected. Since 1969 or 1970, the mortality rates of older age groups have decreased sharply and at a rate far greater than we had previously expected. It is greater, by the way, than for the general mortality decline.

The result is that by the year 2000, even if there is no further progress in the death rates, we can expect 1,725,000 more Americans 80 and older than we had expected for that year as recently as 1971. In other words, we look at the 1971 reports and we find an estimate that is 1,725,000 below what the new report shows, the latest one being 1977. Instead of 6.3 million people 80 and over, we can probablv expect about 8 million.

Unanticipated Elders

The main point is that 1.7 million of the 3 million additional total number of Americans 65 and over, that extra number will consist of Americans 80 and older. Therefore, in any exercise by HEW and other departments that deal with national accounts projections, the differential costs of supporting specific age components of the so-called 65-plus population has to be taken into account. I think it is very misleading, for example, if we take the average cost of supporting each person 65 and over as of 1975.

For example, Secretary Califano refers to medical cost data of $400 on the average per person 65 and over. It would be a mistake, looking towards the future, so simply multiply that figure times the total number of people 65 and over in order to try and estimate support costs for that year 2000, because the age composition of the 65-plus population is changing somewhat radically. I am assuming here that the total support cost for each person 80 and over is going to be much greater than, say, for those people 65 to 69.

Let me shift a little bit now to some other points. We have yet to learn what the total real impact of recent legislation regarding the shift in the allowable mandatory retirement age of 65 to 70 would be, or what the real impact of the increase in the retirement incentive from 1 to 3 percent will be on the upward age side of this policy issue.

I won't have time to present it here, but there is a supplementary submittal on some research findings that we have been carrying out at the American Institutes for Research with an AOA grant in two cities of 1,000 people. We asked them one question: "To what extent

will this new raise in the incentive to stay in the labor force make them consider changing the age at which they retire?" The results were much greater than I expected. About 35 percent said it would make them consider changing their retirement age beyond 65 or were not sure. I don't have time for the details right now, but it is in the total testimony submitted if I may submit that as part of the testimony.

Senator CHURCH. Yes; it will be entered into the record.[1]

Mr. SHEPPARD. I think the most important issue in all this is the early retirement issue. When I say important, I refer partly to the relationship of early retirement to the issue of supporting a disproportionately growing population of the very old, the truly dependent part of the population—disproportionately growing because of demographic and biomedical factors. The role of biomedical influences in that growth rate of the very old is a very specific example of the results of our Nation's progress in promoting the health conditions of Americans long before they reach a very old age. If we continue to pursue the goal of improving the health conditions of preelderly Americans—and no one, I hope, can challenge that goal—we must be prepared to cope with the full consequence of successful outcomes, and one of those outcomes is an increase in life expectancy.

That might mean greater support costs for each of the very old people who survived. If that is the case, then we have to consider now and in the short-term future, not to mention the long run, the necessity and the desirability of at least stabilizing or at best raising the age at which people retire in order to sustain or increase the total working population needed to support the costs of the truly aged population.

Again, I want to mention that in the supplementary testimony, referring to our current research, we asked a question that relates to the alternative suggestion for solving some of the social security fund problems, reducing the rate of increase in the number of people retiring.

What I am dealing with is an issue for the Congress and the executive branch, and I find one of the best ways of setting forth that issue is to quote from a 1976 report by the United Kingdom Department of Health and Social Security. They deal with the issue of early retirement, especially as one way of "solving" the unemployment problem in England. They say the following:

> The question facing those who advocate a lower pension age is what priority the government, representing the working population as well as the retired, should give to this cost [of providing an adequate income for men between 60 and 65].
>
> COSTS OF EARLY RETIREMENT
>
> In other words, early retirement costs the general economy something, and the benefits, such as the alleged increase in job opportunities for the younger population, might not exceed those costs. Indeed, the real resource costs involved must be reckoned with, including the reduction of an economy's potential output due to early retirement patterns. It is even possible that the standard of living of the remaining working population would have to be lower. After all, the increased cost of early retirement has to be paid from a smaller national product.

[1] See p. 60.

To be sure, we would be able to support a larger population of nonworking persons of all ages if we were to experience some miracle in productivity increases, but so far there is little prospect for that. Furthermore, the increased costs due to the required adjustments to a growing energy/resource squeeze only aggravate the productivity issue.

An upward change in average retirement age might be in the offing—or at least a slowdown in the early retirement rate might be emerging—as a result of the high and continuing inflation rate. We have already heard about this in the Secretary's testimony. I don't think we have any clear-cut empirical evidence on this, but I think it is plausible to expect that workers reaching 60 or so today might reason that they themselves would benefit from remaining in the paid labor force longer than previously planned.

This also gets reinforced to the degree that such individuals learn about the increase in life expectancy. It means the earlier they retire, the more years they are going to have to face in retirement, and will their income take care of it all. It may also be reinforced because of the apparent health status level of future generations of the young old—a level better than that of current and past generations the same size.

We already know that within the context of options for early retirement pensions, health status of workers is a powerful predictor of actual early retirement. We know that through the Department of Labor's longitudinal studies. We might expect, therefore, that as health status improves, and given the many other factors that I have mentioned, the early retirement trend might be attenuated.

I have not dealt here with the argument that rising costs for supporting older Americans with no change in retirement age can be offset by such developments as the rising labor force participation rate of women, or by the notion that since we are having a smaller youth population, the reduced cost in supporting the young will offset the cost of the older population. Suffice it to say, just in connection with the young-offset argument that the fertility rate would have to decline far more radically than appears likely in order to constitute a fully 1-to-1 offset to the rising older population; and second, even if that were to take place, we still have a question of how much difference that would mean as far as costs, not a body count, are concerned.

I do want to comment at greater length, though, on one of the major themes expressed by the Secretary in his statement on the importance of the family. But I want to make my comments within the framework of demographic and biomedical developments that I have discussed so far. The fact that the very old are becoming an increasingly greater proportion of the general older population is very relevant in this context. I, along with the Secretary, would reject the notion that the family is disintegrating in America, or that families no longer care for their elderly members.

Pressures on Families

But this may not necessarily mean that, over the next two decades, the adult children of especially the very old can be expected to provide direct services to their elderly relatives or to pay directly for those services. I want to present some figures which can only serve as quantitative clues as to the human side of the emerging problems. They

also point up, perhaps, the need to retain high proportions of the 60- to 64-year-old children of these very old persons in the labor force.

Back in 1960 when I was still with this committee, I started to become interested for the first time in how large a percentage of Americans 60 to 64 had parents still alive, as one indication of the responsibilities of those on the verge of retirement or already in their early retirement years. The most convenient way of estimating that percentage is to take the total population 80 and over and divide that by the size of the population 60 to 64 years of age, as a rough approximation of the number of very old parents and relatives that the young old have.

In 1960, according to such an approach, there were 34 very old persons for every 100 persons 60 to 64. Ten years later, this ratio had increased to 46. By 1980, it will probably be 52. By the end of the next decade, by 1990, we can expect to find 63 very old persons for every 100 aged 60 to 64, and by the end of the century—assuming no further "progress" in biomedical activities—the proportion will rise to 79.

Keep in mind that in 1970 the proportion was only 46. Compare that to the estimate for the year 2000, 79.

These kinds of statistics ought to provoke a lot of questions, and especially some policy dilemmas. For example, can we really expect an increasing proportion of Americans in their early sixties to take care of their elderly relatives, especially if they themselves are retired? They might have more time to provide such care, but what about the expenses involved, particularly in relation to retirement income? If we do witness an increase or stabilization of the labor force participation rate of persons 60 to 64, will they, because of the time factor, be able directly to provide those services?

Finally, assuming that much of the support costs for this population of persons 80 and older—nearly 8 million by the year 2000—will be borne by the total working population, might this not constitute a motive on the part of the under-60 working population to keep older workers in the labor force longer than is currently the case, as one way of distributing over a wide population and sharing the collective expenditures?

My concern over the past several years is that as a nation we can assure our very old fellow citizens—those about 80 or older—of a quality of retirement life that will not put them or the Nation to shame. But that goal requires a strong economic base, which implies a large enough working population. I am suggesting here that we need now to consider the need to include in that working population substantial proportions of those age groups that are now defined as retirable.

Finally, if all the things I have been talking about here do lead to a serious reevaluation of current retirement age policy—especially of early retirement trends—we will need, furthermore, to do more in the way of providing effective opportunities for middle-aged and older workers to learn new skills and to be updated in their current ones. So I am hoping, as a result, that both the Department of HEW and the Department of Labor, along with Congress and the private sector, which we have not talked about much here today, that all of these take the appropriate measures to develop programs for medicare development.

I think I better stop here, Mr. Chairman. I apologize for being so long.

[The supplemental statement of Mr. Sheppard follows:]

SUPPLEMENTAL STATEMENT OF HAROLD L. SHEPPARD

I want to submit to the committee some preliminary findings from the March 1978 phase of an ongoing longitudinal study of older workers by the Center on Work and Aging of AIR, for the Administration on Aging. The study consists of periodic interviews with nearly 1,000 workers or recent workers 40 to 69 years old, in San Diego and Denver.

Some of the questions asked pertain to the major topics for these hearings—especially on retirement age, and the future of the social security system, as well as on the willingness of the public to accept the repsonsibility of supporting an elderly population.

We do not claim that the two samples combined are strictly representative of all workers in this age group, let alone representative of all Americans. But we nevertheless think that the findings are worthy of attention.

First, after informing the respondents that people who retire after 65 can soon increase their yearly social security benefits by 3 percent for each year they continue to work after 65, we asked them if that percentage would be enough for them to consider postponing their own retirement after 65. About one-fourth replied that it would be enough. Another 12 percent could not make up their minds.

Second, nearly two-thirds approved of changing the mandatory retirement age from 65 to 70. I should emphasize that the vast majority of the persons in the sample were under the age of 55.

Third, there appears to be some misunderstanding of how retired worker benefits are financed. For example, more than 40 percent have the mistaken notion that the "social security taxes a worker now pays go into a fund to pay his own benefits when he retires."

Fourth, more than three-fourths of the sample believe that the social security system is in trouble.

Finally, we asked additional questions of this large group of men and women who believe the system is in trouble, questions soliciting their approval or disapproval of four different suggested solutions to "the social security problem."

Nearly three-fifths approved of the idea of using the income tax as an additional source of money for social security benefits.

Two-fifths approved of gradually raising the retirement age "to keep the number of retired people from rising so fast," a proportion higher than we expected.

Two-fifths also approved of raising the social security tax that workers now pay "to keep the fund from going broke."

Only one-fourth approved of keeping social security benefits for people already retired from rising so fast.

More than one-half approved of two or more of these possible solutions. This group was then asked which solution they approved of most of all. The two most favored solutions turned out to be the use of income taxes or general revenues (33 percent); and the gradual raising of the retirement age (28 percent).

There are some very tentative conclusions one might be tempted to draw from these findings. One conclusion might be that there is a general rejection of the notion that workers already retired should be penalized, as far as benefits are concerned, in any effort to solve the problem of financing social security.

At least in the age group covered in our survey, this suggests little in the way of an alleged inter-generational conflict.

The notion of gradually raising retirement age to keep down the rate of increase in the retired population—while rejected by 56 percent—nevertheless had a sizeable minority—41 percent—in favor of this alternative. The further fact that nearly two-thirds of the total sample approve of raising the mandatory retirement age to 70 may be a confirmation of a range of support for this suggestion greater than many would have otherwise expected.

I stress these last few points primarily because I believe we are moving more and more into an open public policy discussion about (1) the degree to which the so-called younger working population—especially those under 60—should be expected to support a growing population of older persons no longer in the work force and who, at the same time, are experiencing an unanticipated increase in life expectancy; and about (2) the degree to which our economy and the government can actually afford the costs of our current early reitrement trend; and also about (3) the degree to which older persons themselves—especially those 60 to

69—may find it financially necessary and desirable to remain in the labor force because of such factors as the high inflation rate, and an increased life expectancy.

Senator CHURCH. Thank you very much, Dr. Sheppard, for your testimony.

The fact that there has been this trend toward earlier retirement is or may be due to the kind of society in which we live—a society in which work itself has so little appeal for many people. In earlier times, many craftsmen took great pride in the work that they did. There was an incentive to continue to work since it was an integral and important part of the life of that person. Today, so much of the work has become simply routine and uninteresting. Maybe that is part of the reason why people look forward to retirement today and would like to stop working as soon as it is feasible for them to do so.

I don't see that changing very much. Do you, in the years ahead, given the nature of our society and the increasing use of the machine, its replacement of the individual worker, the fast production techniques, the large corporation, and the feeling among so many people that they are simply a wheel within a wheel within a wheel?

Mr. SHEPPARD. I certainly have to agree with you that there is a high correlation between the nature of the work a person performs and his or her desire to get the devil out of the work force and retire earlier. I have done some empirical research on that myself, for example, and only found that among male blue-collar workers the lower the quality of their work task—and we had ways of measuring that—even among those under the age of 40, half of them said they would, if they had enough money, retire immediately. I am talking about people under the age of 40, so you are absolutely right in that regard. But I don't know that the directions that we are going to be going in redesigning work and putting some quality into that worklife—I don't want to be too farfetched, but to the degree that all the talk about improving the quality of worklife results in actual change, I would say this would be some offset to the trend we are talking about. I have been dealing primarily in my paper to recognize the economic factors that might bring about change, despite the psychological desire to get out.

THE BABY BOOM'S PROGRESS

Senator CHURCH. I think Secretary Califano spoke of the baby boom that followed the Second World War. In these projections, has that phenomenon been taken into proper account? It seems to me that most of the projections extend into the early part of the next century, where we have this phenomenal enlargement of the elderly population in proportion to the work force, but the projections don't extend beyond that period. I suppose it is accurate in regard to the baby boom of the postwar years as kind of a pig in a poke. As the pig moves through the pipeline, it diminishes very little. But there comes a time when it leaves. I mean it disappears. Aren't these proportions going to change again in favor of the work force to some degree?

I suppose what I am asking is: Are we taking into account in these projection figures the fact that there will be an unusually large proportion of our population in the elderly category for a period of about 20 years, after which the proportions will began to decline again?

Mr. SHEPPARD. Are we talking about 65 years after roughly 1945, which brings us into 2010, when you are going to see, on the demographic side, this big bulge, these babies of all ages, as they go through the process of getting to 65. They are not dying at the rate, say, corresponding cohorts years ago would have died.

Senator CHURCH. True.

Mr. SHEPPARD. At the same time, we don't see yet any rise in the fertility rate, which becomes important in answering your question. Right now, I think we are below what we call the replacement rate.

Senator CHURCH. But when that group reaches that big bulge—at 65—it is going to remain a big bulge for only about 20 or 25 years.

Mr. SHEPPARD. Then it evens itself out.

Senator CHURCH. Because the baby boom has not lasted.

Mr. SHEPPARD. No.

Senator CHURCH. The present birth rate is down rather drastically compared to what it was then.

Mr. SHEPPARD. Then the ratio might even itself out again, assuming no other changes in these other phenomena, including early retirement rates, and so on.

Senator CHURCH. Yes.

Mr. SHEPPARD. I don't want to worry now about the year 2050 or 2070. A lot of my concern has been about the next 20 or 30 years, which brings us into the 21st century.

Senator CHURCH. Yes; I simply wanted to point out that the most extreme figures we have seen may relate to a temporary condition, not a permanent one.

Mr. SHEPPARD. Right.

Senator CHURCH. Secretary Califano's staff person has informed the committee staff that Secretary Califano's statement, on page 19, in which he refers to new retirees age 65 have retirement income at about 47 percent of the retirement income is in error. This 47-percent figure refers only to social security benefits and not other retirement income.

Senator Domenici.

Senator DOMENICI. First, I want to express my appreciation for your testimony. I know we have had a long morning, and maybe we have not done it justice, but I think we are all aware, Dr. Sheppard, of your tremendous endeavor and work in terms of employment policies for the elderly. As part and parcel of analyzing the issues that are before us, we are talking about the social programs and the responsibility of government per se, and that there are no answers without addressing the issue that you are so expert in.

Do you find any attitude change in the expectation of the younger worker regarding retirement, inflation, social security, productivity, those things which might have a real bearing upon a solution to the problems or to compounding them?

Mr. SHEPPARD. Well, there are some studies on the national basis that are going on, for example, about confidence in the social security system. It might be a lot of propaganda, direct or indirect, but there has been a rising level of concern about the future of the social security system, and especially among the young adult population.

Concern About Social Security

Certain segments of the younger population don't want to be paying now for the older people because they don't think they are going to get anything when they retire, which I think is an ominous trend. By the way, we might blame the Social Security Administration—I am going to get in trouble for saying this—for carrying out a very ineffective public education and information program as to the nature of social security, what its benefits are, and so on. They should carry out studies, first of all, to identify what I call the pockets or levels of knowledge or ignorance and the levels of support for, and levels of faith in, the system in order to pinpoint their marketing program, if I can use those terms, and they have not been doing it.

When I made this comment once at a meeting, with some social security people present, they said: "What are you talking about? We publish 35 million pamphlets a year." I am very much concerned about that especially. We can say that social security is involved. I still believe that law is based on consensus, and to the degree that you have that consensus eroded we are in trouble.

Senator Domenici. Yes.

Mr. Sheppard. It is a social contract and it has to be once more built up.

Senator Church. Would you allow a comment there, please, Senator?

Senator Domenici. Yes.

Senator Church. The concern that I find among younger workers who have been reading this criticism of the social security program is quite different from the concern I find among the elderly. The elderly wonder about, indeed, the criticism, and they worry whether or not they will receive their next benefit check or whether the system has gone bankrupt or will soon go bankrupt. I would hope that the action of the Congress last year would tend to mitigate that feeling. But among the younger people, I find the increasing belief that the social security system is some kind of rip-off—a system in which they will not receive anywhere near what they put into it. Many are concerned because they are forced to contribute to a system that they would prefer not to be part of. They would prefer to take their money and buy some kind of an annuity or some other retirement benefit.

I think social security has failed—perhaps all of us have failed—to point out the many hidden benefits within the system that these young people don't take into account—such as the wife and the young children are doing to be cared for if the worker is suddenly killed on the job, and the medicare benefits that are associated with social security. I certainly agree with Senator Domenici that the whole thing must be better explained to younger people because they are increasingly skeptical.

Mr. Sheppard. I think in a survey that was published in the Journal of Risk Insurance a year or so ago showed a fantastically low percentage of the sample who were not even aware of survivors' benefits. I am convinced, without any proof now, that the greater the awareness of the benefits, the greater the level of support there will be for social security, and I would like to see somebody check that out.

Senator Domenici. Right at the end of your statement, you indicated that there was a role for the private sector in terms of expanding the effective opportunities for middle age and older Americans.

That has not been discussed very much today. Would you just elaborate on that, please?

"LET'S TRY SOMETHING NEW"

Mr. SHEPPARD. This is one way of elaborating. There are some sophisticated companies in the United States that have taken a look at the aging of their work force, and have expressed a concern about the possibilities of the so-called obsolescence or the plateauing of their middle-aged employees, including the professional and technical people, especially. Instead of using the traditional approach of saying, let's retire them early to solve that problem, recognizing all the things that we have been discussing here today, they are saying let's try out something new.

We will give an employee 6 months to a year to go off and get his skills updated. If he wants to change his career line we will also pay for that. Some of them have even talked about, in some of the advanced technology industry, being willing to set up an employee in a business on a trial run and if it does not work out, bring him back again. All of these are ways to keep that person utilized effectively. Sometimes he will have the more popular option of having a "lateral" transfer to a less difficult position.

I am trying to give you something innovative. I also think that Congress might explore the results of, say, what France has been doing for the last several years which consists, I think, and I have not kept up with it, of a tax on all employers for such programs, who then get a rebate to the degree that they have employees in such programs for retraining, and so on. I am talking about midcareer age people. I don't think with all the talk about inflation incentives from the Government to employers could be advocated. I may be wrong because that would be one more thing knocked down on the ground of inflation, but what about the idea of a refundable tax if a company provides such a program under certain conditions?

I am giving an off-the-top-of-my-head answer to your very important question, Senator. I wish I could give a more detailed answer.

Senator DOMENICI. Let me just ask you two more questions.

I would suspect that the very recent phenomenon of very high inflation—which many Americans are beginning to think is never going to return to the so-called good old days—my hunch would be that that would be an incentive to remain on the job. Anyone studying pension potential, whether it be social security or private, must figure they are going to be better off working. Am I correct that this may be an incentive to remain on the job beyond the previous retirement time?

Mr. SHEPPARD. You are correct to the degree that I am willing to guess that will happen. As I said in my testimony, it is only plausible to assume that. To the degree that people are inflation conscious, and I don't know who is not these days, and if they are in good health and they are in a somewhat satisfying job, they are weighing all these variables that affect the early retirement decision.

Senator DOMENICI. Do you agree, basically, with the theme of Secretary Califano's method, that we need the mix of the private and public interest income maintenance programs for those who are no longer supporting themselves, that one of the major problems is

that they don't have any inspiration, that there is just a proliferation of different plans?

Cracks Among the Patchwork

Mr. Sheppard. I no longer can pretend to be an expert on it any more because of the multiplicity of quilt work or patchwork is separate, somewhat overlapping, et cetera, et cetera, programs. I have given up. You are absolutely right. Many people, at the same time, fall between the cracks because there is not a total coordinated approach.

Senator Domenici. Your notion of involving the private sector in some way to better utilize older people and keep them on longer, would that have an ameliorating effect on the so-called underfunding of private pension plans? Could it?

Mr. Sheppard. We dealt to some extent on that in our book, "The Graying of Working America," and in certain types ot plans that is definitely the case. We have had some pension fund managers concerned about the rising costs of early retirement policies or trends sometimes encouraged by the payroll management. So you can get in a company a tension between two types of managers, a pension fund manager saying to the payroll manager, "Don't you try to solve your problems by dumping them on my back." That is an analogy to what is happening at the national level or public policy level.

Senator Domenici. Thank you, Mr. Chairman.

Senator Church. Certainly, Senator Domenici.

I don't know whether you can answer this question or not but I am rather curious to know whether private insurance programs typically include a cost-of-living adjustment in the retirement benefit.

Mr. Sheppard. It is vary rare, and as you know, that would add again more to the cost of certain retirement age patterns. The Bankers Trust, every 5 years, does a study of how many corporate plans or a percentage of them have those features still relatively low.

Senator Church. What about private insurance annuity policies? Are there many of those, or any of those to your knowledge, that contain a cost-of-living adjustment?

Mr. Sheppard. I am not aware of any. That is another example of why that so-called approach of having the young people put their money in a private annuity just does not make sense.

Senator Church. I know.

Mr. Sheppard. I would do it my self if I could, but it does not make sense.

Senator Church. This is something that is never taken into account by these critical articles that condemn the social security system, which point out the kinds of private annuities available and what kinds of annuity they pay at retirement age, and so on.

Bill Oriol suggested it might be interesting if we brought many young people who are critical of the social security program into a hearing of this committee, either here or in the field, and let them prepare questions for the social security experts to answer. This is an educational effort, and we could make a record of it here. It certainly needs to be made.

Mr. Sheppard. Doing the work of the Social Security Administration.

Senator CHURCH. They are not getting the message.

Mr. SHEPPARD. I know.

Senator CHURCH. And it needs to be done.

Thank you very much.

Senator DOMENICI. I have five or six more questions that I will submit, that you can answer at your leisure.

The growing population of over 80's, which you have been discussing, from this Senator's standpoint, is a rather new dimension. Is there any suggestion that we ought to have some program in terms of caring for them, other than what we have for the so-called early retirees?

Mr. SHEPPARD. Well, I would not say they need anything special except to keep in mind the service needs of the people now 80 and over. If I am not mistaken, the nursing home population is made up of the very old and that means that in the future, increasingly, some kind of service that we associate with nursing homes will have to be expanded, it is that type of program.

I am glad you picked up the point I was trying to make, that it has been a neglected aspect of these changes. We cannot continually use that sloppy category, 65 and over, any more. I would like to see the Census Bureau and the Labor Department, or whatever, start having finer distinctions. The numbers are getting bigger and the probelms of the 65-year-old population are nothing those like of the 80- or 85-year-old.

FAMILY TIES PERSIST

Senator DOMENICI. This question may not be in an area that you are expert in, but both you and the Secretary mentioned the family—its responsibility and whether it has undergone some generic change. I am most impressed with experts from all over the world who say it really has not. Demographics and distance may be gradually changing, but the willingness to care and love has remained rather consistent. As one of our witnesses said at our international hearing last fall, "What you are really noticing is that older people always love younger people more than younger people love older people." That seems to be something very natural, but that was also true in the "good old days." If we're discussing sacrifice, an older person usually has a bigger heart, but the willingness to help is also there among the young.

Do you have any suggestions as to what we might, as a matter of policy, be doing to encourage families; I might say, to make it easier for them in the present economic system? It is not all our job, but do you have any ideas?

Mr. SHEPPARD. I am glad you posed it in terms of among those who are willing, can't we make it easier for them?

Senator DOMENICI. That is correct.

Mr. SHEPPARD. There are two types of cost they pay, time cost and material cost. Sometimes time costs are greater and we have never done much about developing part-time home health aides for the 80 and over. They need some kind of day care program. They don't all have to be in nursing homes, but I want to say in this context that I got a funny feeling that most of the thrust of our attention these days is how do we get rid of nursing homes.

I think we better start talking about how do we reduce the rate of increase in these nursing homes between now and some future year. We are not going to get rid of something that performs the function today of a nursing home. The demographic reasons I gave earlier, when I talked about the increasing proportion of people in their sixties with very old parents, can be turned the other way. Decreasingly, the very old will not have many children. That is the demographic framework, the thing which you have to think about in considering the role of the family.

Senator DOMENICI. I don't know the answer to this; I should. Assume a couple wants to bring a practical nurse into a household to help take care of either momma or grandma or grandpa. What is the tax situation on that, do you know? We can find out.

Mr. SHEPPARD. I am ignorant about that. I don't know what the tax rate is that they are getting. The only thing I am aware of is if you support an elderly parent at least 50 percent, a child would get some exemption, but I am not certain about such items.

Senator CHURCH. You have to pay more than half of the total support.

Senator DOMENICI. I wonder if it might not be appropriate at this point, Mr. Chairman, to ask our own staff to give us, for the record, the next time we meet, a summary of the tax issues as they involve care and maintenance of this family? I think this might be a good thing.

Senator CHURCH. I think it is a very good idea.

I would also like to point out that Sara Rix worked as a coauthor with Dr. Sheppard on the book, "The Graying of Working America," from which we have taken a portion of the title for our hearings. I believe she is in the room.

Sara, would you please stand up. I want to acknowledge your presence. I compliment you on the excellence of this work.

Dr. Sheppard, thank you very much.

The hearings will continue tomorrow at 10 a.m. in this room.

[Whereupon, at 1:16 p.m., the committee recessed, to reconvene at 10 a.m. Tuesday, July 18, 1978.]

APPENDIX

CORRESPONDENCE RELATED TO HEARING

ITEM 1. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH, CHAIRMAN, SENATE COMMITTEE ON AGING, TO HON. JOSEPH CALIFANO,[1] SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, DATED JULY 31, 1978

DEAR MR. SECRETARY: Your excellent statement was exactly the right beginning for our continuing hearings on "Retirement, Work, and Lifelong Learning." I would like to thank you, once again, for giving us such a substantial and challenging overview presentation.

I have compiled a list of questions and requests either made at the hearing or added since. We would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give a final statement on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

Enclosure.

QUESTIONS FOR SECRETARY JOSEPH CALIFANO

(1) The committee shares your concern about the trend toward earlier retirement. What positive and effective steps should be taken to counter this trend? What should the Government's role be? In addition, what about members of minority groups, so many of whom do not live long enough to reach present social security eligibility ages?

(2) You pointed out, as this committee has on numerous occasions, that home health care receives less than 1 percent of medicaid money. Medicare has a similarly low percentage. You call for an expansion of in-home services but warn that costs and quality must remain under control. What is HEW doing to expedite these services while harnessing costs and invitations to abuse?

(3) You placed appropriate emphasis on the role of health costs at our recent hearings. If too large a part of retirement income goes for health costs, even with medicare and medicaid, our older population will live in uncertainty and even fear, as will the younger members of their families. I am concerned about your listing, as one of the options for our thinking about a national health program for all age groups, the alternative of creating a separate financing and delivery system for long-term care. Do we run the risk, if we place that system outside of everything else in a health care system, of having a "separate but equal" type of situation?

(4) What should be the role of education as the baby-boom children become the adults of the "senior boom"? What should the role of the Office of Education be in providing learning opportunities throughout life? What are your plans for the Office of Lifelong Learning?

(5) Would you submit a detailed, written account of the totals used in your statements and projections about the amount of budget funds allotted to older Americans, including a breakdown on what is provided through trust funds, and what is discretionary and what is not?

(6) Consumer prices increased 4.8 percent in 1976, 6.8 percent in 1977, and so far this year they are rising at a rate of 9.8 percent. In its analyses of future commitments for retirement income in this Nation, is HEW taking such inflationary pressures adequately into account?

[1] See statement, p. 6.

(7) What impact, if any, will raising the mandatory retirement age to 70 for many workers in the private sector have on the social security system?

(8) Do you see any trends in our society now—such as the enactment of the 1978 Age Discrimination in Employment Act Amendments or the increase in the delayed retirement credit form 1 percent to 3 percent per year for persons who not receive social security benefits because they work after age 65—to counter the drift toward earlier retirement?

(9) You will announce around the first of October what the 1979 inpatient hospital deductible charge will be for medicare patients. What is the projection at this time? What, if anything, can be done to hold down or put a ceiling on this rapidly increasing charge, which is posing more of an onerous burden for millions of older Americans.

(10) On page 7 of your testimony, you describe programs which pay out benefits to the elderly, including survivors and disability insurance. How much of total expenditures from these two programs goes to people over 65, when compared to total expenditures? Also, please give the totals paid for the other four programs.

(11) You have mentioned that the proportion of dependent children is likely to decline as our population "ages." You have projections for increased spending for the elderly. Do you have projections for spending for youth?

(12) In your testimony earlier this year on extending the Older Americans Act, you endorsed a White House Conference on Aging in 1981. In view of the very challenging statement you have made, do you think we should make special efforts to gather data and take other actions steps to make this conference more than just a discussion about developing policy? Would it be wise to have working models in place of concepts to apply on a larger scale if the conferees and the Administration and the Congress thought them worthwhile? For example, in advance of the conference, could we not put in place, on a scale not yet achieved, a pilot of the long-term care system you so vividly described?

(13) If our Nation decides to abolish poverty for older Americans, what would be the most effective way to approach this goal? For example, should the emphasis be on supplemental security income, social security, a combination of these two programs, or some other approach?

ITEM 2. RESPONSE OF SECRETARY JOSEPH CALIFANO TO QUESTIONS SUBMITTED BY SENATOR FRANK CHURCH

Question. The committee shares your concern about the trend toward earlier retirement. What positive and effective steps should be taken to counter this trend? In addition, what about members of minority groups, so many of whom do not live long enough to reach present social security eligibility age?

Response. The very existence of the social security program of course has had an influence on when people retire. Since reduced benefits were made available as early as age 62, more and more workers have been retiring early. However, to provide some incentive for continuing employment, the social security law contains provisions that increase benefits of people who remain in the work force past age 65 or who return to work after their initial retirement. There are three mechanisms for increasing social security benefits because of additional work: (1) for workers who have high relative earnings after age 65, benefits may be recomputed to take account of these earnings, (2) a delayed retirement credit is provided for workers who work past age 65 and who, though eligible for benefits, do not receive them, and (3) individuals who retire before age 65 and return to work for periods before attaining age 65, earning sufficient amounts to reduce their monthly benefit for one or more months will have their benefit permanently increased to reflect a later retirement date.

We are considering the broad issues of how to increase incentives for continued employment past age 65. Unemployment benefits and social security disability benefits are already available to people who are unable to find jobs or are too disabled to work until age 65. After the turn of the century, a sharp change in the ratio of workers to beneficiaries is projected. This would result in substantially higher costs to the system. With improvements in rates of mortality and morbidity among the older population and the shrinkage in the relative size of the working age population, there may well be additional opportunities for, and interest in, continued employment among the aged. As a result, recent trends toward early retirement might be reversed as these demographic shifts occur.

It is true that black men and women have lower life expectancies than do white men and women. The average life expectancy at birth for males of black and other minority races in 1975 was 63.6 years compared to 69.4 years for white males—an average difference of 5.8 years. For females the average at birth was 72.3 years for members of minority races compared to 77.2 years for white females—an average difference of 4.9 years.

For persons who survive until middle-adulthood, the difference in life expectancy narrows considerably. Of persons aged 45, the life expectancy was 77.0 years for members of black and other minority races and 79.8 for whites—a difference of 2.8 years. For all four groups, the average total life expectancies at age 45 are well beyond the eligibility ages for retirement benefits under the social security program. Thus, for adults who have had time to build up significant credits toward retirement benefits, members of all four groups have reasonably good probabilities of surviving until retirement age.

While the life expectancy of minority groups is shorter than that for others, they get a better buy for their contribution dollar because of the greater tendency for minorities to receive survivorship and disability benefits. In 1976, for example, members of black and other minority races made up the following proportions of persons receiving old-age, disability, and young survivor benefits:

Old-age: 9.1 percent of retired workers and their dependents; 7.2 percent of aged widows and widowers. Disability: 18.1 percent of disabled workers and their dependents. Young survivors: 23.2 percent of the children of deceased workers; 22.5 percent of widowed mothers and fathers.

The entire range of issues relating to the social security retirement age and at what age social security benefits should first be payable is being extensively studied by the current Advisory Council on Social Security. The final report of the Council is due by October 1, 1979.

Question. You pointed out, as this committee has on numerous occasions, that home health care receives less than 1 percent of medicaid money. Medicare has a similarly low percentage. You call for an expansion of in-home services but warn that costs and quality must remain under control. What is HEW doing to expedite these services while harnessing costs and invitations to abuse?

Response. We are quite concerned that aspects of the benefits and eligibility structure of both medicare and medicaid have meant relatively low utilization of home health benefits. HEW is completing a study of in-home care offered under titles XVIII, XIX, and XX of the Social Security Act. We have welcomed this opportunity to look critically at the current system of home health delivery. Our report will encompass a full analysis of the issues you raise and will contain recommendations related to benefits, eligibility, program management, regulation, and quality standards, etc. When the report is forwarded to Congress, which will be very soon, we will provide a copy to the committee.

Question. You placed appropriate emphasis on the role of health costs at our recent hearings. If too large a part of retirement income goes for health costs, even with Medicare and Medicaid, our older population will live in uncertainty and even fear, as will the younger members of their families. I am concerned about your listing, as one of the options for our thinking about a national health program for all age groups, the alternative of creating a separate financing and delivery system for long-term care. Do we run the risk, if we place that system outside of everything else in a health care system, of having a "separate but equal" type of situation?

Response. Last fall when the National Health Insurance Advisory Committee discussed the options for benefits to be covered by a comprehensive health plan, they agreed that long-term care should not be included. While decisions about the benefit package for a national health plan have not yet been made, we would like to point out the following:

First, long-term care is not an "insurable" benefit in the classic sense. Most who require it need care on a continuing and regular basis, thus making the financing of long-term care inappropriate in an insurance mode, which is based on statistical probability of needing a particular service.

Second, the long-term care system is in need of reform, and by merely transferring the costs currently provided through public programs to another payment source, this much needed reform could be overlooked.

Finally, the chronic nature of long-term care disabilities means that it is a costly service to provide, with high per-person costs. Some feel that including it as an NHI benefit may result in inadequate funding and restricted use of the benefit in order to accommodate services which benefit the entire population,

rather than the portion who require continuing chronic care. Again, it should be emphasized that final decisions have not been made concerning the benefits to be covered under NHI. We will take into consideration the comments of the Advisory Committee and others who have communicated their views to us over the past year.

Question. What should be the role of education as the baby-boom children become the adults of the "senior boom"?

Response. That is a problem which we are continuing to study, especially with the new authorizations in the Education Amendments of 1978 and through our lifelong learning study.

As you may already know, the Federal government already provides several programs of support for the education of adults and older Americans through programs authorized by the Adult Education Act of 1966 (AEA), as amended, and the Higher Education Act of 1965 (HEA), as amended.

The AEA was originally enacted in 1966 to expand educational opportunity and encourage the establishment of programs of adult public education that would enable all adults to continue their education to at least the level of completion of secondary school and make available the means to secure training that would enable them to become more employable, productive, and responsible citizens. It has been amended in 1974, 1976, and again in 1978 in an effort to refine its purposes and attempt to ensure that its purposes are met. With the Education Amendments of 1978, the following changes were made in the Adult Education Act:

The statement of purposes was revised to include the purpose of enabling adults to acquire basic functional skills;

Eligible entities were broadened to include public and private nonprofit agencies, organizations, and institutions;

The State plan requirements were modified to require improved needs assessment, provide for an expansion of delivery services for adult education requiring greater consultation with outside groups in planning for programs, and require efforts by the State to remove barriers to the participation in adult education programs;

The research, development, and evaluation authority was broadened, and a clearinghouse authorized to improve the dissemination of information on adult education;

Appropriations were authorized at $210 million for fiscal year 1979, increasing to $290 million for fiscal year 1983.

The program to enhance educational opportunities for Indians was extended through fiscal year 1983; and

A new program was created to provide adult education for immigrants.

When the HEA was originally enacted in 1965, title I of the act (Community Service and Continuing Education) authorized a program designed to assist the people of the United States in solving community problems such as housing, poverty, government, recreation, employment, youth opportunities, transportation, health, and land use through a program of grants to states. Included in this program was the use of extension and continuing education programs which provided educational opportunities to adults. In 1976, the act was amended to specifically authorize a program of continuing education designed to provide postsecondary educational opportunities to meet the educational needs and interests of adults, including the expansion of available learning opportunities for adults who were not adequately served by current educational offerings in their communities. In addition, the 1976 amendments created a new program of lifelong learning which included adult basic education, continuing education, independent study, agricultural education, business education and labor education, occupational education and job training programs, parent education, postsecondary education, preretirement and education for older and retired people, remedial education, special educational programs for groups or for individuals with special needs, and also educational activities designed to upgrade occupational and professional skills, to assist business, public agencies, and other organizations in the use of innovation and research results, and to serve family needs and personal development. Among the activities authorized by the new program was a clearinghouse function designed to identify, collect, and disseminate to educators and the public existing and new information regarding lifelong learning and report on such findings. The attached report on lifelong learning is the result of that review.

The report discusses some other approaches to learning for older adults as follows:

Independent home-based learning is a logical direction to explore for the older age groups since many of the elderly watch television and prefer to stay at home in the evening. Mass media, correspondence courses, community outreach, educational brokering and counseling can be effective in increasing learning opportunities for older persons.

With more older workers remaining in the workforce and/or changing jobs, employees and employers have much to gain if more job training opportunities are extended to older persons.

The learning needs of those who choose to retire from paid employment should not be neglected either. ACTION's Foster Grandparent Program is a good example of older persons using their experience and talent in community service. Investments in preretirement training and in programs in which older persons can use their experience and talent in community service benefits society as well as the individual.

Fields of knowledge such as history, fine arts, and literature can also be invaluable in helping older persons deal with the traumas of later years. Elderhostel 1977, a summer "live-in-and-learn-in" program, enabled 4,500 older persons to move into dormitories in colleges throughout the country and to study such subjects as theater arts, philosophy, and autobiography. Such pursuits help older persons enhance their self-esteem, develop creativity and increase their sense of control over the events of life.

Education for older people is sometimes challenged as a "frill" which cannot be justified at a time when such pressing needs as health care, income maintenance and crime prevention require attention. However, continuing education may be one of the best ways to meet these needs and help solve major social problems. For example, government expenditures for health care services are higher for this age group than for any other. In order to limit these expenses, it would be logical to pursue preventive health care and self-help measures. Through health education programs that teach older persons to ward off illness through proper nutrition and physical exercise and that teach heart patients, for example, to utilize self-care techniques, the government may recognize cost savings. Many such programs could become components of existing public health services. Further, the older person is the target of robberies, muggings, and other crimes. A small percentage of funding for law enforcement could be allotted to teach older people how to avoid victimization, defend themselves successfully, and set up citizen ombudsmen groups against crime.

Question. What should the role be of the Office of Education in providing learning opportunities throughout life?

Response. With the increasing numbers and improved health of the older population, an Office of Education lifelong learning strategy that takes their problems and potential into account should be directed toward the following goals:

Improved coordination of Federal efforts for older adults.

Coordination of education and aging networks at the State levels including the State offices on aging, the cooperative extension service, public welfare offices which administer Social Security, and membership organizations such as the American Association of Retired Persons, the National Council of Senior Citizens, and the Gray Panthers;

Research on the learning needs and patterns of older adults including the study of how they learn best, what they want to learn, what motivates them to learn, and how they can use their special abilities to contribute to society as well as help themselves; and

Research on the learning needs and patterns of all minority group older adults—Blacks, Hispanics, native Americans, and Asians. As a result of the unique cultural attributes of these minority groups, research on their diverse learning abilities and needs merits additional study.

Question. What are your plans for the Office of Lifelong Learning?

Response. We have no plans for the Office of Lifelong Learning.

The 95th Congress did not appropriate the $5 million President Carter requested for Lifelong Learning in his 1979 budget.

Further, the Office of the Assistant Secretary for Education is currently exploring ways to coordinate the Lifelong Learning program funded by the various Federal agencies.

Question. Would you submit a detailed, written account of the totals used in your statements and projections about the amount of budget funds allotted to older Americans, including a breakdown on what is provided through trust funds, and what is discretionary and what is not?

Response. The figures used for the projections are contained in the attached tables 1 through 6. The $350 billion figure quoted on page 69 of the transcript is derived from the report and projections as cited in the footnotes of table 2. The exact estimate from table 2 is $356.4 billion for the year 2010. Table 1 is a listing of some major Federal programs that provide benfits and services to the elderly.

TABLE 1.—FEDERAL PROGRAMS PROVIDING BENEFITS TO THE ELDERLY

Program	Agency	1978 budget outlays (millions)	Number of elderly served
Public Housing, sec. 8	HUD	776.0	2,201,000
Elderly food stamps	Agriculture	561.0	1,100,000
Administration on Aging	HEW	508.8	[1] NA
Unemployment insurance	Labor	[2] 496.3	[2] 34,800
Housing for the elderly and the handicapped	HUD	[3] 335.0	NA
Title XX, Administration for Public Service	HEW	300.0	NA
Coast Guard retirement	DOT	[4] 155.4	NA
Rental housing assistance, sec. 236	HUD	150.0	343,000
Title IX, Older Americans Act	Labor	[7] 140.7	NA
Rent supplement	HUD	113.0	104,000
Employment services	Labor	[5] 91.8	[5] 1,767
CETA II and VI	do	54.5	11,600
Block grants	HUD	39.0	NA
Foster grandparents	ACTION	34.9	[6] 16,250
Elderly feeding	Agriculture	30.0	395,000
Foreign Service retirement	State	27.3	1,472
Capital assistance	DOT	25.0	NA
Employee retirement income security	Labor	24.0	NA
CETA I	do	20.8	13,130

[1] HEW has data on the number of service units, but not the number of elderly served.
[2] Includes railroad.
[3] Includes elderly and handicapped.
[4] Retirees can retire after 20 yr active service regardless of age.
[5] Recipients are 45 and older.
[6] Number of volunteers.
[7] Recipients are 55 and older.

TABLE 2.—GOVERNMENT PAYMENTS MADE ON BEHALF OF PERSONS AGE 65 AND OVER

Calendar Year	In billions of current dollars						In billions of 1978 dollars					
	HEW programs (includes Black Lung Benefits)	Civil service retirement	Railroad retirement	Military retirement (based on current ratios)	Veterans' benefits	Combined	HEW programs	Civil service retirement	Railroad retirement	Military retirement	Veterans' benefits	Combined
1960	9.9	0.4	0.8	0.1	1.6	12.8	21.1	0.9	1.7	0.2	3.4	27.3
1965	14.8	.7	.9	.7	2.3	18.8	29.9	1.4	1.9	.3	4.6	38.1
1970	32.5	1.3	1.5	.4	2.5	38.2	53.2	2.2	2.5	.6	4.1	62.6
1975	65.4	3.6	2.7	.7	3.3	75.7	76.2	4.3	3.1	.9	3.9	88.4
1977	84.0	4.9	3.1	.9	3.7	96.6	88.5	5.2	3.3	.9	3.9	101.8
1978	94.3	5.5	3.2	.9	4.6	108.5	94.4	5.5	3.2	.9	4.6	108.6
1979	105.9	6.2	3.3	1.0	4.8	121.2	100.6	5.9	3.0	1.0	4.5	115.0
1980	117.8	6.9	3.5	1.1	4.9	134.2	106.9	6.2	3.1	1.0	4.5	121.7
1981	130.4	7.6	3.5	1.2	5.1	147.8	113.2	6.6	3.0	1.0	4.4	128.2
1982	143.9	8.3	3.4	1.2	5.3	162.1	120.7	7.0	2.9	1.0	4.5	136.1
1983	157.9	9.1	3.4	1.3	5.6	177.3	127.3	7.3	2.8	1.1	4.5	143.0
1984	173.4	9.9	3.4	1.4	6.7	194.8	134.4	7.7	2.7	1.1	4.9	150.8
1985	189.8	10.7	3.4	1.5	7.0	212.4	141.2	8.0	2.6	1.1	5.2	158.1
1990	287.4	15.3	3.3	2.0	9.2	317.2	175.9	9.3	2.0	1.2	5.6	194.0
1995	427.0	20.6	2.9	2.7	10.0	463.2	215.0	10.4	1.4	1.4	5.0	233.2
2000	604.9	27.5	2.5	3.5	9.3	647.7	250.1	11.4	1.0	1.5	3.8	267.8
2005	845.4	36.5	2.2	4.5	6.3	894.9	287.4	12.4	.7	1.5	2.1	304.1
2010	1,214.7	49.8	2.0	5.7	3.6	1,275.8	339.4	13.9	.6	1.5	1.0	356.4
2015	1,793.1	71.6	2.0	7.2	1.7	1,875.6	411.7	16.4	.5	1.7	.4	430.7
2020	2,667.3	99.8	2.1	9.2	.5	2,778.9	503.5	18.8	.4	1.7	.1	524.5
2025	3,945.9	136.2	2.3	11.7	.1	4,096.2	612.1	21.1	.4	1.8	0	635.4

Note: Source of figures and comments (as assembled by Office of the Actuary, Social Security Administration)—HEW programs—Based on current law using 1977 trustees report assumptions; Civil service—Derived from CSRS actuary's projection of nondisability benefits at all ages, based on discussion as to age trends; Railroad retirement—Used RR retirement actuary's projection unadjusted. Benefits after 1980 understated if present law is amended for inflation; Military retirement—Used DOD actuary's projection unadjusted. Benefits after 1978 reflect current law and 5 percent annual pay increases; VA benefits—Includes health care pensions and insurance payments. VA projection to year 2000 extended by SSA.

TABLE 3.—GOVERNMENT PAYMENTS MADE ON BEHALF OF PERSONS AGE 65 AND OVER

Calendar year	As percent of GNP						Projections are billions of current dollars		
	HEW programs	Civil Service retirement	Railroad retirement	Military retirement	Veterans' benefits	Combined	GNP	Defense outlays (fiscal years)	CPI deflator
1960	1.96	0.08	0.16	0.01	0.31.	2.52	$506.0	$44.3	0.466
1965	2.15	.10	.14	.02	.33	2.74	688.1	48.5	.496
1970	3.29	.13	.15	.04	.26	3.87	982.4	78.6	.611
1975	4.28	.24	.17	.05	.21	4.95	1,528.8	85.6	.846
1977	4.42	.26	.16	.05	.20	5.09	1,901.0	97.5	.949
1978	4.43	.26	.15	.04	.21	5.09	2,123.0	107.6	1.000
1979	4.49	.26	.14	.04	.20	5.13	2,358.0	117.8	1.053
1980	4.54	.26	.13	.04	.19	5.16	2,595.0	123.3	1.102
1981	4.65	.27	.12	.04	.18	5.26	2,802.0	128.4	1.148
1982	4.79	.28	.11	.04	.18	5.40	3,011.0	133.6	1.194
1983	4.89	.28	.11	.04	.17	5.49	3,230.0	138.8	1.241
1984	5.00	.29	.10	.04	.18	5.61	3,459.0	144.4	1.291
1985	5.13	.29	.09	.04	.19	5.74	3,703.0	150.2	1,343
1990	5.62	.30	.06	.04	.18	6.20	5,114.0	182.8	1.634
1995	6.08	.29	.04	.04	.14	6.59	7,029.0	222.3	1,987
2000	6.33	.29	.03	.04	.10	6.77	9,564.0	270.8	2.418
2005	5.50	.28	.02	.03	.05	6.88	13,007.0	329.1	2.942
2010	6.93	.28	.01	.03	.02	7.28	17,520.0	400.4	3.579
2015	7.70	.31	.01	.03	.01	8.05	23,300.0	487.2	4.355
2020	8.69	.33	.01	.03	.00	9.06	30,679.0	592.7	5.298
2025	9.78	.34	.01	.03	.00	10.15	40,350.0	721.1	6.446

Note: GNP projected in proportion to taxable payroll for medicare. Defense outlays projected in proportion to CPI assumed after 1979.

TABLE 4.—GOVERNMENT PAYMENTS MADE ON BEHALF OF PERSONS AGE 65 AND OVER

[In billions of current dollars]

Calendar year	OASDI	HI	SMI	Federal medicaid	SSI	Special aged 72 benefits	Black lung	Combined
1960	8.8				[1] 1.1			9.9
1965	13.5				[1] 1.3			14.8
1970	22.5	5.2	2.0	1.5	[1] 1.2	0.3	0.1	32.5
1975	46.5	10.3	3.8	2.9	1.8	.2	.6	65.4
1977	58.5	14.3	5.5	4.1	1.8	.2	.7	84.0
1978	64.7	16.7	6.5	4.8	1.7	.1	.7	94.3
1979	71.7	19.4	7.6	5.6	1.7	.1	.7	105.9
1980	78.6	22.4	8.8	6.4	1.7	.1	.8	117.8
1981	85.7	25.6	10.1	7.4	1.6	.1	.8	130.4
1982	93.2	29.1	11.7	8.4	1.6	.1	.8	143.9
1983	100.6	32.8	13.4	9.5	1.6	.1	.8	157.9
1984	108.7	37.0	15.3	10.8	1.5		.9	173.4
1985	117.3	41.5	17.4	12.1	1.5		.9	189.8
1990	162.8	70.7	31.6	21.1	1.3		.9	287.4
1995	225.3	115.0	51.2	34.3	1.3		.8	427.0
2000	303.3	177.7	71.3	51.4	1.2		.8	604.9
2005	410.7	255.8	103.7	74.2	.9		.8	845.4
2010	587.4	368.4	150.9	107.1	.9		.7	1,214.7
2015	887.6	530.5	219.4	154.7	.9		.7	1,793.1
2020	1,360.1	763.9	319.0	223.4	.9		.7	2,667.3
2025	2,058.4	1,100.0	464.0	322.6	.9		.6	3,945.9

[1] For years 1960–70 payments in SSI column represent those made under Older Americans Act program.

TABLE 5.—GOVERNMENT PAYMENTS MADE ON BEHALF OF PERSONS AGE 65 AND OVER

[In billions of 1978 dollars]

Calendar year	OASDI	HI	SMI	Federal medicaid	SSI	Special aged 72 benefits	Black lung	Combined
1960	18.7				[1] 2.4			21.1
1965	27.2				[1] 2.7			29.9
1970	36.8	8.6	3.3	2.5	[1] 2.0	0.6	0.2	53.2
1975	55.0	12.2	4.5	3.4	2.1	.4	.7	7.62
1977	61.6	15.0	5.8	4.3	1.8	.2	.7	88.5
1978	64.7	16.7	6.5	4.8	1.7	.1	.7	94.4
1979	68.1	18.4	7.2	5.3	1.6	.1	.7	100.6
1980	71.3	20.3	8.0	5.8	1.5	.1	.7	106.9
1981	74.7	22.3	8.8	6.4	1.4	.1	.7	113.2
1982	78.1	24.4	9.8	7.0	1.3	.1	.8	120.7
1983	81.1	26.5	10.8	7.7	1.2	.1	.6	127.3
1984	84.2	28.7	11.9	8.4	1.2		.7	134.4
1985	87.3	30.9	12.9	9.0	1.1		.7	141.2
1990	99.6	43.3	19.3	12.9	.8		.6	175.9
1995	113.4	57.9	25.8	17.3	.6		.4	215.0
2000	125.4	73.5	29.5	21.2	.5		.3	250.1
2005	139.6	87.0	35.3	25.2	.3		.3	287.4
2010	164.1	102.9	42.2	29.9	.3		.2	239.4
2015	203.8	121.8	50.4	35.5	.2		.2	411.7
2020	256.7	144.2	60.2	42.2	.2		.1	503.5
2025	319.3	170.7	72.0	50.0	.1		.1	612.1

[1] For years 1960–1970 payments in SSI column represent payments under Older Americans Act program.

TABLE 6.—GOVERNMENT PAYMENTS MADE ON BEHALF OF PERSONS AGE 65 AND OVER

[As Percent of GNP]

Calendar year	OASDI	HI	SMI	Federal medicaid	SSI	Special aged 72 benefits	Black lung	Combined
1960	1.74				[1] 0.22			1.96
1965	1.96				[1] .19			2.15
1970	2.29	0.53	0.20	0.15	[1] .12	0.03	0.01	3.29
1975	3.04	.68	.25	.19	.12	.01	.04	4.28
1977	3.08	.75	.29	.21	.09	.01	.04	4.42
1978	3.05	.78	.30	.22	.08		.03	4.43
1979	3.04	.82	.32	.24	.07		.03	4.49
1980	3.03	.86	.34	.25	.06		.03	4.54
1981	3.06	.91	.36	.26	.06		.03	4.65
1982	3.10	.97	.39	.28	.05		.03	4.79
1983	3.11	1.02	.41	.30	.05		.02	4.89
1984	3.14	1.07	.44	.31	.04		.03	5.00
1985	3.17	1.12	.47	.33	.04		.02	5.13
1990	3.18	1.38	.62	.41	.03		.02	5.62
1995	3.20	1.64	.73	.49	.02		.01	6.08
2000	3.17	1.86	.75	.54	.01		.01	6.33
2005	3.16	1.97	.80	.57	.01		.01	6.51
2010	3.35	2.10	.86	.61				6.92
2015	3.81	2.28	.94	.66				7.69
2020	4.43	2.49	1.04	.73				8.69
2025	5.10	2.74	1.15	.80				9.78

[1] Under Older Americans Act program.

Question. Consumer prices increased 4.8 percent in 1976, 6.8 percent in 1977, and so far this year they are rising at a rate of 9.8 percent. In its analyses of future commitments for retirement income in this Nation, is HEW taking such inflationary pressures adequately into account?

Response. It is true that in recent years the rate of increase in the Consumer Price Index (CPI) has been well above the average annual rate of 4 percent per year that is assumed for purposes of long-range cost estimates for the social security program. While it is difficult to know what the future holds with respect to economic factors, we can make assumptions about the future course of the CPI based on current understanding of economic behavior.

The average annual rate of price increases of 4 percent per year that is used over the long range in the intermediate set of assumptions in the 1978 Trustees' Report is slightly higher than the actual average annual rate of increase over the last 30 years of 3.4 percent. It is assumed that the current high rate of increase in the CPI will gradually decline and will average out to about 4 percent after 1985. The 4-percent level was selected because the trend over the last 65 years indicates a tendency for the rate of increase in the CPI to increase slowly with time. The current outlook does not support a cessation or reversal of this tendency. At the same time, the high rates of increase in the CPI that we have experienced in recent years are not expected to continue over the long range.

The ultimate percentage increases in the average annual CPI of 3 percent under the more optimistic assumptions in the Trustee's Report (Alternative I) and 5 percent under the more pessimistic assumptions (Alternative III) were chosen to be 1 percentage point lower and higher, respectively, than the 4 percent used in Alternative II. It should be noted, though, that along with a 5-percent increase in the CPI, Alternative III also assumes that there would be a corresponding increase in covered wages of 6¼ percent per year, which would increase the income to the program.

As a result of the 1977 Social Security Amendments, the assumptions as to future increases in average wages and in the CPI have considerably less influence on the actuarial balance of the trust funds—and, therefore on long-range financial commitments—than was previously the case. This is mainly because of the new method of benefit calculation which removes the double indexing of future benefits to both average wages and the CPI. Under the prior law, future benefit levels reflected increases in both prices and wages, and, as a result, program expenditures were highly sensitive to changes in either of these factors.

Question. What impact, if any, will raising the mandatory retirement age to 70 for many workers in the private sector have on the social security system?

Response. It is expected that some workers who were forced to retire because their employers had a mandatory retirement age below 70 (usually age 65) will continue to work. The 1978 Report of the Trustees of the Social Security Trust Funds assumes that increasing the mandatory retirement age to 70 will result in a long-range saving of 0.08 percent of taxable payroll.

Eventually the additional number of persons who will be working past age 65 would reach 150,000 to 200,000 because of the change in mandatory retirement age.

Question. Do you see any trends in our society now—such as the enactment of the 1978 Age Discrimination in Employment Act Amendments or the increase in the delayed retirement credits from 1 percent to 3 percent per year for persons who do not receive social security benefits because they work after age 65—to counter the drift toward earlier retirement?

Response. Possibly, although the evidence is not in yet. However, as mentioned in the response to question 7, because of the enactment of the 1978 Age Discrimination in Employment Act, in the future some workers will apply for social security benefits later than they otherwise would have, which is expected to result in a small long-range saving to the program.

Regarding the current situation, the sharp increase in the retirement rate of older men has occurred at a time when the size of the adult workforce has been expanding rapidly. Both the movement of women into the paid workforce and the sharp increase in the number of young workers born during the post-war baby boom have brought dramatic increases in the size of the active workforce in spite of the declining employment of older men.

With the supply of younger workers increasing rapidly, both workers and employers have seen their interests served by pension options that permit or encourage early retirement of older workers. In recent decades both private and public retirement policies have been altered so as to permit or even encourage the early retirement of older workers. Private pension plan initiatives in this area are significant. Mandatory retirement policies, which typically called for retirement at 65, have received a great deal of attention. Perhaps even more important in the private pension sector has been the liberalization of early pension options. Research has shown that early retirees under social security were far more likely to leave their jobs willingly when they had early pensions to combine with their reduced social security benefits.

Today practically all workers covered by pension plans have some type of early retirement provision in their plan. The qualifying conditions for early pensions have also been relaxed. In the past employer consent was usually required, but is rare today. The length of service and age requirements for early pensions have also

been lowered, and the amounts by which early pensions are reduced (if at all) are typically less than the actuarial equivalent to take account of the longer period over which they are payable.

As the demographic picture changes and the supply of younger workers increases more slowly, both workers and employers may see their interests better served by employment policies that help to prolong the work life. Thus, in future years we may see a shift from the expansion of early pension options toward employment policies that help to prevent skill obsolescence and to make work settings more attractive to older workers. Such a shift could be an important factor in countering the continued trend toward earlier retirement.

Question. You will announce around the first of October what the 1979 inpatient hospital deductible charge will be for Medicare patients. What is the projection at this time? What, if anything, can be done to hold down or put a ceiling on this rapidly increasing charge, which is posing more of an onerous burden for millions of older Americans?

Response. As you know, the Secretary of HEW is required by law to review the hospital cost experience of Medicare beneficiaries each year and to adjust the inpatient hospital deductible amount according to a specific formula in the Social Security Act. Under the formula the inpatient hospital deductible amount for 1979 will be based on the rate of increase in hospital costs over the period from the start of the Medicare program through 1977. The inpatient hospital deductible will be increased to $160 for 1979, an increase of more than 11 percent over the $144 deductible amount now in effect.

Because the formula used to determine the deductible fully reflects the rate of increase in hospital costs (a rate which has increased much faster than the cost of living generally) the financial burden of the deductible on aged and disabled medicare beneficiaries who need hospital care has increased much faster than improvements in beneficiary incomes. I am convinced that the best way to reduce this burden on our medicaid population is through the enactment of legislation which will effectively deal with the spiraling costs of hospital care. In my view, implementation of a hospital cost containment program similar to the plan submitted to the Congress by President Carter 18 months ago is the only responsible way to reduce excessive annual increases in hospital costs and thereby to reduce the inpatient hospital deductible amount which medicare patients must pay.

Question. On page 7 of your testimony, you describe programs which pay out benefits to the elderly, including survivors and disability insurance. How much of total expenditures from these two programs goes to people over 65, when compared to total expenditures? Also, please give the totals paid for the other four programs.

Response. Based on fiscal year 1978 data, the following table presents the amount and proportion of benefits for persons 65 years and older under the various programs:

Program	Benefits for persons 65 years and older (in billions)	As a percent of total benefit dollars under program (in percent)
OASDI	$62.7	69.1
Old-age insurance [1]	49.1	49.1
Survivors insurance	[2] 13.5	58.7
Disability insurance	([3])	.3
SSI	1.7	35.3
Medicare	21.5	87.3
Medicaid	3.6	36.4
Black lung	.7	72.2

[1] Total benefit payments to retired workers and dependents include payments to retired workers aged 62-64 receiving reduced benefits and to dependents under age 65. Dependents under age 65 include spouses aged 62-64 receiving reduced benefits, children, and their mothers under age 62.

[2] Benefit payments to survivors aged 65 and over consist of payments to aged widows and aged dependent parents.

[3] Less than $50,000,000. The only persons aged 65 and over receiving benefit payments are spouses of workers under age 65.

Question. You have mentioned that the proportion of dependent children is likely to decline as our population "ages." You have projections for increased spending for the elderly. Do you have projections for spending for youth?

Response. Future spending for the young under the social security program is estimated to be an average 0.66 percent of taxable payroll. Future AFDC expenditures are projected only for 5 years thus precluding any meaningful comparison with the long-range projections supplied for spending on the aged.

Additional data related to the question of future spending for the young is included in a paper by Professors Robert Clark (North Carolina State University) and Joseph Spengler (Duke University) entitled: "Changing Demography and Dependency Costs: The Implications of New Dependency Ratios and Their Composition." Clark and Spengler provide data on Federal expenditures for health, education, and income maintenance programs, and State and local education expenses, and categorize them according to age group of dependent. Based on these data and assuming replacement level fertility and annual average immigration of 400,000, public dependency costs as a percent of the gross national product are expected to drop slightly for youths over the next 75 years (from 5.2 percent to 3.8 percent), while those for the elderly are expected to rise (from 4.7 percent to 7.3 percent).

The three attached tables provide projections for spending for the young and the elderly, and data on future OASDI child beneficiaries. Table 1, which is based on the Clark and Spengler data mentioned above, shows government expenditures for young dependents up to age 18 and for aged dependents age 65 and over for 1974 and future years. It should be noted that the largest part of dependency costs for children is met through private, rather than public means. Private expenditures are not taken into account in any of the data above or in Table 1.

Tables 2 and 3 show the projected increases in child OASI and DI beneficiaries, respectively, over the next 75 years under the three alternative sets of economic assumptions in the 1978 Annual Report of the Board of Trustees of the Federal OASDI Trust Funds.

TABLE 1.—DEPENDENCY COSTS FOR 1974 AND FUTURE YEARS[1]

[Dollars in billions]

	1974	1990	2000	2025	2050
Gross national product (GNP)[2]	$1,413.2	$2,279.7	$2,976.8	$5,576.6	$9,719.3
Expenditures on youths	$72.9	$95.6	$127.1	$216.7	$373.3
Percent GNP used to finance benefits to children (percent)	5.2	4.2	4.3	3.9	3.8
Expenditures on elderly	$67.0	$121.9	$157.1	$405.2	$708.3
Percent GNP used to finance benefits to elderly (percent)	4.7	5.3	5.3	7.3	7.3
Total dependency costs as percent of GNP (percent)	9.9	9.5	9.6	11.2	11.1

[1] This table is derived from Robert Clark and Joseph Spengler, "Changing Demography and Dependency Costs: The Implications of New Dependency Ratios and Their Composition," in "Income and Aging: Programs and Prospects for the Elderly," edited by Barbara Herzog, Human Science Press, New York, 1978, p. 76. Dependency costs are expressed as a percentage of GNP rather than of disposable personal income.

[2] Estimate of GNP based on Clark and Spengler's projections of disposable personal income (DPI) and assumption that DPI comprises 0.685 of full-employment GNP (in accordance with postwar experience).

TABLE 2.—OASI BENEFICIARIES WITH MONTHLY BENEFITS IN CURRENT-PAYMENT STATUS UNDER ALTERNATIVES I, II, AND III, AS OF JUNE 30

[In thousands]

	Retired workers and dependents			Survivors of deceased workers				
Calendar year	Old age	Wives and husbands	Children	Mothers and fathers	Children	Widows and widowers	Parents	Total
Actual data:								
1970	13,066	2,561	535	514	2,673	3,151	29	22,619
1971	13,604	2,673	556	523	2,745	3,287	28	23,416
1972	14,811	2,706	578	536	2,847	3,433	27	24,308
1973	14,880	2,756	602	548	2,887	3,575	25	25,273
1974	15,589	2,806	619	565	2,908	3,706	24	26,217
1975	16,210	2,836	633	568	2,905	3,823	22	26,997
1976	16,789	2,867	674	576	2,876	3,838	21	27,741
1977	17,380	2,899	655	573	2,859	4,042	19	38,427
Alternative I:								
1980	19,293	3,054	708	595	2,791	4,440	15	30,896
1985	22,104	3,106	751	636	2,597	4,970	10	34,174
1990	25,008	3,170	505	527	2,439	4,203	7	35,859
1995	26,664	3,114	363	606	2,557	4,103	7	37,414
2000	27,549	3,040	379	662	2,749	4,043	7	38,429
2005	29,004	2,920	431	679	2,850	3,851	7	39,742
2010	32,109	2,975	521	676	2,875	3,800	7	42,963

TABLE 2.—OASI BENEFICIARIES WITH MONTHLY BENEFITS IN CURRENT-PAYMENT STATUS UNDER ALTERNATIVES I, II, AND III, AS OF JUNE 30—Continued

[In thousands]

Calendar year	Retired workers and dependents			Survivors of deceased workers				Total
	Old age	Wives and husbands	Children	Mothers and fathers	Children	Widows and widowers	Parents	
Alternative I—Continued								
2015	37,056	3,080	639	678	2,899	3,602	7	47,961
2020	43,088	3,203	760	687	2,986	3,417	7	54,148
2025	49,022	3,274	843	697	3,105	3,280	7	60,228
2030	52,828	3,154	844	707	3,200	3,200	7	63,940
2035	54,168	3,058	807	720	3,269	3,118	7	65,147
2040	53,717	2,854	768	744	3,326	2,971	7	64,387
2045	53,581	2,825	777	773	3,422	2,837	7	64,222
2050	54,808	2,972	829	795	3,535	2,676	7	65,622
2055	56,674	3,183	875	812	3,642	2,660	7	67,853
Alternative II:								
1980	19,296	3,054	708	595	2,791	4,440	15	30,899
1985	22,119	3,108	750	636	2,593	4,970	10	34,186
1990	25,024	3,172	506	525	2,414	4,203	7	35,851
1995	26,682	3,115	364	595	2,486	4,103	7	37,352
2000	27,569	3,043	380	640	2,613	4,043	7	38,295
2005	29,029	2,919	412	651	2,656	3,851	7	39,525
2010	32,139	2,976	499	645	2,641	3,799	7	42,706
2015	37,090	3,082	600	643	2,626	3,600	7	47,648
2020	43,127	3,207	700	642	2,660	3,411	7	53,754
2025	49,063	3,287	762	641	2,718	3,271	7	59,749
2030	52,867	3,190	762	642	2,755	3,189	7	63,412
2035	54,203	3,126	729	646	2,771	3,110	7	64,592
2040	53,750	2,940	693	656	2,776	2,955	7	63,777
2045	53,458	2,889	698	669	2,813	2,794	7	63,328
2050	54,155	2,964	730	677	2,860	2,585	7	63,978
2055	55,187	3,100	756	682	2,902	2,485	7	65,119
Alternative III:								
1980	19,344	3,062	710	595	2,790	4,440	15	30,956
1985	22,134	3,110	748	636	2,585	4,970	10	34,193
1990	25,041	3,172	507	517	2,358	4,203	7	35,805
1995	26,697	3,118	365	573	2,345	4,103	7	37,208
2000	27,587	3,045	371	595	2,342	4,043	7	37,990
2005	29,052	2,917	384	593	2,271	3,851	7	39,075
2010	32,168	2,975	443	582	2,180	3,797	7	42,152
2015	37,129	3,081	507	571	2,100	3,594	7	46,989
2020	43,172	3,219	579	557	2,055	3,400	7	52,989
2025	49,108	3,328	631	537	2,015	3,252	7	58,878
2030	52,907	3,275	631	519	1,963	3,166	7	62,468
2035	54,242	3,276	603	506	1,908	3,091	7	63,633
2040	53,786	3,124	574	496	1,852	2,985	7	62,824
2045	53,181	3,015	569	488	1,812	2,858	7	61,930
2050	52,809	2,962	573	478	1,778	2,690	7	61,297
2055	52,167	2,937	566	465	1,743	2,624	7	60,509

Note: Alternatives I, II, and III and the 3 sets of economic and demographic assumptions used in the 1978 OASDI Trustees Report. Alternatives I and III may be respectively characterized as more "optimistic" and "pessimistic" than alternative II.

TABLE 3.—DI BENEFICIARIES WITH MONTHLY BENEFITS IN CURRENT-PAYMENT STATUS UNDER ALTERNATIVES I, II, AND III, AS OF JUNE 30

[In thousands]

Calendar year	Workers	Wives and husbands	Children	Total
Actual data:				
1970	1,436	271	861	2,568
1971	1,561	293	934	2,788
1972	1,737	327	1,028	3,092
1973	1,925	364	1,127	3,416
1974	2,098	391	1,203	3,692
1975	2,363	429	1,333	4,125
1976	2,602	468	1,462	4,532
1977	2,755	482	1,496	4,733
Alternative I:				
1980	3,248	535	1,641	5,424
1985	4,031	578	1,733	6,342
1990	4,696	732	1,863	7,291
1995	5,458	844	1,953	8,255
2000	6,413	965	2,109	9,487
2005	7,457	1,092	2,362	10,911
2010	8,310	1,192	2,661	12,163
2015	8,777	1,225	2,929	12,931
2020	8,860	1,234	3,132	13,226

TABLE 3.— DI BENEFICIARIES WITH MONTHLY BENEFITS IN CURRENT-PAYMENT STATUS UNDER ALTERNATIVES I, II, AND III, AS OF JUNE 30—Continued

[In thousands]

Calendar year	Workers	Wives and husbands	Children	Total
Alternative I—Continued				
2025	8,612	1,225	3,175	13,012
2030	8,341	1,207	3,093	12,641
2035	8,407	1,224	3,097	12,728
2040	8,782	1,263	3,214	13,259
2045	9,252	1,326	3,405	13,983
2050	9,541	1,368	3,529	14,438
2055	9,68	1,397	3,591	14,670
Alternative II:				
1980	3,249	535	1,641	5,425
1985	4,040	579	1,737	6,356
1990	4,709	734	1,868	7,311
1995	5,465	844	1,935	8,244
2000	6,415	966	2,058	9,439
2005	7,455	1,086	2,257	10,798
2010	8,299	1,175	2,492	11,966
2015	8,750	1,203	2,700	12,653
2020	8,811	1,203	2,829	12,843
2025	8,523	1,188	2,811	12,522
2030	8,190	1,158	2,692	12,040
2035	8,161	1,159	2,650	11,970
2040	8,390	1,178	2,708	12,276
2045	8,675	1,209	2,819	12,703
2050	8,792	1,227	2,873	12,892
2055	8,793	1,237	2,877	12,907
Alternative III:				
1980	3,273	535	1,653	5,461
1985	4,049	580	1,741	6,370
1990	4,725	735	1,869	7,329
1995	5,468	845	1,897	8,210
2000	6,415	965	1,946	9,326
2005	7,447	1,070	2,043	10,560
2010	8,278	1,142	2,154	11,574
2015	8,702	1,151	2,234	12,087
2020	8,712	1,140	2,248	12,100
2025	8,347	1,112	2,139	11,598
2030	7,895	1,065	1,966	10,926
2035	7,677	1,035	1,866	10,578
2040	7,625	1,009	1,835	10,469
2045	7,551	990	1,833	10,374
2050	7,350	966	1,801	10,117
2055	7,107	946	1,748	9,801

Note: Alternatives I, II, and III are the 3 sets of economic and demographic assumptions used in the 1978 OASDI Trustees Report. Alternatives I and III may be respectively characterized as more "optimistic" and "pessimistic" than alternative II.

Question. In your testimony earlier this year on extending the Older Americans Act, you endorsed a White House Conference on Aging in 1981. In view of the very challenging statement you have made, do you think we should make special efforts to gather data and take other action steps to make this conference more than just a discussion about developing policy? Would it be wise to have working models in place of concepts to apply on a larger scale if the conferees and the Administration and the Congress thought them worthwhile? For example, in advance of the conference, could we not put in place, on a scale not yet achieved, a pilot of the long-term care system you so vividly described?

Response. Because the elderly are increasing both in absolute numbers, and as a proportion of the Nation's population, steps are being taken now to meet the wide range of needs which older persons in varying circumstances will confront in the future.

The Administration on Aging has launched a new initiative which, when fully implemented, will enable AoA to more adequately address the needs of the increasing numbers of older persons. The development of focal points in the community for the coordinated delivery of necessary services to the elderly is a major initiative within AoA. These services are designed to enable the elderly to remain in their own homes for as long as possible through the development of a comprehensive long-term services system at the community level.

This initiative is reflected in the fiscal year 1978 guidelines for research and demonstration projects funded by AoA. These projects will promote the development of comprehensive and coordinated community-based services with particular emphasis on services to sustain older persons in greatest economic or social need

in their own homes or in the least restrictive setting. The issues to be addressed by researchers include: the factors which affect the selection of long-term alternatives of care for older persons; the effects of reimbursement methods on the supply and quality of community-based services for older persons; and the cost-benefits of alternative service modalities for older persons. Model projects will demonstrate ways to improve community care systems for older persons and to foster the mutual reinforcement of community and family supports in living and service arrangements for older persons. Increased emphasis will be placed on supporting special projects designed to meet the special needs of, and improve the delivery of service to, low income, minority, rural, and disabled older persons.

The problems of the chronically disabled aged are a major concern to the Department. Consequently, there will be a complete staff review, and a series of initiatives proposed over the next several months to better meet their needs utilizing existing available financial resources. The White House Conference to be held in 1981 will assess where we stand in this country on meeting the needs of Older Americans and to develop recommendations to improve the delivery of needed services and other opportunities.

The Health Care Financing Administration will be carrying on a series of demonstrations designed to assess the cost and effectiveness of alternative ways of meeting the long-term care needs of the aged.

Question. If our Nation decides to abolish poverty for older Americans, what would be the most effective way to approach this goal? For example, should the emphasis be on the supplemental security income, social security, a combination of these two programs, or some other approach?

Response. There are two conflicting needs that we face in any effort to abolish poverty—that of keeping future costs under control and of increasing benefits for people whose income is inadequate.

The earnings related social security programs should remain the Nation's primary means of providing economic security for older Americans. The system lends itself well to supplementation by private pensions, savings, and other individual and group efforts to provide economic security. We recognize that social insurance cannot provide an adequate income for those who have had little or no earnings during their working years. Thus, an effective means tested program to provide basic income for people with low income is a necessary third ingredient to meet any need for cash income that social security and private resources cannot provide.

The Advisory Council on Social Security that was appointed in February 1978 is currently studying all aspects of the social security program. The Council will be focusing on selected issues dealing with the role of social security in the future, including the issues raised by your questions. In addition, as you know, the Social Security Amendments of 1977 established a National Commission on Social Security, which will be jointly appointed by the President and the Congress, to make a broad-scale comprehensive study of the social security program. Along with the financial status of the social security program, coverage, and benefit adequacy, this Commission may study possible alternatives to current program, including integration of the current program with private retirement systems.

Further study of this sort will be carried out by the Presidential Commission on Pension Policy. Established under an Executive Order, the Commission will examine pension systems around the country in an effort to develop national policies for retirement, survivor, and disability programs that can serve as a guide for public and private programs. The Commission on Pension Policy will coordinate its work of the Advisory Council and the National Commission.

ITEM 3. LETTER AND ENCLOSURE FROM SENATOR FRANK CHURCH TO HAROLD L. SHEPPARD,[1] PH. D., DIRECTOR, CENTER ON WORK AND AGING, AMERICAN INSTITUTES FOR RESEARCH, WASHINGTON, D.C., DATED JULY 31, 1978

DEAR HAL: Once again, the Senate Committee on Aging owes you an expression of appreciation, not only for excellent testimony, but for your willingness to share your expertise and insights. Your statement last week gave us the exact focus we needed on several issues of major consequence.

[1] See statement, p. 54.

I have enclosed several other questions on which you may wish to comment. I would like to have this additional material by September 5 for inclusion in our hearing record. If it is not possible to give final statements on any individual matter, I would be glad to have an interim response indicating when the additional information will become available.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

Enclosures.

QUESTIONS FOR DR. HAROLD SHEPPARD

(1) You caution against the "body count" method of arriving at a dependency ratio. Your book gives examples of factors, apparently modest, which could alter such ratios dramatically in varying combinations. Would you care to discuss some of them?

(2) Do you agree with those who say that increased costs for supporting an increasingly older population may be offset significantly by reductions in public expenditures for a decreasing proportion of younger persons?

(3) You did not have time in your testimony to discuss the growing number of women in the work force. Secretary Califano has spoken of the important role of the family in providing services to their elderly kin. But since women are probably the major deliverers of services to elderly family members, do you see a growing conflict of role here?

(4) The new employment and training report of the President, issued annually in response to a mandate of the 1973 CETA legislation, has a chapter this year on older workers. I personally am glad to see that this group of workers is receiving more attention from the Department of Labor and from HEW. At one point (p. 98) the report says that the senior community service employment program, funded through the Older Americans Act, offered part-time community service jobs to 37,400 economically disadvantaged persons aged 55 and over. New authorizations and appropriations are likely to raise that number significantly in the near future, but are you satisfied with the rate of increase in these excellent programs? In addition, middle-aged and older workers still have a disporportionately low representation in CETA. Where should the focus be: bigger and better title IX programs? A more receptive CETA? Or both, and more?

(5) You close your excellent statement by expressing the hope that HEW and the Department of Labor, along with the Congress and the private sector, take appropriate measures to develop expanded programs for mid-career development. What should be the division of labor between HEW and DOL? What should be the Congressional focus, and how can the private sector be made more aware of the growing need to retain and retrain the older worker?

(6) May we have your permission to make, as part of our hearing record, pp. III–X (Summary), pp. 105–120 (Part-Time Work, New Work-Time Arrangements, and Work Restructuring), pp. 121–140 (The Older Worker Woman), pp. 141–156 (Older Minority Group Workers), and pp. 157–160 (Older Workers in Rural Areas) from your report, "Research and Development Strategy on Employment-Related Problems of Older Workers"? These pages provide very useful and pertinent material which would effectively supplement your testimony.

ITEM 4. LETTER AND ENCLOSURE FROM DR. HAROLD L. SHEPPARD TO WILLIAM E. ORIOL, SENATE COMMITTEE ON AGING, DATED AUGUST 7, 1978

DEAR BILL: Enclosed are my answers to the questions Senator Church asked me to comment on in his letter of July 31. Also, further information on the "biomedical dimension" requested by Senator Domenici.

Sincerely,

HAROLD L. SHEPPARD.

Enclosure.

RESPONSE TO QUESTION 1

The "body count" approach of measuring the dependency ratio consist simply of dividing the number of persons outside of the "working age" population, arbitrarily defined (e.g., under 16 and over 64) by the number of persons in that "working age" population (16–64 years of age). But this statistical approach fails

to consider factors that influence a more sensitive measurement of dependency. Some of these factors are:

(1) The number of persons actually working, and whether full-time, year-round, or part-time, regardless of age.

(2) The detailed composition of the nonworking population, especially the age composition of the older dependent segment.

(3) Trends, if any, in rates of early retirement.

(4) The costs of the working population of supporting the nonworking portion.

The major purpose of any dependency ratio is to determine the support burden on the working population. But the "body count" can be misleading. For example, it is possible to have a relatively unchanging ratio but for costs to decrease, or increase. The conventional ratio provides no indication of the cost factor. An unchanging ratio, over time, can also obscure the possibility of an "aging" of the older population which itself implies a heavier support cost. And this is what we are experiencing now—a growing proportion of the increasing 65-plus population consisting of persons 80 and older.

Finally, a dependency ratio ostensibly could increase, but the costs remain the same if, for example, the country's economic base (including sharply increased productivity) were to improve sufficiently to compensate for an increase dependency ratio.

RESPONSE TO QUESTION 2

There is no doubt that if high fertility rates prevailed over the next few decades, the total support costs would be much greater than they might be under current and expected conditions of low fertility. But this does not mean that the low fertility rates will be sufficient to offset, on a one-to-one basis, the growing costs of supporting the increasing retired older population. Furthermore, a smaller nonworking infant and youth population does not necessarily result in an arithmetically lower public expenditure per child. In addition to relatively fixed capital costs, such as for schools, it is possible that decisions would be made to spend more per child for other purposes than in the past. The total aggregate costs per child might be less, but not enough to offset, on a one-to-one basis, the rising costs of supporting the aged population.

RESPONSE TO QUESTION 3

This question applies more generally to the need to develop programs and policies in response to the rapidly growing proportion of persons in late adulthood (say, 60–64) with parents and older relatives still alive (e.g., 80 and older). As I pointed out in my testimony, this proportion is increasing by leaps and bounds—from 46 percent in 1970, 63 percent by 1990, and 79 percent by 2000, based on current data on population projections.

Even today, we run across women in their young sixties concerned about what role to play in relationship to the needs of their parents and older relatives. Should they continue to work for their own reasons, and for helping to pay for some of the support of their older relatives? Can they afford to stop working in order to provide some or all services to those relatives?

These comments and questions are primarily speculative on may part, but the main point is that I have not seen any overt recognition of the trends I've described above. It is plausible to believe that the rising labor force participation rate of women will put a strain on their capacity and resources (including time resources) for providing direct care for their older family members. It might possibly reduce the supply of nonworking women available for such services to those members. In that event, the need for a system of paid services, of wage and salary workers to provide those services—outside of the informal family network—may be greater over the next several years than is now the case.

Finally, we must also recognize that a very large proportion of the "very old"—much greater than as of now—will have no or few children as potential service providers on an unpaid, informal basis. And, if an increasing proportion of women in their late 50's and early 60's are in the future labor force, this means fewer of them available to provide direct services for their older relatives. Assuming that women become much more attached to the labor force (for economic and psychological reasons) than they are now, we may witness a growing "role conflict" among them. I also assume, in describing such a scenario, that women, much more than men, will be expected to be the providers of the bulk of services required by the elderly. But this, too, might undergo change.

RESPONSE TO QUESTION 4

I certainly agree that an increase in the number of Title IX participants is important. At the same time, I am concerned that more equitable opportunities for participation in the larger programs of CETA be opened to persons 55 and older. As long as there is an apparent "differential treatment" of older jobseekers in our communities and economy, we will continue to need earmarked programs such as the Title IX program. But this does not preclude some Congressional mandate to provide more opportunities in the other titles of CETA, including public service programs. More liberal eligibility standards might also be applied, such as allowing the poverty criterion to be extended to 125 percent of the formal poverty income cut-off point.

A more critical question, as far as the long-term future is concerned, is: Will we continue to sustain a pattern wherein older workers seem to be "flaked off" during times of economic downturn, or are retired early, only to be forced out of economic necessity to join a quasi-marginal workforce? Once in this position, government then finds it necessary to create such programs as those made possible by Title IX, and other temporary public service job programs. We don't know too much about the previous employment experiences of participants in such programs, but I feel sure that a large portion of them had been victims of a lack of mid-career training and job redesign programs, during economic downturns This, in turn, brings me to your next question.

RESPONSE TO QUESTION 5

Mid-career development obviously cuts across departmental boundaries, and perhaps it should even include the participation of the Department of Commerce because of its relationships with private employers. Our educational institutions, still within the scope of HEW, and the employment and training activities of the Department of Labor, should develop, for example, aome consortia dedicated to the stimulation and expansion of mid-career development activities among employers—first of all, for their current middle-age workers. Much of this thrust would require greater outreach programs, instead of merely using a passive approach in recruitment of participants. Congress might consider a range of incentives to employers to expand or create such programs, perhaps with a higher emphasis on selective industries, depending on the age profile of their current work forces.

RESPONSE TO QUESTION 6

There is no need to obtain my permission to reprint parts of my report [1] for the Department of Labor. It is public property, and I am very pleased that the Committee believes the material in the report can be useful.

Senator Domenici also requested further information on the "biomedical dimension."

The new developments in the biomedical sphere are perhaps the new and as yet unrecognized factor adding to the "senior boom" in this country. Until recently, it would be safer to say that the increased size of the aged population was the result of higher fertility rates in the past, rather than of any increased longevity (relatively speaking). But certainly since 1970 and through 1975—the latest year for which data are available from the National Center for Health Statistics—life expectancy for older Americans has increased at a rate far greater than for the previous 10 years. This change is a reflection of lower mortality rates for older Americans. For example, among men 65–69, death rates per 100,000 from 1960 to 1965, and from 1965 to 1970, were virtually the same. But from 1970 to 1975, the death rate for this same age group declined by more than 11 percent.

What this means, therefore, is that men 65–69 in recent years have a far greater chance of surviving to be 70 or more than previous cohorts of the same age. The increased numbers of men 70 and older, or 80 and older, are therefore a result of improved biomedical conditions, as well as a result of higher fertility rates around the turn of the 20th century.

The accompanying table shows the rate of change in age-adjusted death rates for the 65-plus population over these three 5-year periods, for males and females.

[1] See item 5, p. 87.

RATES OF CHANGE IN AGE-ADJUSTED DEATH RATES FOR THE 65-PLUS POPULATION, 1960-65, 1965-70, AND 1970-75

[In percent]

	1960-65	1965-70	1970-75
Males	+0.5	−3.4	−7.2
Females	−5.2	−8.1	−11.1

Based on data from National Center for Health Statistics.

In brief, this tables shows that for men, there was little, if any progress in reducing mortality rates in the 1960–70 decade, but that over the next 5 years, a rather sharp decline. The same is true for men 55–64 not shown in the table. For women, there has been a steady and increasing rate of decline in death rates for each of the separate age groups in the 65-plus population, to such an extent that the 1970–75 period witnessed a decline rate more than twice that for the 1960–65 period.

These developments, to repeat, mean a greater life expectancy for the aged population, and thus an increase in that population greater than had been previously expected by most experts.

One major explanation of the decline has to do with the progress being made in the fight against diseases of the heart. From 1970 to 1975, death rates for this cause declined from 1,558 to 1,324 (per 100,000) for men and women 65–74 years old. From 1965 to 1970, the death rate for the same cause declined only slightly—from 1,698 to 1,558.

As Dr. Rix and I have pointed out in our book on "The Graying of Working America," much of the decline in this and other death-causing diseases are no doubt due to greater health-consciousness in the population, better nutrition, exercise, and new medical technology. It is our view that even greater strides will be taken against "premature" death when the research results of physiologists and chemists come to be applied to much of the general population. This, too, will mean an increase in the number of adults living to be 75 or 80 and older, thus adding to the "senior boom" now underway.

ITEM 5. EXCERPTS OF REPORT ENTITLED "RESEARCH AND DEVELOPMENT STRATEGY ON EMPLOYMENT-RELATED PROBLEMS OF OLDER WORKERS," BY DR. HAROLD SHEPPARD [1]

VI. PART-TIME WORK, NEW WORK-TIME ARRANGEMENTS, AND WORK RESTRUCTURING

Each of these concepts has general applicability to the total working or working-age population. Older workers are no exception, and in the opinion of a variety of experts and organizations, may constitute a special target group for the concrete types of work suggested by those concepts.

In this connection, it cannot be stressed too much that survey research on the retirement decisions and intentions of middle-aged and older workers rarely poses a choice of options to the survey respondents. They are asked, instead, questions of an either-or character regarding employment: full-time work *or* full-time non-work—nothing in-between. The failure to use an alternative approach results in little useful knowledge regarding (1) the potential labor supply for voluntary part-time work; (2) for occasional, on-and-off employment; or (3) the "market" for a policy of tapered, or gradual retirement. (The latter is a variant of part-time work; it might just as well be conceptualized as part-time *retirement*).

In one study designed to overcome this limitation, Jacobsohn (1970) found that British factory workers nearing retirement age gave *different* responses, depending on the kind of question asked. When asked the either-or type, 55 percent preferred complete retirement. But when offered *choice*, only 21 percent chose such complete withdrawal from work.

The proportion citing a preference for continued *full*-time work fell from 44 percent (when asked the either-or question) to only 15 percent when the question was re-phrased to include part-time, or occasional work. More than three-fifths of them, it turned out, preferred part-time or occasional employment. Altogether, then, only 21 percent—not 55 percent—preferred total withdrawal from the work force.

[1] See statement, p. 54.

Research using a similar approach among American workers—by type of occupation and industry, age, sex, race, and other characteristics—is lacking, and information on the empirical dimensions of the issues involved should be valuable to employers and government, not to mention the individual pre-retiree who may be otherwise forced to think in either-or terms regarding employment in the later years.

On the other hand, the advantages of part-time employment—on a voluntary basis—may be more obvious to the middle-aged and older worker than they are for the organization or employer. There is little in the way of research-findings consensus on the latter. Indeed, little, if any, of the research on the topic of part-time employment focuses on age differences *vis a vis* advantages to the employee or employer. One study (which makes no reference to age) did find—through personal interviews and mail questionnaires among users and non-users of permanent part-time employees—that: (1) little net positive effect on the economic side (from the standpoint of managerial measures of performance); (2) few types of technologies affected these ratings; (3) the vast majority of such jobs consisted of those with discrete (and primarily repetitive) job tasks, and with cyclical demands for output; and (4) part-time jobs apparently are more acceptable to non-traditional, change-oriented managers, and in organizations with more informal "organizational climate."

More in-depth, organizational *case studies* might be necessary to gain further practical insights into how these and related dimensions of the employers of different age groups voluntary part-time workers on a permanent basis might differ between and amongst each other.

As part of the need to assess the market for *voluntary* part-time employment, a first step should consist of sophisticated analysis of the distribution of voluntary part-time employment by industry and occupation, with special attention on the former as a starting point. In 1976, for example, voluntary part-time employment was disproportionately over-represented in wholesale and retail trade (growing since 1966); and finance and other services. Unfortunately, Department of Labor statistics report no information by age in each industry (see Erenburg, 1970).

From 1966 to 1976, the *total* number of persons working part-time on a voluntary part-time basis increased by 41 percent. But the rate of increase in the case of the 45-plus group was much lower, only 25 percent. This fact, plus the additional one—that total numbers employed on a *full-time* basis increased very little (in the case of the 45–64 group) and actually *decreased* in the 65-plus in the same ten-year period—raises the question of whether efforts must be increased to expand opportunities for voluntary part-time employment for older persons, if it is an agreed-upon policy that such employment is one of the positive solutions to certain problems of older workers.

The facts indicate that "opportunities" for such employment increased at a greater rate than opportunities for full-time employment, even omitting the 65-plus. From 1966 to 1976, full-time jobs for the 45–64 group expanded by only 2.6 percent, compared to a 26 percent expansion of voluntary part-time jobs in the same age group.

This type of discussion should also bear in mind that between 1966 and 1976, the number of persons 45–64 who usually worked full-time, but were working part-time because of economic reasons (because of slack work, and inability to find full-time jobs), increased by 39 percent. That rate of increase should be compared with the mere 2.6 percent increase in full-time employment during the same period.

These statistics (taken from the 1977 Employment and Training Report) tell us nothing as to the reasons for lower rates of increase in voluntary part-time employment for the older age groups (compared to younger ages); and for the greater increases in such part-time employment than in full-time employment for the 45–64 group. Nor do they give us any clues as to whether the latter phenomenon is a socially desirable goal or policy to pursue (despite the label of "voluntary").

How many of the so-called voluntarily part-time employed older persons would accept a full-time if offered one? Under what conditions, etc.?

All of these questions require pin-pointed research inquiries and policy discussions which, to our knowledge, are missing in the current scene.

Other specific research questions stimulated by these data, and which should have program and policy implications, include the following:

In which industries, and areas, have there been the least and most increase in part-time employment—and by category (voluntary and involuntary)?

What are the trends (keeping the above in consideration) for males vs. females; whites vs. minority groups?

How do the differences in rates of change in opportunities for full-time vs. less than full-time (especially on an involuntary basis) affect the "discouragement" process?

Any research and program focus on part-time work should, however, conceptualize such work as only one type of pattern, or option, available to older workers (in this case, say, 50 and older)—ranging from:

(1) Continued full-time employment in same occupation with same employer.

(2) Continued full-time employment but with same or different employer, but in different occupation.

(3) Part-time employment with same employer, same occupation.

(4) Part-time, with same or different employer, but in different occupation.

(5) Voluntarily intermittent employment.

"Part-time" itself as a term can be misleading, since it encompasses a broad spectrum of number of hours and/or days per week. Furthermore, at a certain point in the worklife cycle, individual workers may choose, or be encouraged to choose (depending on a number of conditions), a *gradual* tapering down of total working hours, or days per week—or even weeks per year.

Research in this area would require an identification of factors and conditions that are associated with different patterns of work-time distribution on the part of older workers (with due recognition of the heterogeneous composition of that population), by occupational groupings, family situation, etc.

Equally important, of course, is the extent to which employing organizations—both public and private—can actually function with such work-time patterns, the conditions under which such organizations can be induced to initiate such personnel practices; the role of unions in facilitating or hindering the introduction of such patterns, etc.

Also, it is not clear how much of the desire for part-time work on the part of older workers is unmet because of their lack of job market information regarding the availability of such employment in different organizations. This topic should not be separated from an additional one, namely, the degree to which various forms of part-time employment, as an alternative to full withdrawal from the labor force, are known to older workers—or to *employers* whose "cake of custom" blinds them to the use of part-time employees even when this might be of advantage to them (e.g., in times of high demand for labor).

Apart from the obvious research efforts that can be carried out on these topics, it may be more fruitful to conduct experimental and demonstration programs designed, for example, to improve the match between older workers seeking various forms of part-time employment and employers seeking such persons—or who could be persuaded to hire them.

Finally, there is, at the present time, no comprehensive picture, based on empirical research, of:

(1) The distribution of and trends in work-time patterns by age, industry, and occupation;

(2) Worker and employer evaluations of these patterns;

(3) Projections of employee and employer demand for such types of work-time distribution; and

(4) Cost-benefit analyses of these types.

Juanita Kreps (1971), in commenting on needed research on the general topic of work-time options for older workers, stresses the point that:

"[It] would be useful to business organizations, public employers, and union officials in determining whether their employees and constituents would prefer a second career or early retirement, should such options be available. *In the absence of such evidence on desired work-leisure patterns, the free time generated by economic growth will be used in ways not necessarily compatible with preferences. It is also difficult to predict the degree to which firms could accommodate to worker preference without some evaluation of the institutional constraints operating against career flexibility.*" (emphasis added)

In addition to the position that holds that older workers should be treated the same as any other age group when it comes to the right to engage in all types of occupational employment and on a fulltime basis, we need also to recognize that many older workers—especially those in the upper age groups (say, 65–74)—seek only part-time or intermittent full-time work.

The research need here is to determine (1) the size of such a population; (2) the types of work they are already capable of performing (without any extensive or intensive training); and (3) the "market" for such voluntarily less-than-full-time paid activity (the demand side).

None of this implies that there is or should be such a thing as part-time types of employment for "older workers only," although many programs or program proposals may tend to adhere to such a doctrine.

Furthermore, on the experimental and demonstration side, pilot efforts might be designed and carried out to *expand* on the types of jobs that could be performed on a part-time basis, for (1) a *variety* of jobseekers (again on a voluntary basis)—including older workers—and (2) for older workers *only*. This would first require a survey of employers in given local areas to determine the possibility, or feasibility of creating such positions (or locating them, if already existing but not filled), and the numbers and types involved; second, an active job development effort coupled with an orientation and recruitment activity.

Some of these jobs might be traditionally viewed as full-time jobs, but could be the source of *work-sharing* design. Needless to say, such an E&D suggestion would also entail an examination of the legal and institutional barriers to its effective implementation; and how, if at all, other, previous similar efforts overcame such barriers.

In addition to, and perhaps as a prelude to this type of E&D project, research might be needed on previous and current programs to provide part-time and intermittent jobs to older workers, with a focus on:

Types of jobs; and industries.

Types of older workers.

Degree to which nature of the local community and the local labor market affects the prospects for part-time employment activity.

Previous experience with regard to barriers; recruitment of interest among employers and older workers themselves.

Costs to the employer.

Degree to which such employment facilitates the "adjustment" to full-time retirement.

Research on the topic of part-time employment should also concentrate on some specific issues including the following:

(1) What proportion is truly voluntary?

(2) What is the "universe of need" for such voluntary part-time employment—by specific subgroups of older persons (type of area; previous occupation; current total income; race-sex differences, etc.)?

(3) What is the current and potential structure of opportunities for such employment, according to industry?

(4) What are the obstacles and facilitators affect that opportunity structure (e.g., government, company, and union rules and customs)?

(5) What are the trade-offs involved, as far as effects on other groups' employment status is concerned?

(6) What effect does such employment have on such programs as transfer payment systems? On community services?

(7) To what extent would the already-retired (and who among them) take advantage of such opportunities for part-time work?

On each of these items, and related ones, experimental and demonstration projects might be expanded or developed, in order to obtain answers to the questions, and to determine what other effects are found, of an unexpected nature; and how obstacles were overcome, or facilitators were improved.

If voluntary part-time employment is to be accepted as a positive public policy, it would then seem appropriate for the federal government at least to serve as a model.

A report by the General Accounting Office (1976) on part-time employment in federal agencies spelled out the advantages and disadvantages cited by federal agency managers on the use of part-time employees. It refers to the age distribution of the total numbers involved in 21 agencies, but nothing on the constraints, advantages and disadvantages according to age. Nearly 28 percent of the overall numbers (105,000) were 41 and older; 40 percent, under 25.

For government agencies at the Federal, state, and local levels—as well as for private industries employing persons in similar occupations (typically white-collar)—it may be valuable to ascertain whether the following examples of advantages and disadvantages also apply to older groups:

Advantages

Greater access to a "pool of talent" not needed or available on a full-time basis.

Greater agency flexibility in meeting temporary demand during seasonal workload peaks.

Greater productivity (reported only from some agencies) than by full-time employees.

A new and valuable source for eventually full-time personnel.

Disadvantages

Excess training and administrative costs.
Problems of work-time accommodation.
Lack of job continuity and completion.
High turnover.
Poor morale among part-timers because of fewer, or no, fringe benefits.

In addition to research into the applicability of these and other advantages and disadvantages regarding the use of older persons as part-time employees, similar efforts should be directed—of a research *and* demonstration nature—toward other levels of government, and in the private sector.

But is part-time employment worth pursuing as a national goal or policy? Furthermore,

(1) Does such employment patterns suggest that it is a sign that the mainstream of the labor force is moving towards a general pattern of reduced working hours?

(2) If the country were to adopt an opposite policy, namely, a *restriction* on the number of part-time jobs, would that policy increase *full*-time opportunities—and for which groups in the population, if at all?

(3) Do employers—and in which industries—respond to major changes in age in such a way as to influence the demand for persons available for less than full-time employment? That is, does the "supply" of such persons increase the demand for part-time employment?

(4) To what extent, can part-time employment serve (and under what conditions) as a *transition* for various adult and older groups to *full*-time retirement?

This discussion so far, and the research and policy questions raised, have dealt primarily with the topic of part-time employment from the standpoints of the individual and the employer. What about the "total economy" side? We can only answer this important question with questions.

For example, do such employment patterns affect opportunities, and to what extent, for full-time employment (and with fringe benefits, etc., not typically associated with part-time employment)? In which particular sectors of the economy?

Without such employment, would there be a deterioration in the numbers and kinds of *services* desired and required by the community and consumers?

These and similar questions have been treated at length recently by Owen (1976), but the study does not include attention to the age factor.

Work sharing, flexi-time (on less than a full-week basis), and similar concepts should be considered as variants of the basic part-time employment topic, and the issues, research and demonstration prospects—as far as older workers are concerned—should not be too different, if at all. (State of Wisconsin, 1977; Glickman and Brown, 1974; Evans, 1973; Baum and Young; 1974, Kimzey and Prince, 1974). However, few, if any, of the many reports and research studies include considerations of the age factor.

Tapered, or "part-time" retirement, also is another variant (the other side of the coin), but because of its special character, warrants more attention in this report. It is discussed in other sections of this report.

These separate topics can be conceptualized as specific examples and facets of a more general, perhaps more basic, approach concentrating on the *lifelong allocation of time*—or the lifetime distribution of work, leisure, and education. That approach highlights the issue of how society and economies "decide" on who shall (and when they shall) learn, work, and not work over the total lifespan, and the value of redistributing, intermittently, each of these activities over that lifespan (Sheppard, 1977; Best and Stern, 1976; Chalendar, 1976; Wirtz, 1975; Kreps, 1971).

It may be too soon for the Department of Labor to devote its research and demonstration resources to this intriguing subject which is issue-laden. For the immediate future, however, the sub-topic of *mid-career change and development* cannot be ignored now. That dimension of the lifespan approach is treated in a separate section of this report.

Work and work environment restructuring. Separate and distinct from the topic and issue of time-allocation of work, is another category of alternative work patterns, generally found in research and policy discussions about job satisfaction, job redesign, job enrichment and "quality of work," etc. In recent years, this topic has reached a stage virtually of a movement in various circles, in many countries.

One of the ways in which it bears upon the job-related problems of middle-aged and older workers is with respect to the retirement phenomenon. Jacobsohn (1972) found that workers' acceptance of their companies' retirement age was

clearly related to the level of job strain, and of worker autonomy in job performance (e.g., machine-paced vs. bench work). Sheppard, in his simple cross-classification analysis of NLS data (1976), found that level of 1966 job satisfaction predicted for early retirement rates, but only among *unhealthy whites*, with no analysis by age. The fact that no relationship prevailed in the case of unhealthy blacks raises the issue as to whether these men are in any economic position—despite their poor health—to leave the labor market if dissatisfied with their jobs.

However, Andrisani (1976) found, through a more sophisticated analysis of the same data, that for both whites and blacks (regardless of health status) early retirement was a function of job dissatisfaction.

What may be one of the most interesting research and policy changes is the fact that while the economic rewards of the NLS sample of middle-age and older men increased, on the average, over the 1966–71 period, *job satisfaction* actually declined in this same period. While the latter has been found to be generally associated positively with income level—in *cross-sectional* research—this does not automatically mean that the components and roots of job satisfaction are exclusively economic in nature (Sheppard, 1976). Because of this, improvements over time in economic status (as measured by real income changes) are not necessarily accompanied by improvements in satisfaction with other dimensions of a person's work life and its environment.

The analysis of quality of task levels among white male blue collar workers—i.e., degree of variety, autonomy, and responsibility—by Sheppard (1972) found that the lower the task-quality level, holding age constant, the greater the proposition of such workers indicating that if assured of adequate income, they would retire immediately. More important, UAW data for 1972–73 indicate that among workers eligible for "30-and-out" retirement, actual retirement rates varied according to skill-level: the higher the skill, the lower the rate.

The analysis of the Survey of Working Conditions survey by Quinn showed that *low autonomy* was associated with early retirement—for *men* but not women. Why should this be? Does it mean that work itself—at least in the past and contemporary scenes—is of a greater central life focus for men, that men are so much identified with their jobs that negative features are more salient to them? Will this *change*, as women become more regularly attached to the labor force over a greater portion of their lives?

Andrisani's multi-variate analysis (1976) of the NLS data (for all age-sex-race sub-samples) found that:

(1) Regardless of the state of the economy, dissatisfied middle-aged males were more likely than the satisfied ones to change jobs voluntarily.

(2) Black middle-aged males—but not whites—who were dissatisfied with their jobs *and* who changed voluntarily made higher advances (in terms of job status and earnings) in subsequent years.

(3) With the exception of blacks, job satisfaction among the middle-aged *declined*, from 1966 to 1972.

The *reasons* for these relationships and trends should provide some basic policy guidelines for approaching the qualitative dimension of job-related problems of middle-aged and older workers.

The decline in job satisfaction among the *non*-changers in the NLS sample is a case in point. Policy thinking regarding labor turnover and mobility—which are partly a function of level of job satisfaction—is characterized by contradictory values. On the one hand, there is a concern about turnover as a cost item—especially at the organizational level. On the other hand, there is also a great emphasis on the virtues of mobility for the sake of a highly rational and fruitful functioning of the economy. If job satisfaction among job-*stayers* does decline—even among middle-aged and older workers who conventionally are deemed as having become "satisfied" over time—this might lead to various kinds of diseconomies and costs to the firm, and thus indirectly to the total economy.

Finally, there is a more intriguing dimension of the various efforts for improving the quality of work life. If it is correct that job attitudes, and early retirement (coupled with quality of job performance itself), are in part a function of such criteria as degree of task autonomy, what is happening in the many organizations—in both the private and public sectors—now experimenting with, or institutionalizing, such notions as job redesign, job enrichment, autonomous work groups, etc?

For example, to the degree that such notions have been put into actual practice—on a pilot or regularized basis—is there a change in early retirement intentions? In actual retirement rates? How do these measures in such situations compare with

findings in workplaces producing the same product or service but which have *not* introduced similar practices?

The time is ripe for research on these questions which may be of import to workers, organizations, and the economy.

Job redesign has, over the years, been recommended as one of the solutions to selected problems of older workers, usually in response to presumed physical and mental changes associated with advancing age, as a way of coping with their inability to maintain performance in their *regular* jobs. Such a notion consists of changing those regular jobs in such a way as to make the jobs match the working capacity of workers growing older—as opposed to *transferring* them to "easier" jobs (frequently resulting in lower pay and loss of status). (OECD, 1966). This particular meaning of job redesign, however, is *not* the same as that intended by other researchers and consultants using the same term (e.g., Davis and Taylor, 1973).

According to a Department of Labor report (1967), few of the 1,000 largest American industrial corporations have specifically redesigned jobs for older workers for purposes of matching the job to the presumed decline in older worker performance. There is no compelling reason to think that much has changed in this regard in recent years (although the "quality of work life" projects may coincidentally include older persons). Corporations generally have tended to exercise two options—*transfer* older workers to less physically demanding jobs under the presumption older workers could not continue in their present jobs, or persuade older workers to retire early.

Instead of resorting to either of these courses of action, corporations could benefit from job redesign based on task analysis by creating new jobs that tap the skills and experience of older workers, and *reduce* the odds for increased job dissatisfaction. Such efforts might be encouraged by Departmental experimental and demonstration programs.

Whether or not an older worker will like a job is no more important than whether or not he or she can do a job. An experimental program may involve the creation of new jobs by new combinations of tasks in a given industry.

Does combining so many demanding tasks together make a job "undoable" or stressful?

Does combining *many* low level tasks together make for a high error rate due to boredom?

Does the "right" combination of tasks ("right" from the standpoint of job enrichment proponents) make a positive difference for *all* age groups?

It is recommended that tasks that make up several jobs be considered in the experimental effort to allow latitude for innovative new job-quality creation. Results from such a study could be considered in relationship to other experimental job redesigns such as re-clustering of tasks from a single existing job into "higher" and "lower" task-quality groupings.

No easy predictions—and no comforting prescriptions—should be made on the potential outcomes of improving the quality of worklife (as defined from the standpoint of experts on the subject) on the job behavior and retirement decisions among older workers. In the first place, there is no such animal as *the* "older worker," as we have tried to make clear throughout this report (and despite our own frequent violations of that percept): there are *varieties*. The response to changing the nature of job tasks will be influenced by the nature of the individual older worker—and of younger ones whose retirement desires also may be affected by the nature of the job.

Experts on the topic of work values and personality types *vis a vis* quality of work (Yankelovich, 1972, for example) suggest that the *young* workers of today—the older workers of tomorrow—will tolerate less the low task quality of many job assignments; that many, if not most of them—but to a greater extent than in the case of today's older workers—will require job tasks of a higher quality to keep them productive, in the future.

Furthermore, the *way* in which such changes are introduced play a role in worker reaction. Pollman and Johnson (1974), for example, found that retirement decisions among auto workers were partly affected by job changes *not* initiated by the workers themselves. It is not clear from their study, however, which of the jobs the workers were transferred to were, if at all, of a more positive task-level quality.

The critical questions stemming from that research and from the general theory (and expectation) concerning the virtues of job redesign, job enrichment, and other forms of work-quality improvement involve the extent to which changes in those directions are made with the participation of the workers themselves, and not merely initiated by management. As workers grow older in jobs already

"enriched," are their job performance and retirement behavior any different (and in what way) from their age peers not in such jobs? These and related questions should be part of a research agenda in this arena of job-related problems of middle-aged and older workers.

VII. THE OLDER WORKING WOMAN

As women have become a more significant segment of the labor force, and with their participation rates increasing, the topic of older working women and the issues and problems associated with these phenomena gather in importance. Chief among these problems are the following (not necessarily in order of importance):

(1) Once unemployed, average duration of joblessness for women is higher than for men of the same, older ages.

(2) The older the discouraged woman worker, the greater the length of time between last job and the "decision" to drop out of the labor force (Moser, 1974).

(3) Compared to discouraged older males, the length of time is also greater.

(4) The chances of adequate retirement income are more severe for women than for men, and while the future may see improvements over the present, these chances will remain lower than for men (Bernstein, 1974).

(5) The uncertainty regarding the shift toward "male" occupations which typically have higher status, and which affects employment and retirement status in the later years may characterize the employment world of adult women.

(6) Even with improvements in vesting provisions, due to ERISA, women face more serious problems than men, given their shorter tenure in any given job, and their high representation among the part-time employed (who typically do not enjoy fringe benefits such as pension coverage). However, taking women of all ages, the proportion of the total population of women working on a year-round, full-time basis has risen over the past decades; and in the *middle*-age groups, at least, this proportion is greater than in the younger groups of women.

(7) Given the general pattern of no survivors' benefits in private pension plans, the higher *survivorship* of wives beyond their husband's time of death means serious problems for them, unless they themselves have gained adequate work experience with private pension coverage as well. Frequently, this element plays a role in the work-nonwork decisions of married women.

(8) This point also may prompt decisions to re-enter the labor force, or enter for the first time, at a late stage in life, with many attendant problems.

(9) Among these problems are the need for training or re-training as well as for "occupational socialization" in the world of work after many years of nonwork.

(10) But such investments in training can be stymied to the degree that both "sexism" and "ageism" together persist as barriers to the employment status of older women.

(11) Mature women seeking employment in part-time professional jobs and those with high levels of responsibility encounter obstacles in that search.

(12) *Retired* older women have lower morale than those employed (with the exception of the higher income groups). Those who never worked have the lowest morale (Jaslow, 1976).

(13) Lack of training in the early years produces a "retrogression" in economic status between the first and current jobs (Parnes, et al., 1975).

(14) *Nonmarried* older women (58–63) tend to have the lowest proportions covered by private pensions prior to retirement.

(15) Because they are typically in lower-paying jobs, with less continuous attachment to the labor force, and with wages *below* the taxable wage ceiling for Social Security purposes, women are affected more than men by the "regressivity" of the system's payroll tax.

(16) If old enough, they are more likely to "opt" for early retirement (with severely reduced benefits) than men, in times of unemployment (Sommers, 1975).

(17) On the other hand, if under the age of 62, they run the risk of being "too old to work, and too young"—i.e., little work experience—for adequate unemployment insurance (Sommers, 1975).

(18) Because of many of the above problems, and others, mandatory retirement age requirements—and not-completely voluntary *early* retirement—can mean even greater problems in the later years for women than for men.

Labor force participation. The topic of, and problems related to, labor force participation among older women (and the longitudinal dimensions of such participation) is important for a number of reasons, including (1) those stemming from the cultural shift among women themselves regarding their roles in the society; (2) the relevance of such participation—at what scale, i.e., part-or full-time—to

the broader issue regarding the need to find "offsets" to the allegedly growing problem of the "dependency burden" of supporting larger numbers and proportions of older nonworking persons; and (3) the possibility that work itself is becoming a more salient dimension of women's lives than in the past.

In this connection, we find it of more than passing interest that preliminary findings from a current AIR study of a national sample of 1,000 men and women 48 to 52 years old, indicate that out of 15 factors associated with the quality of life, work among women was the most important influence. Among men, however, it was only the third most important. This is a study (by Flanagan and Russ-Eft, sponsored by the Administration on Aging) which has not yet been fully explored, of the jobs and work experiences of this middle-aged group which explain the high influence-rank of work for women in this age group, and the reasons why it is higher in rank for women than for men. Other studies (e.g., Lowenthal, 1975), however, indicate that work as a source of stress is greater in the lives of middle-aged men than for women.

In any event, work as a major element in the lives of women, especially as reflected in the experiences of those with continuing attachment to the labor force, seems to be on the upswing. This development may even influence such spheres as the retirement decision, early retirement rates, and degree of acceptance of mandatory age-at-retirement practices.

Attention to this possibility is rare in the research literature and in policy documents. In a study of British semi-skilled factory workers, Jacobsohn (1970) found that among the women 50–59 years old, there was a greater reluctance to retire than among men of the same age; they were *less* positive about the prospects of retiring than the men.

Is this type of contrast a matterr of cultural differences, i.e., not to be found among American women in similar circumstances?

Is it—regardless of culture—a portent of any *divergent* tendencies among women as opposed to men regarding the trade-off between work continuity and nonwork, or "leisure" (retirement)?

Is it a specific manifestation of the general socio-cultural shift in the life and work ethos of women (in its most dramatic form, a result of the "women's liberation" movement)? That is, are today's women becoming attracted more to the world of work as a more desirable alternative to the unpaid work-role of homemaker, which is what "retirement" more typically means for women than for men—at least, so far?

These and many other questions can be translated into hypotheses for new research efforts supported by the Department of Labor. The empirical facets of such research may have policy and program implications regarding, for example, demands of working women for improved status in the labor force as they grow older, including rights to training and promotion opportunities; tailor-made provisions regarding retirement options, instead of universal policies.

The rising participation rates of women accompanied by an opposite trend for men—especially in the middle- and older age groups—is a phenomenon that has both fascinating research and policy-problem nuances. In what ways, if at all, are these two opposite trends related to each other? Or are they, to some extent, unrelated—or fortuitous? The relationship has only been asserted, and descriptively reported with statistics showing each of the two separate trends. But, to our knowledge, there has been little research as to any presumed causal relationship.

Are women actually taking the place of older men—on a job-by-job, occupation-by-occupation, industry-by-industry basis?

Does the current EEO emphasis on the employment rights of women—regardless of age—result in the reduction of opportunities for older men?

Or is the process essentially due to the growth of occupations "traditionally" held by women, and the simultaneous decline of those traditionally filled by men? As Oppenheimer (1973) has pointed out, men and women have been "used" interchangeably in *some* occupations over recent decades, but "most demand for labor has usually been sex specific," that is, the growing participation rate of women is to a considerable extent a function, so far, of the pattern of economic development which has characteristically moved the demand for labor toward those service occupations and industries historically associated with "women's work." The usual explanations, such as reduced fertility, higher education, urbanization, etc., (which increase supply) all may be relevant, but the economic development factor must also be reckoned with.

On the policy side, how feasible would it be to break up the *general* pattern of "male" versus "female" types of occupations, in order to maintain or to increase the participation opportunities of older men?

Is the current effort to change the "sex identity" of certain occupations primarily one-sided, i.e., directed toward placing women in traditionally male positions, and not directed *without* regard to sex? On this latter point, internal labor market situations might be the best sites in which to study the question.

Each year has witnessed a rising proportion of the 45+ group in the labor force. At the end of World War II, 33 percent of women 45–54 were in the work force. A little more than a quarter of a century later, the percent for women of the same ages was 55 percent. The corresponding figures for the 55–64 age group are 21 percent (1947) and 41 percent (1974)—nearly a 100 percent rate of increase. During the same period, the rates for men in both age groups *declined.*

The 65+ group's participation rate has by and large remained the same, about 8 percent, with slightly higher percentages from about 1955 to 1965. Even among just the 65–69 year olds, the rate has remained basically unchanged.

In 1947, women made up only 23 percent of the 45+ work force, but by 1976, this proportion had increased substantially, to nearly 39 percent.

The greatest rate of increase in labor force participation has been taking place among married women. Commitment or attachment to work among married women may be becoming increasingly like that of their husbands, a possibility which deserves greater research attention.

From 1959 to 1974, the percentage of women in the age groups of 45–54; 55–59; and 60–64 who worked on a year-around, full-time basis (YRFT) has also increased sharply—with the greatest rate of increase occurring in the 55–59 age group.

Contrary to what has been happening to *men* in the 62–64 age group, there has been little decline in the percent of women of the same ages with some kind of work experience, and/or working on a year-round, full-time basis—this despite eligibility for retired worker benefits at age 62.

If opportunities for year-round, full-time employment are viewed as a desirable goal (since, for example, it means a higher income), then it is important to see how such factors as *education* affect those opportunities for older women workers. The proportions of each age group working YRFT in 1974 show a clear relationship to amount of schooling.

PERCENT OF WOMEN WORKING YEAR ROUND, FULL TIME, BY AGE AND EDUCATION, 1974

	25–34	35–44	45–54	55–64	65-plus
Total	42	44	48	37	3
Less than 9 years schooling	21	30	33	27	2
9 to 11 years	25	40	42	34	3
High school (12 years)	42	45	52	42	5
1–3 years college	47	46	49	43	6
4-plus years college	54	52	60	56	5

Source: Census Bureau, Current Population Reports, p. 60, No. 101, "Money Income in 1974 of Families and Persons in the United States," 1976. Table 58.

While the proportion working YRFT in each level of schooling peaks in the 45-54 age group, the important point is that within each age group, including the key 45-64 group of women, the higher the educational level, the greater the proportion of women working on a year-round, full-time basis.

It is equally important that in each of the levels of schooling, the *median income* of the older women, especially those 45-64, is equal to or greater than the income of younger women.

Finally, although the proportion of older women working year-round, full-time is generally lower than the proportion for men of the same age group, that proportion rises depending on level of schooling, The greater the schooling, the greater the proportion working YRFT.

The importance of marital status of older women regarding labor force participation rates can partly be seen in the 1969 Retirement History Study of the Social Security Administration. Despite the eligibility for retired worker benefits at age 62, one-half of the *non*married women were still in the labor force. If they were *widows*, the proportion was only 42 percent—in contrast to 62 percent of those *never* married. Unfortunately, the Study did not include married wives with previous or current attachment to the labor force. In any event, trends in participation (or retirement) rates warrant monitoring on a systematic basis over the short- and long-run, including the rates of married women in this age group.

More sophisticated research should also include consideration of educational and occupational levels—simultaneously with marital status—as factors associated with trends in labor force participation rates of this older female age group (for example, similar to the 1900-1960 analysis by Darian, 1972).

As stated already, the participation rate of women has been increasing over the past several decades. The greatest rate of increase has occurred in the case of *married* women—almost by definition, since the rates of participation among women of other marital statuses are already high. Using an approximation to a truly longitudinal method, analysis of the data indicate that from 1966 to 1976, the rate of increase (based on the "Stouffer Method" [1]) in participation of married women 25-34 years old in 1966 had increased—by the time this cohort was 35-44 in 1976—by over 32 percent. This was greater than for other women of the same age in 1966; greater for those 35-44 in 1966 and 45-54 in 1976, and for those 45-54 in 1966 and 55-64 in 1976—*regardless* of marital status.

Nevertheless, unmarried older women do have the highest participation rates. One major research and policy-related question here is, to what degree do unmarried women in the labor force remain in it, and thereby—as they grow older—enjoy greater prospects for upward mobility than married women who typically enter (or re-enter) the labor force at a later age? This possibility thereby places the older married female re-entrant (or new entrant) in what may come to be a disadvantageous position.

Furthermore, we have little information on the "job adjustment problems," if any, of the middle-aged housewife who, for a variety of reasons, enters the labor force and finds employment. For those previously employed, does this experience, facilitate the establishment and acquisition of new substantive and adaptive skills, as compared to those without previous job experience, and to those women of the same age but with long years of uninterrupted employment?

The higher the educational level, the smaller the gap between labor force participation rates of older married and other women. How far this development will go is still not clear, and requires regular research monitoring. This "gap-narrowing" qualifies the general view that there is less economic *need* for upper socio-economic groups (one proxy for which is years of schooling) of older married women to seek employment.

Is part of the explanation due to the differences in opportunity structures according to education?

Is it because higher education is associated with having fewer children, thus making such women more available for employment?

Are there other socio-cultural values involved—such as careerism—that distinguish the upper socio-economic groups of married women?

In what ways do all of these, and other factors interact to produce the higher participation rate of married women with greater education which, in turn, narrows the gap cited above?

Finally, what are the average retirement ages of such married women relative to all others—and to men as well? We cannot accept, without empirical research, the assumption that parity between the sexes—especially holding education constant—will produce parallel retirement plans and decision-making.

Comparisons between 1964 and 1974 data reveal that among married women 55–64 years old, participation rates in each ascending level of schooling achieved had risen, with the *exception* of those with four or more years of college completed.[2] For this latter group, the drop was quite marked (from 59 down to 50 percent, while the rate for other women remained relatively unchanged—thus increasing the gap).

Finally, it may be critical to explore the reasons for, and the implications of the general *increase* in participation rates for *married* middle-aged women (45–64), accompanied by a general decrease in rates among widowed, divorced, and separated women, over the past dozen years, even in the higher-educated groups.

Because the greatest rate of change in female labor force participation has been occurring among married women, it is important to determine the *extent* of their

[1] A measure developed by Samuel Stouffer, in his volumes on The American Soldier, that accounts for the fact that an increase from one level of percentage to some maximum percentage (such as 100 percent) will be affected by the size of the base percentage. It is a more sensitive measure, and more relevant than the one that takes a percentage at one time and uses the absolute percentage points between that one and the succeeding one as a proportion of the original percentage, i.e., Difference in percentage points from time A to Time B divided by Difference between 100 percent and Time A.

[2] Special Labor Reports on Educational Attainment of Workers, for 1964 and 1974. By 1976, the participation rate for this group rose, slightly, to 53 percent.

work experience, e.g., the percentage working part-time, or less than year-round full-time. From 1971 to 1975, according to work experience tables of the Department of Labor, the prop tirons of married women, by age, with *any* work experience who were employed *less* than 27 weeks, were as follows:

	1971	1975
All women, 16-plus	23.7	20.7
Married, spouse present	22.8	19.5
25–44	24.3	21.5
45–54	15.0	12.9
55–64	15.0	12.1
65-plus	30.9	25.8

Source: Special Labor Force Reports for 1971 and 1975, Department of Labor, Bureau of Labor Statistics.

Since these percentages are based only on those with work experience, it is not clear whether the downward changes are a function of an increase in full-time job opportunities, or of a decrease in opportunities in general due to cyclical changes, etc. This clearly is an untapped research topic.

Also, to our knowledge, little, if anything, is known about the relationship between (1) changes in the labor force participation rates of different age groups of married women (and/or proportions working or seeking full-time employment, etc.), and (2) the employment status of their *husbands.* While it is generally accepted that the rise in such rates must be associated with such factors as a rising educational level of women, decline in size of family, etc., we do not know the extent to which *husband's* employment status is also influential in this changing phenomenon. We should add, too, the influence of rates of change in *inflation,* insofar as efforts to maintain a given family standard of living requires the wife to seek employment or—if already employed part-time—to seek full-time work. The current longitudinal project by Sheppard and Rix (with support from the Administration on Aging)—focusing on persons 40–69 in two large labor areas with widely contrasting rates of unemployment—is partly designed to test the hypothesis that the husband's employment status may influence the labor force status of other family members.

In any type of research on older women in the workforce, it may not be sufficient merely to refer to statistics on "labor force participants," since such figures do not actually tell us how many women actually worked in any given year, i.e., work experience. This is especially true of middle-aged and older women. For example, in 1975, the female "labor force" figure was reported as roughly 37 million (all 16 and older), but work experience tables for the same year indicate that nearly 49 million worked for some period of time, a difference of nearly 16 percent.

More important, the older the woman (starting at age 60), the *greater* the discrepancy between the labor force size and the size of the female population with any work experience. The same is true in the case of men, incidentally, but the discrepancy is of a smaller magnitude, reflecting the sex difference in proportions working year-round and/or on a full-time basis. Furthermore, comparisons between 1970 and 1975 data suggest a *declining* discrepancy in the case of women, which may reflect the growing proportion of women working on more than a part-time, or part-year basis.

To repeat, labor force *participation rates* of women, by age, marital status and race, are one phenomenon: They should not be confused with data on *work experience.* More important, from the standpoint of eventual retirement income, are *years* of full- and/or part-time employment. But there is little systematic or periodic information on this topic.

The National Longitudinal Study of women—*if* supported long enough and with little attrition—could become one major source of such information. The type of research required, however, must ideally include women currently not in the labor force, or currently not employed, and must also be designed to reckon with the possibility of intermittent participation and employment (full- and part-time) in future years, prior to full and permanent retirement.

There are other aspects of the older woman worker topic which need research and policy attention, and which may contain the roots of potential problems. The major conceptual point regarding one of those aspects is that the relationship between marital status and labor force status among women as they become older may not be uni-directional. We cannot ignore the possible impact of employment

among women upon their marital status, and their eventual socio-economic status in later life. Many single women obtain satisfying employment and partly because of this, remain single for a *longer* number of years than otherwise, or may even remain single throughout their lives—again, partly because of the nature of their work experience.

Equally important, if not more so, many *married* women may obtain and keep a satisfying type of employment, and this fact *itself* might increase the odds for separation or divorce—thus making them "unmarried" for the rest of their lives. To the degree that family dissolutions are a critical problem for individuals and for society, the topic acquires a policy-implication significance.

There is, however, little in the way of research designed explicitly to test the hypothesis that labor force status is itself an "independent" variable in marital patterns and trends, including the phenomenon of divorce and separation. One research model might consist of longitudinal analyses of cohorts of young adults and middle-aged *employed vs. not employed* wives, concentrating on relative changes in marital status over an extended number of years. Data of a cross-sectional nature already exist on the labor force status of divorced and separated women, but they do not contain information regarding the relative *time* position of entry into the labor force and of change in marital status.

Finally, with regard to labor force participation, no attempt to carry out *projections* of participation rates of middle-aged and older women should ignore those factors that may function, over time, as possible deterrents (or conversely, facilitators) to their continued participation in the workforce, with special regard to socio-economic differences among such women. In discussions of this nature, the observations of Taeuber (1976) on projection efforts in general should be heeded:

"To the chagrin of forecasters and other seers and to the delight of the human spirit, the future cannot be foretold. . . . No single manpower projection, no matter how careful and sophisticated, can lay claim to much confidence that it portrays *the* future path. Policies need to be adjusted to changing circumstances, and so do projections. The activity of projection should be continuous and it should be focused on the delineation of multiple alternatives. The alternatives should represent varying perspectives on what is likely to happen and on what may happen as a result of various deliberate policy interventions."

To be sure, labor force projectors cannot be expected to know about all the various developments and problems that other social sciences may include in scenarios of alternative futures, but they should make use of some of those resources to identify the important, more plausible sets of alternative possibilities, and to work out the major *indirect* effects.

For example, in professional and technical classes, a middle-aged or older husband-wife family may have to make a trade-off between dual employment and higher taxes required by the higher joint income of the two. In such cases, where the couple decides the marginal return is not sufficient to warrant a second person working (both of them on a year-round, full-time basis), who shall stay in the labor force? Who shall drop out? Or might we not also see a new pattern emerging, one in which the two take turns participating in the labor force, as another variation of the notion of alternative work schedules?

As another example, among the older married working women in the future, will it be as safe at that time, as it apparently was nearly ten years ago, to assert that retirement for them will be defined in terms of their *husbands'* withdrawal from the labor force? This was a major reason given by the Social Security Administration for excluding married women from their Retirement History Study, begun in 1968.

As of 1966, in the NLS sample of middle-aged males, nearly one-half of the whites and nearly three-fifths of the blacks reported working wives. This survey, because of its longitudinal nature, should be a valuable source of findings on (1) relatively recent patterns regarding such an assertion, and for (2) suggesting new avenues and hypotheses for research on future cohorts of middle-aged husband-wife labor force members.

Older female heads of families. Marital status—whether married, divorced, separated, widowed, or never married—is an important factor in the labor force participation of women, but among the non-married, there are female *family heads.* Middle-aged and older women in this classification may have been experiencing different patterns of labor force participation—and special problems associated with those patterns—compared to others. From 1970 to 1975, the labor force participation rates of 45–64 year-old female heads of families *declined*—in contrast to those of married and all other women (McEaddy, 1976; Employment and Training Report, 1977).

Equally important, among family heads only, this decline occurred only in 45 and older age groups.

There are no definitive explanations for these contrasting trends and patterns, nor anything that tells us much about the problems, if any, accompanying the trends and patterns. What is there about such middle-aged and older female family heads and their circumstances that explains their declining participation rates, relative to younger female heads, and to other women of the same ages? Is the decline indicative of special difficulties faced by them and their families? Once such information is obtained through careful research efforts, special programs and policies could then be developed to meet those difficulties, if indeed they exist.

Unemployment duration and discouragement. Once unemployed, middle-aged and older women remain unemployed longer than their younger peers, just as in the case of men. From 1973 to 1976, the proportion of older women unemployed for 15 or more weeks increased at a greater rate than for other age groups—but still slightly less than for older men. But by 1976, for both older women and men, the long-term employed were at least 42 percent of all older unemployed—in contract to approximately 30 percent for all others.

Because of their generally lower number of UI eligibility weeks, older women are also disproportionately among the UI exhaustees, and thus perhaps more likely to become "discouraged workers," i.e., labor force "drop-outs."

In the older studies of workers subjected to plant shutdowns and mass layoffs, it was generally found that older women were much more likely than older men to cease job-seeking activities altogether, or to persist at a lower level than in the case of men. There have been few studies of such situations in the past five years or so, but one hypothesis would be that the extent of continued job seeking persistence among older women in similar situations would be greater than in the past. This hypothesis is based on the assumption that today's female labor force—including the older segment—has a greater attachment, for economic and social-psychological reasons, to the labor force than in the past.

The late entrant. We have already stressed the importance of continued, and well-paying, employment in general for the ultimate retirement status level of Americans. The principle applies more directly in the case of women (and for disadvantaged minority groups, too). Even with the improved mortality rates of older men, women can still "count on" outliving their spouses, and thus exposed to higher risks of low status in their retirement years. The longer a person lives, in other words, the greater the unmet needs. We should add to this factor the implications of an apparent trend toward never-married and divorced women, a phenomenon which portends new job-related problems for women.

Apart from the general issue of sex-bias in the occupational structure of the labor force which exacerbates the current and future job-related problems of middle-aged and older women, another source of these problems lies in the large number of women who, in middle-age, enter the labor force for the first time, or after many years of only "home-making" experience.

The extent to which women enter the labor force at relatively young ages, and *remain* employed, should, of course, tend to reduce this problem. It is incumbent, therefore, that research on trends in proportions who are long-term employed, by different age groups, be a regular component of the Department's activities. This does not rule out, however, the strong possibility that for many women over the long-term future, first-time entry (or entry after an extended period of non-attachment to the labor force) will continue to warrant strong research and program attention. The fact that the general educational level of women has been improving, and will continue to improve, constitutes (1) an ameliorative facter in improving the job chances of such new entrants; and (2) a challenge, in that such higher-educated women may face problems of *under*-employment—i.e., employment in types of jobs not commensurate with their levels of education and the expectations that such education usually create.

But for some time to come, we will still be faced with the "displaced homemaker" problem, and that of all middle-aged and older women re-entering or entering for the first time, the labor force. They may frequently need special training because of their limited work experience.

On the research side, there may be a need to identify the types of "deficiencies" for which such special training would be designed—including training in more than the substantive skills.

Congress has, in recent years, been considering legislation (similar to that already existing in some states) which would provide special assistance to what has been called the "displaced homemaker" population, i.e., women who—because

of widowhood at an early age, or divorce and separation—desire and need employment. This assistance would consist of, among other things, special counseling, training, and job development.

Without waiting for such national legislation to be passed, the Department could, at the present time, support projects designed to evaluate such few ongoing programs as do exist, for example, in California, and Maryland, in order to learn critical lessons from such experiences as a means of being better prepared to design more effective nationally legislated programs, once passed.

Social Security. Another job-related problem of women is that they are treated "equally" with men as far as "years of forgiveness" for interrupted work experience or low earnings years are concerned, in calculating retirement benefits. Women's rights advocates point out that the maximum of five years lowest earnings may have been reasonable in the case of men, but that the special labor force status of women is such as to result in many more years of such earnings levels.

As women enter the labor force on more than an intermittent level, this problem will become somewhat attenuated, but will *proportions* of women with such regular labor force attachment and employment reach—at least in the intermediate future—those for men?

Here too, is a topic for research attention. While the problems facing the Social Security system are not directly those of the Department of Labor, some types of cooperative policy research analyses (with an aim at alternative solutions) might be carried out.

Middle-aged and older women in—or seeking to enter—the labor force not only face the obstacles encountered by their age peers among men, such as stereotypes regarding work performance. In addition to the "ageism" hindering their chances in the labor market, they face also the "sexism" encountered by women in general. Other complaints registered by advocates for the job rights of women include the apparent penalty paid by married women as far as entitlement to retired *worker* benefits are concerned, under Social Security—a reflection of the "cultural lag" surviving from the time of the passage of the Social Security Act when it was taken for granted that few married women would work for extended numbers of years, and that the only protection they needed was as *widows* or wives of retired males. Thus, today, according to these critics, they do not accrue, upon retirement, their full benefits as retired *workers.*

On the other hand, even with an intermittent work career, her benefits as a wife can be larger than if she had never worked at all, even though her earnings were subject to deductions for Social Security contributions.

Much of the problem is rooted in the original and basically still prevalent principle (and financing) of Social Security—namely, that it is a form of "insurance," defined as a payment (a *transfer* payment, and not an annuity) to a previously employed person after a certain age (now 62) in the *event*—the contingency—of no employment.

Defenders of the current Social Security system point out that "it is not correct to argue for . . . changes on the ground that women workers as a group get less for their contributions than do men workers as a group." [1] This does not address the issue of whether some women—especially working wives—have a legitimate complaint. As a research topic, this issue is important if only to delve into the degree to which such inequities, if they exist, function as disincentives among women to enter the labor force in any meaningful way.

This topic is thus related also to the adequacy or accuracy of projections (and the assumptions used in such projections) concerning labor force participation rates among women, especially married middle-aged and older ones. The Social Security Board of Trustees report of 1975 projects that "ultimately" (no date specified) the female participation rate will be about 73 percent of the male rate. Such projections call for regular assessment and re-examination, as already suggested.

Older minority women. Currently, the occupational structure of middle-aged and older female blacks shows a much lower socio-economic profile than the structure of comparable white women. The critical research topic here is to determine, over the ensuing decades, the degree and direction of changes absolutely and relatively, as the current "new generation" of female blacks (and some other minority women)—with their improved educational achievements, reduced fertility rates, etc.—move into their older years.

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[1] U.S. Senate Special Committee on Aging, Women and Social Security: Adapting to a New Era, October, 1975.

We do know, for example, that much smaller proportions of young female blacks, compared to their older ranks, are in such low status jobs as domestic servants, and that their educatioual achievements are far superior to those of older black women—all of which suggests the *possibility* of an improved status in the future. But there is a need to distinguish between improvements over a previous generation of women of the same race, and improvements relative to women of other races.

VIII. OLDER MINORITY GROUP WORKERS

In the past, little attention was paid to the special and unique job-related problems of older blacks and other minority groups—partly because it was asserted that they were preponderantly in rural and farm areas where unemployment was little studied (apart from problems of low income from rural-farm pursuits); partly because the civil rights movement had not yet succeeded to the point of raising the consciousness (and conscience) of the majority society. Another extended viewpoint was that since so few blacks survived into the upper ages, there was no problem worth considering!

Current facts and projections for the future no longer justify such neglect. For example, in 1975, there were nearly 2.6 million nonwhites 62 and older; more than 1 million 55 to 59; and nearly 4 million, 40–54 (2.3 million; over 900,000, and 3.5 million blacks respectively).

By 1990, slightly more than one decade from now, these figures will rise to about:

[In millions]

	All nonwhites	Blacks only
62-plus	3.7	3.2
55–59	1.3	1.1
40–54	5.5	4.5

The rate of increase in such numbers is actually projected to be higher than for whites or similar ages. These figures assume no marked improvement in mortality rates, an assumption which can no longer be accepted with as much sanguinity as in the past. The median age of the black population in 1975 was only 23.4 (compared to 29.6 for whites), but the projected median age for 1990 is 28.5 for blacks (compared to 33.6 for whites)—reflecting declines in fertility rates, but with no account taken of possible improvements in mortality rates for middle-aged and older persons.

Just the increase of roughly 1 million additional blacks 40–54 between 1975 and 1990 will present a special challenge to the country's general problems of employment of its middle-aged workers. At the very least, it suggests the importance of special research, policy and program attention directed *now* to those blacks and other minority group members who are in their 30's and 40's—the future 40–54 year olds of a decade from now.

Preventive measures, unfortunately, receive a lower priority than those measures designed to cure and alleviate the job-related problems of today's older persons, regardless of ethnicity. But for such minority groups, the generalization is especially pertinent. The current emphasis on the "welfare population" can be interpreted partly as a cost of past failures to cope with the job-related problems of such persons at earlier ages. The magnitude of the future welfare population problem will depend in part on what is done with and for *current* critical segments of the "young middle-aged" in minority groups.

It is difficult to accept the explanation that *voluntary* retirement, for instance, is the critical factor involved in the far greater decline in labor force participation rates among nonwhite males—compared to whites—from the time they were 35–44 in 1956 to the time they were 55–64 twenty years later, in 1976.

This is apart from the greater mortality rate among nonwhite males over these two decades—itself partly due to job-related problems. The latter phenomenon is also a critical research, program, and policy matter.[1]

[1] By 1976, the total 55–64 nonwhite male population was only 77.5 percent of the corresponding 1956 35–44 population, as contrasted to 86.1 percent of the whites, an indication of the lower survivorship rate of the nonwhites.

A report by the National Center on Black Aged (1976) highlights the special labor force problems of older blacks, including the following:

—Higher labor force drop-out rates.
—Greater involuntary part-time employment.
—Few, if any, local black sponsors of such limited programs as Title IX programs.

Much of that document is devoted specifically to the issue of participation by older blacks in job programs, a topic of a separate section in this report.

"Double jeopardy" is the term frequently applied to the situation of older black workers. As one example, while white workers 55–64 experienced an increase in labor force participation in the 1975–76 "recovery," the opposite—a decrease—occurred among blacks and others (the BLS tables in the Employment and Training Report do not separate other racial groups from blacks, but the latter constitute the vast majority of that category).

Actually, the decrease took place among black *males*, not females. The 55–64 year old nonwhite male participation rate fell by three full percentage points from 1975 to 1976—in contrast to a mere 0.4 decline point for black *females* of the same age group; a decline of 1.1 point for white males; and only 0.1 point for white females.

The reasons for such differentials still need exploration and warrant continued research.

Rates of unemployment also are critical, and as the accompanying table reveals, only the nonwhites in the 55–64 age group—in contrast to their white peers—experienced an increase in unemployment from 1975 to 1976, otherwise a period of job "recovery."

Persons 65 and older are excluded from this table because of the age-heterogeneity of that category—a point which needs correction in future statistical reporting series, since it should be useful to ascertain rates for such age groups as 65–69, and 70–74, but especially the 65–69 group. Furthermore, since men and women can retire as early as age 62 under Social Security, even the 55–64 classification should be broken down into 55–59; 60 and 61; and 62–64—just as the Department's work experience tables have done for some years. (By 1990, there will be at least a 36 percent increase over 1975 in the number of nonwhites 60–69 years old.)

ADULT UNEMPLOYMENT RATES BY RACE, SEX, AND AGE, 1970–76

	1970	1971	1972	1973	1974	1975	1976
Al l16-plus							
White males	4.0	4.9	4.5	3.7	4.3	7.2	6.4
White females	5.4	6.3	5.9	5.3	6.1	8.6	7.9
Black and other males	7.3	9.1	8.9	7.6	9.1	13.7	12.7
Black and other females	9.3	10.8	11.3	10.5	10.7	14.0	13.6
25–34:							
White males	3.1	4.0	3.4	3.0	3.5	6.3	5.6
White females	5.3	6.3	5.5	5.1	5.7	8.5	7.6
Black and other males	6.1	7.4	6.8	5.8	7.2	11.9	11.0
Black and other females	7.9	10.7	10.2	9.7	8.6	12.9	13.0
35–44:							
White males	2.3	2.9	2.5	1.8	2.4	4.5	3.7
White females	4.3	4.9	4.5	3.7	4.3	6.6	5.8
Black and other males	3.9	4.9	4.8	4.0	4.1	8.3	7.1
Black and other females	4.8	6.9	7.2	5.3	6.7	8.6	8.1
45–54:							
White males	2.3	2.8	2.5	2.0	2.2	4.4	3.7
White females	3.4	3.9	3.5	3.1	3.6	5.8	5.0
Black and other males	3.3	4.5	3.8	3.2	4.0	9.0	7.2
Black and other females	4.0	4.2	4.7	3.7	4.3	6.7	6.1
55–64:							
White males	2.7	3.2	3.0	2.4	2.5	4.1	4.0
White females	2.6	3.3	3.3	2.8	3.3	5.1	4.8
Black and other males	3.4	4.7	4.6	3.1	3.6	6.1	6.2
Black and other females	3.2	3.5	4.0	3.2	3.3	5.3	5.5

Source: "Employment and Training Report of the President, 1977," table A-20.

More important in this context, however, is the fact that from 1973 to 1975 (the start and end of the recent "recession"), black males in each of the age groups in the 25–64 range experienced a *doubling* of their unemployment rates which were already high as of 1973; for the 55–64 group the 1976 rate (which *in general* declined) was even higher than in 1975. The same was true, too, of black females. Age and race thus combine to produce the double jeopardy.

Such job-related problems of older minority groups may be further aggravated by the possibility of their having more dependents than whites. Among the 53–57 year old black males in the NLS sample, for example, nearly 12 percent still had three or more children under 18 in 1966, still living with them, in marked contrast to only 4.3 percent in the case of white males of the same ages. Among Spanish-speaking and other minorities, the proportion may be even higher.

To be sure, white males 25–54 also experienced a doubling of unemployment rates from 1973 to 1975, but the rates were lower to begin with, and more important, *declined* from 1975 to 1976. Furthermore, the rate for white males 55–64 did not double, unlike the case of black males, from 1973–75, and they experienced a slight decline in unemployment after 1975.

One of the crucial dimensions of the double jeopardy status of older minority workers can be seen in the fact that even for the NLS sample of "healthy" middle-aged blacks (45–57 in 1966), unemployment in that year had a greater statistical relationship to nonparticipation (i.e., withdrawal from the labor force) *seven* years later than in the corresponding group of whites. In both cases, for both whites and males, the relationship held, but more so for the blacks.

In both cases, the finding points to the need to consider "exogenous" influences on the "decision to retire" and also the need to cope, when conducting research on the impact of unemployment, with the "lag" factor which suggests that a process is involved which cannot be captured through cross-sectional kinds of research. It should be noted that labor force withdrawal in this particular analysis (Sheppard, 1976) refers to withdrawal *before* the age of 65 (EWR). The older the unemployed individual, furthermore, the higher the early withdrawal rate—even for those only 45–47 years old in 1966. Again, the relationship was greater in the case of black males.

Health and employment status as of 1966, when added to the race variable, clearly shows the disadvantaged position of black males, as demonstrated by the following tables showing early withdrawal rates (including death before the age of 65).

1966 employment, race, and health status

Rank:	*EWR by 1973*
1. Employed healthy whites	19. 1
2. Employed healthy blacks	22. 5
3. Unemployed healthy whites	29. 5
4. Employed unhealthy whites	33. 9
5. Unemployed healthy blacks	37. 5
6. Employed unhealthy blacks	39. 2
7. Unemployed unhealthy whites	40. 0
8. Unemployed unhealthy blacks	63. 2

Presenting the findings in another way, (1) among the workers employed when interviewed in 1966, and (2) among those unemployed that year, the 1973 EWRs were as follows:

Race and health status	Employed in 1966, EWR	Unemployed in 1966, EWR
Healthy whites	19. 1	29. 5
Healthy blacks	22. 5	37. 5
Unhealthy whites	29. 5	40. 0
Unhealthy blacks	39. 2	63. 2

The higher rates of unemployment and of poor health status (as measured by elf reported estimates of work-limiting capabilities) among black middle-aged s nd older males are reflected in this table, and call for special research analyses and appropriate program responses to cope with the special problems of that group—including measures designed to intervene before such men reach their 40's and 50's. The fact that the early withdrawal rate of employed healthy blacks is not much below that of comparable whites reinforces the importance of both health and employment status.

Relatively good health status, among older blacks, however, does not necessarily mean that their labor force participation rates will be similar to that of whites. Their poor health status may be offset by a greater economic need to remain in the labor force.

The NLS data file contains a rich source of information concerning some aspects of the factors processes involved, that is, the experience and attitudinal changes

in the intervening years, and research should be encouraged on the work-capacity and employment aspects of the labor force experience of blacks and other minorities as contrasted to that of whites.

Future Years. Given the reported sharp improvement in the occupational gains of young blacks in recent years, it is important to carry out longitudinal studies to determine whether such gains are not only sustained, but to ascertain the extent to which such phenomena as changes in early withdrawal rates occur—and in which direction—among minority groups, relative to whites, and by sex. The NLS samples of women, if continued to be surveyed, would be a major contribution to this effort.

Furthermore, a new sample survey of men 45–59, beginning no later than 1979 or 1980, would provide information of an important nature and quality concerning "generational" differences, if any, in the labor force and life status of blacks relative to white middle-aged and older workers. In other words, in what respects are the 45-59 cohorts of, say, 1980, different from those of 1966?

Part-Time vs. Full-Time. The work experience data available through the Department of Labor (BLS) have not, to our knowledge, been as fully exploited for research and policy purposes as they might be, a point made in other parts of this report. In the case of minority groups, for example, in 1975, nearly 16 percent of nonwhite males 45-64 years old worked either in full-time jobs for less than 27 weeks or at part-time jobs, compared to 10 percent of white males. Corresponding figures for females were 39 percent in the case of nonwhites, versus 36 percent for whites. For both male and female nonwhites, the proportion working only part-time was greater then among whites. Compared to the 25–44 age groups, the part-time proportion was greater for the older persons, especially among non-white females.

Unfortunately, these age groupings are too broad for any usefulpolicy-reseiarch purposes, and furthermore, information is lacking regarding the degree to whch such work experience on less than a year-round, full-time basis is voluntary vs. involuntary.

Furthermore, the percentages reported here are based on only those with any work experience at all. Perhaps a more sensitive measure would be derived from using as the basis the *total* population in each race and age group (with and without work experience). This failure to use a total population base may serve to obscure the discouraged worker phenomenon in such age groups, especially when trend analysis included cyclical changes in the general level of employment opportunities.

Underemployment. Anecdotal literature is replete with case studies of black males who achieved higher education degrees in the 1940's and '50's, but remained victims of race discrimination in the world of employment; they thereby became "underemployed." No study of a systematic nature has been carried out to find out if the recent progress in equal employment opportunities has produced any marked effect on their current employment status levels.

Has their older age become the new barrier for any upward mobility?

Have they become "locked in" (because of pension rights and other equities built up over time), and thus reluctant to seek upwardly mobile opportunities?

Has the long-term experience with such underemployment produced an "adaptation" on their part, of a form of resignation?

To what extent does the same phenomenon occur even *today*, and with what different implications for the future?

Each of these questions needs to be examined within specific industries, occupations, and regions. The NLS occupational mobility items would be one general source, in both the 30–44 female sample, and the 45–59 male sample, for exploratory findings.

The NLS sample should be analyzed to seek answers to these and related questions. The 1974 report (Parnes, et al., 1974) on the 1966–71 data does not shed any direct light on the issue, but the material on voluntary job-changing during those five years (with no White-Black comparisons) may provide some suggestions for further research on the questions, for example:

(1) Education was positively associated with voluntary job-changing; pension-coverage, *negatively* associated.

(2) Job satisfaction with new job among Black voluntary job-changers increased over satisfaction with previous jobs, much more than among White changers.

Policy dimensions of life expectancy differences. One of the issues among researcher and advocates concerning problems of the minority aged emanates from the lower life expectancy at birth of racial groups such as blacks. Accordingly, such persons argue that special provision should be made in the Social Security system

to rectify this disadvantage—either in the form of even *lower* retirement ages for such groups, and/or *higher* benefits for those persons retiring at the same age as the White majority.

Apart from the administrative and cost problems entailed in such proposals, there remains the issue of whether or not, among the *older* black workers (i.e., those who survive into the upper ages), such differences in life expectancy—say, at 60 or 65—are as great as implied. According to the National Center for Health Statistics, life expectancy at 50 and 65—as of 1973—for white and nonwhite males and females was as follows:

	Whites	Blacks and others
Male:		
Age 50	24.3	22.4
Age 65	13.7	13.4
Female:		
Age 50	30.3	27.9
Age 65	18.1	17.5

Source: National Center for Health Statistics, Vital Statistics Report, vol. 28, No. 11 supplement, February 1977, table 2.

This table suggests that by age 65, white-nonwhite "gap" among males is nonexistent, although among women, the life expectancy for whites is greater. But none of this pinpoints the specifics of life expectancy among *workers*—or those retiring from the labor force—by race, sex, and age. As long as the industry-occupation mix is not "equal," factors such as mortality and health (as affected by the nature of the job, for example), and "retirement resources" (as affected by pension eligibility, number of dependents, etc.), may also continue to be unevenly distributed. Regardless of the legal and financing dimensions of the issue of differential benefits and retirement ages under social security, Black "caucuses" of/and for the aged can be expected to keep the issue alive.

All of these and related facets raise the question of the degree to which EEO laws, regulations, and enforcement will move minority groups into industries and occupations which (1) improve their pension-coverage status; (2) raise their total life work experience and wage levels; (3) impact on their health status as a function of the nature of the job—and thus their life expectancy, etc. Current research should make this one of its major focuses, and simulation models might be constructed to project future conditions regarding these phenomena.

As an example of the "inequality" dimension, in 1966 (according to the NLS data), among men 48–52 years old, (1) only 15.7 percent of the blacks were craftsmen and foremen, compared to 26.3 percent of whites. (2) Their "health" rate was lower than for whites. (3) On the other hand, their death rate by 1973 was no different—perhaps even better—compared to whites. (4) Among those still alive in 1973 (55–59 years old), their "unable to work" proportion was about the same as for whites.

But, to repeat, a much smaller proportion of black males was in this occupation. As a result, for all blacks 48–52 in 1966, compared to their white age peers, their early withdrawal rate (including deaths) by 1973 was much higher than for whites. And among those still alive in 1973, their "unable to work" proportion was higher than for whites. In general, such data imply the difference it makes to have an equal white-nonwhite occupational distribution. It should also be noted that as of 1966, few blacks—if any—in the 48–52 age group were in managerial, official, or proprietor, sales and clerical occupations.

Another inequality dimension can be seen in (1) the relation *pension* coverage of whites and blacks in the NLS data on 45–59 year old males; in 1971, 72 percent of the white, but only 59 percent of the blacks, were employed in establishments with pension programs. (2) In 1973, 70 percent of whites 62–64 were retired with a pension, compared to only 52 percent of blacks of the same age.

Many of the research and program recommendations of a general nature discussed throughout this report should be applied, naturally, to the special subgroups in the population. For example:

(1) Trends in proportions affected by mandatory retirement age policies.

(2) Similarly, measures regarding other forms of involuntary retirement, *before* any mandatory retirement age.

(3) Extent of voluntary vs. involuntary part-time employment—and the "universe of need" for voluntary part-time employment.

Other elements of the minority older worker topic which contain research, policy, and policy suggestions include:

The impact of union vs. nonunion membership. One study (Parnes, et al 1975) indicates that middle-aged black operatives who are not union members earn at least 25 percent less than comparable whites while the differential between black and white union member operatives is much less (about 10 percent). But this latter differential itself warrants special attention.

The importance of labor market information. For example, most jobseeking studies indicate the importance of job-openings through friends and relatives or other informal mechanisms. Typically, whites are more familiar about such knowledge, and the challenge here relates to how such information can be improved among minority middle-aged and older jobseekers.

Effects of workplace "outmigration" from central cities. To the degree that restrictions on access to housing in suburbs and in urban areas to which industries might relocate continue to be greater for minority groups, the drift in the direction of greater and greater concentrations of older persons in the central cities constitutes not only a serious problem for older minority jobseekers, but even for the central city governments as well. New trends, if any, in the migration patterns and opportunities, require special research attention.

Changes in the industry-occupation composition of middle-aged and older minority workers. Independently of the characteristics of such persons, the dynamics of change in the Nation's industry-occupation mix will serve both to improve and to damage the job-related problems of minority groups, especially the middle-aged. The effects of such changes in this regard should be a major focus of empirical and projection studies.

Greater union contract coverage. The NLS data indicate that, contrary to some expectations, a higher proportion of middle-aged and older blacks are covered by collective bargaining contracts. If this is so, and these contracts provide for some form and degree of seniority rights, such contract coverage becomes a valuable beachhead for these workers, not available to whites in general. The facts do not contradict, however, that among only whites and blacks covered by contracts, the former may have higher seniority (including senority restricted to more desirable jobs and departments).

How will blacks fare, in the future, relative to other *non-unionized* blacks, in the same occupation, and in other occupations? What will be the trends *vis a vis* unionization and its presumed benefits among *today's younger* blacks (and other minorities, too), as they themselves become middle-aged or older?

Effects of Rulings on Seniority Coverage. In recent years, in the steel industry for example, restrictions of seniority rights within only departments (e.g., in foundries) have been abolished by court action. What have been the effects of greater *company*-wide seniority rights in the internal labor market experiences of minority workers? How widespread is the pattern of company-wide seniority rights, an in what ways are minority group middle-aged and older workers benefitting from such a pattern?

Relationship of type of job to health status. While work environment attributes contribute to the health status of all workers, in what ways is that status among minority middle-aged workers any better or worse, given their current lower positions, in general, with regard to their location in types of industries and workplaces characterized by greater risks regarding safety and health? Are OSHA's activities having any effect on this phenomenon?

Other minority groups. The fact that this report devotes little space to minority other than blacks should not be interpreted as a reflection of any intent to place a lower priority on their job-rated problems. Blacks, however, are the dominant minority group in this country, and have been the most politically effective in expressing their unmet needs in the employment area. But even for this groups, attention to the middle-aged and older segments' job-related problems has been only recent. Detailed, systematic statistical reporting for blacks only (as contrasted to "nonwhites" as a statistical category) is only beginning to improve.

Departmental research should be systematic in disaggregating such data, even if this requires over-weighting of their representation in samples (such as in the case of the National Longitudinal Survey). In special local areas, where it is known that *other* minority groups are concentrated more than in other areas (such as Filipinos, American Indians, and Spanish-speaking persons), the same principle should be applied.

Unfortunately, national data of a detailed nature, by age, are lacking regarding such items as participation rates of other minority groups (e.g., those of Spanish origin), according to age and education, for example. As a case in point, the 1975 BLS report on *Educational Attainment of Workers, 1974*, provides a participation rate table, on persons of Spanish origin using the broad age span of 25–54, by sex and education, which thereby obscures age differences, if any, within that span. This makes it impossible to make meaningful comparisons between specific age-sex-education-ethnic groups *vis a vis* whites and blacks. Furthermore, the samples for the upper age groups (55–64, and 65-plus) are too small for any reporting purposes—part of which, of course, is a reflection of the very low educational achievements of those age groups.

IX. OLDER WORKERS IN RURAL AREAS

Typically, rural areas are characterized by work forces older than those in the larger urban areas—attributable partly to the greater likelihood of young persons to emigrate from them because of restricted job opportunities. The range of severity of rural older worker problems is affected by the latter, too, but also by type of rural area (e.g., the midwest wheat belt vs. Appalachia, and the rural South). Generalizations on this topic are not too secure.

Nevertheless, it may be safe to say that in most instances, the traditional structure and dynamics of job opportuniteis in rural areas are such as to increase the odds for middle-aged and older workers in those areas to move into a poverty status by the time they reach 65 or more. This may be especially true in the case of rural *nonfarm* population.

Departmental and other governmental concern with the rural older worker should probably concentrate more on programs, and demonstration projects, than research—except to the degree the latter is required as part of programs and demonstration projects, including evaluation.

Given the limited opportunities in many, if not most, rural areas for employment in the private sector for persons of all ages, emphasis should be placed on greater involvement of the local rural public sector agencies, especially with regard to the older worker. Limited experience with Title IX programs in such areas suggests that public sector opportunities might be expanded.

In one effort, carried out in several counties (by the American Association of Retired Persons), jobs were developed for persons 55 and older as school matrons, teacher aides, hospital and library aides; assistant school bus drivers—and even maintenance mechanics. Other examples include welfare agency case worker assistants and commodity distributors.

The benefits for the individual persons employed, the agencies employing them, and the families of such persons should be obvious. But there is also a community benefits side that requires consideration and perhaps evaluation. For example, as a result of employing elderly persons as pickup truck drivers to bring children to county health clinics, the number of children and of clinic visits increased—presumably with positive effects on the health status of the children. Even the Food and Drug Administration improved its rural consumer education program by enlisting the older persons as part-time employees.

On a more general policy level, serious consideration should be given to relatively *permanent* rural community service employment programs for older men and women. For middle-aged rural workers, public *works* programs might also be given greater emphasis. Without any additional public works programs in such areas (when truly needed, of course), there may be a tendency to disregard that age group in favor of younger persons still remaining in the rural areas.

In any event, all of these kinds of programs should be studied, with a focus on income effects; migration rates and patterns of program participants *and* their younger family members.

Census reports suggest that starting in the early 1970's, the rate of growth in metropolitan areas declined and that *non*metropolitan areas continued to gain populations from the former (Bureau of Census, January, 1977). "Many 'rural' counties, particularly those with a large State university or an especially recreation area," show a new *in*migration from other parts of the country.

To our knowledge no special focus has been directed to the impact of this phenomenon on the socio-economic status of the older age groups in the native, nonmigrant population of those rural areas. Ostensibly, such areas should be experiencing a growth—at least a stabilization—of employment opportunities, to the benefit of middle-aged and older persons, as well as to that of younger ones.

But no attempt has yet been made to verify this hypothesis. At the very least, such information should help in the fine-tuning of policies and programs designed to assist rural-area middle-aged and older persons in their job-related problems.

Contrary to stereotypes, older persons do nevertheless migrate—especially if unemployed. Therefore, in addition to the phenomenon of older rural nonmigrants and their related job problems, there remains the equally significant phenomenon of older rural migrants to urban labor markets, and the differences over time (as persons "age") between migrants and nonmigrants in places of destination. It should be obvious that an integral part of a systematic effort to ease the problems of rural persons in general is the facilitation of adjustment to the urban labor market among those who do not stay in rural areas, but rather migrate to the former. (Peterson *et al*, 1977).

In this connection, little research attention has been given to the characteristics of the place of *destination* of migrants from rural areas. Sheppard (1971) has reported on the labor force status and experience of young and older rural migrant *females* (white and black), according to size of SMSA, using the 1967 Survey of Economic Opportunity data sources. He found, for example, that among white females, the larger the SMSA the greater the opportunities for year-round full-time work for those 45-plus. The same was true for blacks of the same age group. At the same time, the proportions of older black rural migrants working no weeks at all increased, according to SMSA size. This was *not* true in the case of *white* rural migrants 45 and older.

Equally, if not more important, the occupational structure in 1966 among older black rural migrants reveals greater opportunities in the largest SMSAs (over 750,000). This is dramatically illustrated by the fact that the proportion of older black women employed as domestic servants was much less in the largest SMSA's, compared to those with populations under 250,000 and 250–750,000. Furthermore, while the proportion of older rural migrants employed in this low-status occupation was higher than for older "native urbanites" (those born in the SMSA where interviewed) in the smaller SMSA's, this difference disappears in the largest SMSA's.

Finally, as a single index of family socio-economic status, the "poverty rate" among *white* older rural migrants, the poverty rate was higher than for white native migrants, regardless of sex of SMSA (although the rate is lowest for both migrants and native urbanites in the largest SMSA's).

But for black females, the pattern is the exact opposite: older rural migrants, especially to SMSA's over 250,000, had *lower* poverty rates than their counterparts who had always lived in the urban area where interviewed.

The reasons for this latter finding still need to be explored. Education may be a factor, given, given the finding by Sheppard that both black and white rural migrants reported more years of schooling than native urbanites.

In addition, this type of research focus requires updating, given the fact that these findings are at least ten years old, and economic changes, as well as changes in the composition of the populations, have taken place, and will continue to do so.

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MEDI-GAP: PRIVATE HEALTH INSURANCE SUPPLEMENTS TO MEDICARE

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 2—WASHINGTON, D.C.

JUNE 29, 1978

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CONTENTS

	Page
Opening statement by Senator Lawton Chiles, presiding	211
Statement by Senator Pete V. Domenici	212

CHRONOLOGICAL LIST OF WITNESSES

Woodard, Curtis L., U.S. Postal Inspector, Houston, Tex	214
Cheatham, Wiley L., district attorney, 24th judicial district, Cuero, Tex	220
Dole, Hon. Elizabeth Hanford, Commissioner, Federal Trade Commission; accompanied by Jeffrey Edelstein, attorney-adviser; Anne Denovo and Gail Shearer, Office of Policy Planning; and Mark Rosenberg, Office of General Counsel	234
Mike, Joseph C., insurance commissioner, State of Connecticut, and chairman, NAIC Accident and Health Insurance Subcommittee; accompanied by Richard Hemings, NAIC counsel	245
Garcia, Manuel A., Jr., Santa Fe, N. Mex., superintendent, department of insurance, State of New Mexico	262

APPENDIXES

Appendix 1. Policy planning issues paper: Private Health Insurance to Supplement Medicare, prepared by the Federal Trade Commission	275
Appendix 2. Statement of Milt Smedsrud, president, Communicating for Agriculture, Fergus Falls, Minn	319

MEDI-GAP: PRIVATE HEALTH INSURANCE SUPPLEMENTS TO MEDICARE

THURSDAY, JUNE 29, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to call, at 9:40 a.m., in room 457, Russell Senate Office Building, Hon. Lawton Chiles presiding.

Present: Senators Chiles and Domenici.

Also present: William E. Oriol, staff director; Kathleen M. Deignan, professional staff; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; David A. Rust, minority professional staff; Theresa M. Forster, fiscal assistant; Madonna S. Pettit, research assistant; and Pam Klepec, clerical assistant.

OPENING STATEMENT BY SENATOR LAWTON CHILES, PRESIDING

Senator CHILES. We will convene our hearing.

A few weeks ago, when this committee opened hearings on the sale of private insurance policies to the elderly, I was distressed to hear from consumers and State insurance commissioners that many older Americans were clearly being taken advantage of by unscrupulous insurance agents eager to make high commissions.

We were also distressed to hear that in some cases insurance company policies encourage oversale and misrepresentation of health insurance policies to the elderly—while the insurance company at the same time does not take the responsibility for its own agents.

RESPONSE TO FIRST HEARING

As one result of that hearing, additional refunds have been made to some consumers, and inquiries are being made about agents who figured in earlier high-pressure sales.

We also received much mail—from consumers, from insurance commissioners, and from insurance salesmen. Their letters show that these problems are not limited to the situations described in the earlier testimony.

We have heard of insurance salesmen offering door prizes at senior centers and other programs for older Americans to obtain membership lists—lists which are then routinely used to sell insurance policies.

Sales agents have described company directives requiring them to sell new policies on every service visit, to write new policies rather

than to renew current ones, and to delete medical histories on new policy forms.

We have also had reports of companies routinely denying claims when they first come in—taking the better-than-average chance that the elderly policyholder will not challenge their judgment and resubmit a claim.

Relatives have written who were outraged when they discovered an elderly parent with many insurance policies and large accumulations of canceled checks to insurance companies. One from Marathon, Fla., said:

> Last spring, I learned that my 88-year-old aunt * * * whose income is less than $5,000 per year * * * had been sold more than $10,400 of health insurance in approximately a 1-year period.

Several expressed great frustration at knowing how to find good supplemental health coverage for their parents. Some related long stories of visits and letters to State insurance commission offices and to State consumer protection offices—only to be told that there was nothing that could be done about getting refunds on policies they felt had been sold under false pretenses.

Another of these letters came from Mr. Wiley Cheatham, a district attorney in Cuero, Tex., who told us that he had seen, and prosecuted, many cases much more aggravated than those the committee heard at our earlier hearing. We will be hearing from Mr. Cheatham this morning, as well as Mr. C. L. Woodard, a U.S. Postal Inspector from Houston, Tex., who assisted Mr. Cheatham in prosecution of agents preying on the elderly in Texas.

I would like also to welcome Elizabeth Hanford Dole, Commissioner, Federal Trade Commission. Commissioner Dole has taken a special interest in consumer problems of older Americans ever since her appointment, and she has been instrumental in turning the Federal Trade Commission's attention to the difficulties elderly consumers have in purchasing medicare supplemental insurance.

We are also pleased to take testimony from Mr. Joseph Mike, commissioner of insurance in the State of Connecticut, representing the National Association of Insurance Commissioners. We look forward to the National Commission's recommendations and to working further with all State insurance regulatory commissions to find solutions to these problems. Commissioner Garcia, from New Mexico, is also here, and I am sure we will have many good suggestions from him.

Senator Domenici, we are delighted to have you here and we would be delighted to have an opening statement.

STATEMENT BY SENATOR PETE V. DOMENICI

Senator DOMENICI. Thank you very much, Mr. Chairman.

I would like my written statement to be made part of the record, with your concurrence, and just make a couple of remarks and an explanation to the witnesses and to you about my schedule.

Mr. Chairman, I don't think there is an easy answer to this problem. Obviously, we are here to find out what we can do as the National Government. One suggestion is that we broaden the base of counseling that is available to senior citizens so that they can be

better informed. However, any such effort will not solve the entire problem.

Minimum Standards

While I do not want to usurp the State's role, I am looking forward to hearing from the experts here as to what our Federal Government's role ought to be. Perhaps some national minimal standard should be in place if the States do not adopt some kind of disclosure or minimum compliance standards. Basically, we have got to get a handle on the sale of insurance, the type we have recently heard about. I hope that the experts we hear from today will address the issue forthrightly and give us some ideas as to what we might do.

I am most appreciative that Mr. Garcia is with us today. I am fully aware that his agency in New Mexico is taking very constructive steps, and I think we will learn from his experience and his suggestions today along with the other experts whom you have welcomed to the hearing.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Domenici follows:]

Prepared Statement of Senator Pete V. Domenici

In an age of rapidly rising health care costs, all of our citizens are afraid that the insurance they carry will not be sufficient to meet their health care needs. Our elderly, who are so much more vulnerable to long-term illness than the rest of the population, are especially aware of the deficiencies in many health insurance policies. Also, as we all well know, medicare has its limitations, and coverage is frequently inadequate. We are now learning that medi-gap policies, sold to "fill the gap" in medicare benefits, also have some serious drawbacks.

To protect what assets they may have, many elderly persons seek additional insurance coverage. Medicare now covers only about 38 percent of total health care costs for those age 65 and over. In addition, there is often confusion over what is covered by medicare. For 1976, out-of-pocket costs for health care of medicare members was $562 million.

"Shocking Testimony"

During the hearing held on this subject on May 16, this committee received some very shocking testimony. A case in point was that of Mrs. Lucille W. Lowry. By June of 1977, Mrs. Lowry's contractual obligations for premium payments to one insurance company amounted to $9,158.61 per year, or approximately 68 percent of her annual income. At that hearing we were led to believe that abuses of this type are not so uncommon as we might like to think.

It is easy to see why our elderly fall prey to unscrupulous insurance agents. Seniors are often unsophisticated and unknowledgeable about the terms and conditions of insurance policies, many of which are quite complex. Further, as age progresses, they realize that their health is more likely to fail, and they do not want to burden themselves or their families with exorbitant medical bills. Catastrophic

illness can wipe out anyone's income, and our elderly are especially prone to catastrophic or, at least, long term illness.

Reforms are needed to protect the elderly from overlapping and inadequate medi-gap coverage. Many reforms will have to be made at the State level and insurance companies will have to institute safeguards of their own. In addition, I have proposed—and I hope that the committee will take an in-depth look at my suggestion—a program of insurance counseling for the elderly. If we can devise and implement a comprehensive and easily understandable insurance counseling program, our elderly will be better informed and can then purchase medi-gap coverage wisely at premiums they can afford.

I hope that some very important questions will be answered by the witnesses testifying today. In particular, I would like to know what you feel the role of the Federal Government should be in the area of medi-gap abuse. Naturally, I do not want to see the authority of the States usurped in any manner, but it is very possible that limited Federal involvement is necessary. Perhaps it should be the responsibility of the Federal Government to develop a set of minimum standards. In any event, I hope that Commissioner Dole and the other witnesses we hear today will be able to provide their thoughts on the responsibility of the Federal Government in this area.

I am very pleased that Manny Garcia, superintendent of insurance, State of New Mexico, is here to testify today. Manny and his predecessor, Mr. Kenneth Moore, have involved themselves extensively in this problem, and have taken affirmative action to uncover and eliminate medi-gap abuse in my State of New Mexico. Both Mr. Garcia and Mr. Moore deserve praise and commendation for their fine efforts to eradicate medi-gap abuse. I look forward to hearing from Mr. Garcia about the details of New Mexico's reform program.

Mr. Chairman, thank you for your time. I look forward to working with those testifying today and with the committee members toward a solution to a very perplexing and serious problem which faces our senior citizens.

Senator CHILES. Thank you.

Senator DOMENICI. I would want to say to the witnesses that at 10 o'clock I have to appear with a nominee for the Federal pension in the State of New Mexico. Mr. Chairman, I will go there and reappear as quickly as possible if you wish.

Senator CHILES. Our first witnesses will be Mr. Cheatham and Mr. Woodard. We will ask you if you will come up, please.

Mr. Woodard, you may proceed in any way you desire.

STATEMENT OF CURTIS L. WOODARD, U.S. POSTAL INSPECTOR, HOUSTON, TEX.

Mr. WOODARD. Mr. Chairman and members of the committee, my name is Curtis L. Woodard. I am a postal inspector stationed at Houston, Tex.

This is Wiley Cheatham, district attorney from the 24th Judicial District of Texas.

I appreciate the opportunity to appear before you today to discuss investigations the inspection service has made regarding the defrauding of elderly citizens of Texas and Oklahoma by unscrupulous insurance agents and exinsurance agents.

I have been assigned the investigation of mail fraud cases at Austin and Houston, Tex., for approximately the last 7 years. The type of fraud investigated and prosecuted under the mail fraud statute, title 18 United States Code, section 1341, is very broad and includes any type of business which is operated fraudulently and uses the U.S. mails to further its scheme. It need not be a mail order business.

TEXAS INVESTIGATIONS

The postal inspection service investigates alleged violations of the mail fraud statute among its many responsibilities. Normally, the results of a mail fraud investigation are presented to the U.S. attorney for consideration of filing charges in the U.S. district courts. However, in these investigations, the U.S. attorney's office in Fort Worth, Tex., determined that it would be advantageous to cooperate with Mr. Wiley Cheatham, the district attorney in the 24th Judicial District of Texas. This decision was based partially on the fact that State investigations were underway and some indictments had been returned in State court. The fact that all of the victim witnesses were aged and some were in poor health was also considered.

Beginning in January 1974, the inspection service was asked to investigate a series of offenses involving the defrauding of elderly people in Texas by unscrupulous insurance agents and exinsurance agents, usually working in pairs. Mr. Wiley L. Cheatham, district attorney, 24th Judicial District of Cuero, Tex., who had noticed some of these crimes occurring in his district, which consists of four counties in south Texas, was also investigating violations of State statutes. Indictments were ultimately returned in six other State judicial districts and overlapping convictions were obtained in three of those districts. The State board of insurance assisted and assigned Investigator Howard L. McRae who also worked with us on these investigations.

Senator DOMENICI. May I ask a question, Mr. Chairman?

Senator CHILES. Yes.

Senator DOMENICI. What is the crime? Would you state it for us again?

Mr. CHEATHAM. Yes. It would actually be theft by false pretext or theft by fraud, as someone indicated in their prestatement. It is theft, but theft by misleading and defrauding of people as to what they are getting. Legally we call it theft by fraud.

Does that clarify it for you?

Senator CHILES. Yes, sir.

Senator DOMENICI. Yes, sir.

Mr. WOODARD. A mail fraud case would be a combination of many such thefts drawn into one indictment.

The series of investigations involved aged victims, usually women, age 65–92 years, living alone. Also elderly couples were fraudulently solicited, but usually one of them was senile or incapacitated, and the fraudulent pitch would be directed toward the one who handled the checkbook and financial affairs. Elderly people tend to be concerned with their health and their need for extra hospitalization which is generally motivated by a desire to remain independent and to be able to financially survive an expensive illness.

The elderly citizen is frequently lonely, and a well dressed, youthful, and confident salesman has an easy time gaining entry to the victim's home and gaining his or her confidence. We noticed that the elderly people usually do not understand the fast talking, double talking sales pitches that these agents use. These factors make the elderly an easy mark for unscrupulous insurance salesmen.

"Goose Lists"

The first investigation in which I participated involved two men. One was a licensed insurance agent and one had lost his Texas insurance agent's license. They sold accident and health policies by "hard-sell" tactics to elderly women commonly called "gooses" by these agents.

Senator Chiles. Tell me, what does that term mean? That was a term of art that the agents used?

Mr. Woodard. Mr. Cheatham.

Mr. Cheatham. This is the slang word that they use for these elderly people who are easy prey.

Senator Chiles. Easy marks.

Mr. Cheatham. Easy marks, yes.

In fact, when we got down the line we were able to capture one of the goose lists [1] and we will give you a couple of examples of what it pretty well portrays, the feeling that these agents have for these old people in their description of them, how easy they are to sell. We will cover that if you like.

Senator Chiles. Thank you.

Mr. Woodard. These insurance sales were intermingled with the selling of worthless, desolate west Texas land or lots at grossly inflated prices. The term "gooses" relates to aged people who can be sold hospitalization, insurance, or almost anything else on an insurance pitch, whether or not it is needed. Most of the west Texas lots were sold on a "paid-up" hospitalization pitch, when in fact no such paid-up insurance was available, nor was any insurance furnished. The salesmen perpetrated their fraudulent scheme by substituting deeds for virtually worthless lots; however, these deeds were generally not furnished to the victims unless a complaint arose or an enforcement agency became involved. Some insurance policies were put in force but were sold by the same tactics that we found—misleading. Some lots were deeded to more than one victim. The scheme involved the mailing of checks for collection between banks and the mailing of the deeds of the worthless and unwanted lots. Approximately $200,000 was obtained from elderly people in Texas on this flim-flam.

Overloading Accident and Health Insurance

The two principal operators received 7- and 8-year prison sentences from the DeWitt County Texas District Court. That is Mr. Cheatham's district. The investigation further disclosed numerous instances of overloading and defrauding elderly citizens of Texas and Oklahoma in accident and health insurance solicitations.

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[1] See p. 227.

Several separate but similar investigations were made in 1974 and 1975 involving a loose-knit group of insurance agents and exagents primarily operating out of Fort Worth, Tex. Generally, one agent who held an insurance license was recruited to "front" or sign the papers and receive a percentage of the commission for very little effort on his part. Unlicensed salesmen fraudulently solicited business from the aged and sometimes senile citizens susceptible to high pressure tactics. These schemes usually worked for relatively short periods of time because the Texas insurance companies, and in a few instances Oklahoma or other out-of-State insurance companies, were eager to obtain the new business which had virtually no claim liability during the first 1 or 2 years. Underwriting safeguards were not adequate to detect and reject the fraudulently solicited business.

The high pressure and fraudulent sale of accident and health policies to the aged almost always resulted in the "twisting" or replacing, or the dropping of existing policies which had outlived some or all of their waiting periods.

Senator CHILES. That term "twisting," is that another term of art?

Mr. WOODARD. Yes, sir.

Mr. CHEATHAM. Yes, sir, that is correct. The way they work it—you touched on it slightly a while ago—an agent presents a policy and collects the annual premium. Usually nearly all the policies have waiting periods from 1 to 2 years before the purchaser is covered as far as hospitalization. As that policy comes near to the time it will expire, the agent will come in and usually tell the victim that there are a number of ways to renew which we can touch on later if you like.

Senator CHILES. Yes.

Mr. CHEATHAM. The agents will tell people, for example, "It is time to renew your policy; we need your annual premium." The agents will say, "We didn't have time to get it out of the computer so you will be getting a bill on this, but just disregard the bill and you can go ahead and pay us now." They collect the money and of course the insured will follow the instructions of the agent and will disregard the notice and not make the payment, so their policy that is in force will lapse and they will lose what time coverage they had. They will be sent a new policy which will have a new waiting period and actually many of those old people were never insured although they would pay premiums each year supposedly for renewal and it would actually be for a new policy which would begin anew.

Senator CHILES. Regardless of their claim, they would always be in the waiting period.

Mr. CHEATHAM. Always be in the waiting period. The company will say: "I am sorry but you have not had the policy long enough. We regret very much not being able to pay your hospital claim."

Mr. WOODARD. We will cite you an example in just a moment, Mr. Chairman.

This replacing or twisting of policies of course resulted in a high rate of denials of claims. Some instances of twisting within the same company were noted. In one such instance, an agent was convicted in the 24th Judicial District of Texas in a case prosecuted by Mr. Cheatham. In that case the aged victim's claim was denied after the

agent had fraudulently replaced a good policy that had been in force with a new policy. The more common type of twisting noted during these investigations involved the transferring of aged customers between two or three companies. This usually resulted in the expiration of policies which were in force, in favor of newly acquired policies with new waiting periods.

Tactics Used

Some examples of fraudulent and deceptive tactics used by salesmen in obtaining money from the aged citizens are as follows:

One: The seeking out of elderly people who are known to be susceptible to repeated insurance sales.

Two: The use of "goose lists" in identifying and locating aged victims, and in disseminating information from one agent or ex-agent to another on the pitch or technique to be used.

We have an actual goose list [1] that we would like to show you and we have made copies. The names we would like to protect for the reason of not embarrassing those people.

Senator Chiles. Thank you.

Mr. Woodard. Some of the comments are very interesting in that they show the salesman's attitude toward the old people.

Three: Salesmen claiming to be there to collect on accident and health premiums due on existing policies while actually soliciting new business.

Four: Salesmen claiming to represent the victim's accident and health companies.

Five: Salesman claiming to be combining their insurance and sometimes getting money back.

Six: Unlicensed agents soliciting insurance sales to be "fronted" by licensed agents.

Seven: Licensed and unlicensed agents claiming to represent companies that were familiar to the aged victims, such as American Insurance Co.—anything with "American" in it is good to use on an old person—and tricking them into signing new applications for insurance with other companies.

Eight: Salesmen representing that "Our company has bought out your company" and that "The company has sent us out here to collect for your insurance and get these new papers signed," while actually soliciting new hospitalization business.

Nine: Salesmen's representations such as "No waiting periods," "This policy will pay everything" or "Everything that medicare does not pay," "This is a paid-up hospitalization policy," and "You will start getting so many dollars per month back on this paid-up policy."

Incidentally, I don't know of any paid-up policies. We didn't run across any in our investigations.

Ten: Salesmen represented that they would reinstate expired accident and health policies which in some cases had been expired for 2 or 3 years and had been issued by companies they did not represent.

Eleven: Some solicitations were as simple as "Get your checkbook; your insurance is due."

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[1] See p. 227.

Twelve: Salesmen claiming that they were there to help the aged victims with their social security while actually soliciting accident and health business.

Thirteen: The use of familiar sounding and appealing agency trade styles such as the American Agency, Senior Citizens Agency, and First Continental Agency—these names were actually used in Texas—to induce aged people to listen to the sales pitches.

Fourteen: Falsification of applications for new accident and health policies by clean sheeting—omitting unfavorable information such as age, health conditions, and additional policies in force; forging signatures of applicants; and fence-post policies—completing applications in the name of relatives or others, unknown to the victims. This is done to bypass underwriting rules when it is known the victims already have the maximum coverage in effect with a company.

Sixteen Individuals Convicted

The results of prosecutions—Mr. Cheatham's prosecutions. As a result of the investigations, 16 individuals were indicted and convicted on insurance-related offenses which were prosecuted by Mr. Cheatham in the 24th Judicial District of Texas. Some individuals were convicted of more than one offense. One was convicted of perjury in connection with a grand jury investigation and another on bail jumping when he failed to commence his sentence, and that was an additional offense. Prison sentences ranged up to 9 years in addition to probated sentences and an additional 5-year prison sentence was assessed to the bail jumper after a 9-year sentence on swindling old people. All defendants indicted in Mr. Cheatham's district were ultimately convicted.

I don't think that is intended to mean that everyone that did something bad to old people was indicted. Some of the cases could not be made, but he did convict all of the ones he indicted.

Mr. Chairman, I have prepared five specific examples which demonstrate the hardship these insurance frauds have worked upon the elderly. With your permission, I offer them for the record.

Senator Chiles. Without objection, they will be made a part of the record.

[The material follows:]

Examples of Fraudulent Accident and Health Insurance Solicitations

An 84-year-old woman at Helotes, Tex., paid at least $15,303 on approximately 23 accident and health solicitations from November 1972 to April 1974. She paid $3,200 on a paid-up insurance pitch, but later was delivered a deed to near worthless and unwanted lots in west Texas (she owned a 10,000-acre ranch in Texas plus three farms in New Mexico). She was solicited three times during March and April 1974 and issued checks totaling $6,720.50, payable to Senior Citizens Agency, VWC Agency on Nursing Care, and accident and health pitches. The money was diverted to purchase worthless vehicle warranty contracts. Among the policies issued to her, nine were issued on forged or unsigned applications and seven were issued on "fence post" or unauthorized names.

One victim at Dallas, Tex., age 92, was solicited for insurance 13 times between April 1972 and July 1974. She paid $3,440 in checks plus $1,000 cash, and received nothing. On April 16, 1974, she paid $975 on an insurance pitch that would allegedly combine and pay up her accident and health policies. She alledgedly was to begin receiving $100 per month from the paid-up insurance. However, the money went to purchase worthless vehicle warranty. She owned no automobile.

An aged couple at Victoria, Tex., was solicited for 16 checks, totaling $3,220, for accident and health-type insurance between October 1973 and May 1974. The husband was unable to handle financial affairs and the wife, age 74 and confined to a wheelchair, looked after these matters. Of the money paid for hospitalization, $633 was diverted to a vehicle warranty contract. Salesmen claimed they were collecting premiums on insurance that was due.

Two sisters living together at Victoria, Tex., ages 85 and 91, were solicited six times between January and May 1974 for a total of $3,071 on accident and health pitches. The 91-year-old sister unwittingly paid $1,656 in two installments for a vehicle warranty contract. She had no automobile, but her sister did have a 20-year-old car.

An 83-year-old victim at Lockhart, Tex., gave an agent a check for about $7,200 to pay up her insurance, but overheard the agents conversing as they left her home and thus learned that they did not intend to do as they had agreed. Later testimony by one of the agents disclosed that the money had been solicited for insurance, but was to be converted to worthless west Texas lots. She was again solicited in March and April 1974 for $1,975 and $1,860. The first solicitation was to reinstate a lapsed policy and to pay up two life policies, plus one annual hospitalization policy. She received no insurance coverage for this money. The $1,860 was paid on an accident and health pitch, but included a $50,000 life policy. She received no insurance, but did receive a worthless vehicle warranty contract in the mail for her $3,835 paid to Senior Citizens Agency.

Mr. WOODARD. This concludes my statement. I will be glad to answer any questions you may have.

Senator CHILES. Thank you, sir.

Mr. Cheatham, we will put you on next and then we will question both of you.

STATEMENT OF WILEY L. CHEATHAM, DISTRICT ATTORNEY, 24TH JUDICIAL DISTRICT, CUERO, TEX.

Mr. CHEATHAM. Thank you, sir.

I believe what I might do is to cover this in a little more depth.

Senator CHILES. Fine. If you want to relate to any of these examples, fine. I want to ask you some questions about this.

Mr. CHEATHAM. Any time that you like, feel free to interrupt me.

Senator CHILES. Why don't you list them?

Mr. CHEATHAM. We photocopied part of the list and I will be glad to leave a copy with you. We have the original in case you would like to see it.

RICH AND POOR VICTIMS

I would like to mention that in this regard both the rich and poor alike are victims of these schemes. We had an ex-Governor's close relative who was victimized regularly, not in my district, however, but it came to my attention. In our investigation in our district we have a district judge's elderly mother and aunt who were regularly taken each year for considerable sums of money, unbeknown to the judge. This is one area that the younger relatives might want to take note, because these elderly people like to feel that they are handling their business; that they are getting insurance and won't have to fall back on their children; so very often they don't tell their closest relatives of the business transactions they have had.

We were able to recover quite a bit of the judge's mother's and aunt's money that they had expended on these fraudulent sales and policies. We had several wealthy widows, one of them who has a ranch in excess of 10,000 acres in Texas, and much more land in New Mexico. She was one of the regular customers. They would

more or less vie for who would go in there and write her a big policy.

We have another elderly lady in one of the adjoining counties where one set of salesmen would go in and write in excess of 10,000 dollars' worth of policies at one time, come back the next year and write her again. Since it was not in my district, we could not follow up on it, but one of these agents who we convicted, as part of his sentence, made full disclosure of his knowledge of the violations that had gone on in Texas, New Mexico, and Oklahoma. He indicated that in a period of 14 months this one wealthy lady, through about four companies and a larger number of agents, spent between $45,000 and $50,000.

Then, of course, you have many of the poorer senior citizens living in low-cost housing units. We have found quite often that the agents would have to time their visits so that they would get there after the social security checks came in so they could take advantage of the social security checks.

"Clean Sheeting"

With reference to their tactics, they have a language all of their own, and this I guess makes it a little difficult to understand the jargon, but Mr. Woodard touched on the "clean sheeting." When the agents go into a house and write the victim, they will write it up as if there were no prior illnesses, thus indicating to the company that if they get sick, anything would be covered. This is sort of a two-edged sword, if you will, because when the person gets sick and goes to the hospital, the doctor makes the report. When the company gets it they write back and say, "Well, you defrauded us, you didn't tell us about all your prior illnesses, so therefore we have to deny your claim." We had a number of the companies that were doing that.

I guess one of the best examples that we have had is an old couple that lived right behind the jail in Cuero, Tex. The husband had had a stroke and had been in a wheelchair since 1967. His wife was the sole breadwinner and she worked at a little hamburger stand making hamburgers and selling soft drinks. We recovered something over $3,000 for them, a lot of others we didn't, but the point being that the husband had been in a wheelchair since 1967 and when the agent went in to sell, the husband was sitting there in the wheelchair. Yet, the agent wrote up the policy indicating that he had had no prior illnesses.

Some of the companies had had insurance policies on these people before and had claims before and, of course, knew what sort of shape the old man was in, yet they would accept these new policies each time. She thought she was renewing and she was getting a new policy every time so that very seldom did the waiting period run out. If it did run out—the waiting period—then the company still would refuse to pay because they said the people had not related to them that they had had the prior illnesses in their application for the insuring policy.

They would hit the old people with the "Pay it all proposition"; in other words, you are paying up all of your insurance. Also, for example, they went in on one couple, indicating that the company would pay up to $25,000 no matter what the bills were. Well, of

course, the policy itself did not read that way. The agents used an outlaw pitch sheet, a printed form which they would show the people and, of course, the people felt that they were legitimate agents.

Senator CHILES. Were, in fact, some of the agents legitimate and working with companies?

Mr. CHEATHAM. Yes, very definitely so. Some of them were agents with the companies, and I will touch on this just momentarily. Many of them were prior agents who had lost their license and then kept on selling these old people through another licensed agent. I might add—and I think this is important—that when these agents go in these old people's homes they come up in a $500 suit and a Lincoln Continental or a Cadillac. They come in there and they know everything about that old couple or the old person. They will know what policies they have, when their policy will be coming due. They will know the name of their cat or their dog, whether or not the sister lives with them. When they go in on those old people like that it is very disarming; in other words, they feel that they are bound to be legitimate agents and a legitimate company, otherwise they would not have all the information.

Many times these people hardly ever have company; they don't see people very often. When you have an agent coming in and being that aware of everything about their prior life and visiting with them, they are very easy prey.

"LOADING UP"

Mr. Woodard touched on this matter of "loading up," or collecting for many policies. Very often we found where the agents would go in and find out how much the victims had in the bank and leave the victims $50 or $100 to live on for the next month and write out a check for whatever amount the older person had, and then left the victim just short of going on starvation wages. They would sign these forms up in blank and then go back in the company offices and select various policies that would fit the amount of money that they had collected. Very often these policies would be of very little value or no benefit to the person. They would probably sell them two or three hospital policies and maybe a cancer policy on the side to try to fit the amount of money they had collected. Very often, the cost of the policies furnished did not match the exact amount of money collected from the victim.

One of these agents, incidentally, indicated that his net take for his part per year was approximately $85,000. The other agents of course got like amounts.

NONLICENSED AGENTS

Mr. Woodard touched on this matter of "fronting." This is where you have one or more licensed agents and maybe a half dozen nonlicensed agents or agents that have lost their license. The nonlicensed agents go in and make the pitch to the old lady. They meet at the end of the day or the end of the week and have the licensed agent sign the application forms before submitting them to the company.

In Texas, this form requires that the agent be present with the

old lady when the application was taken, so he signs the form indicating that he was present in Cuero, Tex., or Victoria, Tex., when the victim signed the application. This also has some problems as far as the prosecution of these men, because when we get a description from a little old lady that said, "There was a nice tall dark headed man who came in and sold me this policy," and we think it is "so and so" insurance company, we check with that company and get a copy of the application and it will have an agent's signature on there. They will get a picture of the agent and it will turn out to be a short blond. So we have a little old lady that they say, "Well, she is just completely confused." It does not even fit the same description of the signing agent. It also helps the agents to have a defense when you catch up with them, unless you are able, as Mr. Woodard helped us, to find and check the other nonlicensed agents that were working with the licensed agent.

But in one of these little rural districts when you have one little old lady and she gives a description of a man that does not fit the description of the man who wrote the insurance, you can realize the difficulty in trying to make a case to catch the man who defrauded her because she does not even have the right description. She describes the person who was there, but the person who was there is not the one who signed the policy.

Mr. WOODARD. You convicted the signing agent.

Mr. CHEATHAM. Yes. I might add that under Texas law a person is guilty as a principal if he does anything to aid another person in committing the offense, and in several instances we were able to indict not only the person who went in the house after we found out who he was, but also the signing agent acting as a principal, although he didn't actually, physically, go in the house where the little old lady was. But he took part in the scheme by signing the application in which he was confirming he was there at the time.

"PAID-UP POLICY PITCH"

Touching on this "paid-up policy pitch" that they have, they go in and tell them, "We want to finalize your policies." They will get some little old lady that has a suitcase full of policies who has been paying $300 or $400 to the companies for the last 3 or 4 years on each of many policies. She may have a big paper sack or suitcase full of policies that are duplicated and they come in and tell her, "These other companies are not treating you right: you are paying too much money. We want to fix it up so we will finalize or combine all of your policies. You pay us another $700 or $800 and we will put them all together and they will be completely paid up and then you will start drawing"—usually they will tell them $100 to $200 a month. Of course that sounds like Christmas, you know, a good thing, so the little old lady pays that up and of course she never gets the several hundred dollars a month and she also does not keep the policies alive that she already has.

Mr. Woodard touched briefly on what they call "fence posting" in the business. This is where they sell so many policies that the company can't legally insure them on any more policies and they have more money that they collected from the little old lady. This $45,000 one, and several of the others—they would start writing up

policies on her relatives or even her friends. They would ask, "Who is your beneficiary?" and they would write up several policies on her. We convicted several of these.

One of the little old ladies, when she got the policy back, was still alert enough to realize that they were sending her a hospitalization policy back on her sister and brother who lived some 300 miles away in Forth Worth. She wrote them. Fortunately for us, she wrote a little letter to the company and indicated she did not do that, and of course the company just avoided it, and did not answer the letter at that time as I recall, so she had her lawyer write a letter.

When you get instruments like this, it helps you very much with the little old ladies, because if they have become senile in the meantime it is very difficult to make a case on their testimony, but where you have evidence in black and white and written complaints that come from the victim or principal to show what their understanding of what they were being sold at the time, it helps very much in prosecuting these people. Because, you can realize the problem of having a one-witness case with a little old lady that can't remember the color of the agent's hair or remembers the man as being a brunette and he turns out to be a blond. Here comes a smooth talker who could sell an Eskimo a refrigerator, if you pardon the expression, and he comes into court and is a smooth operator. When you are successful in getting these other instruments, it does help tremendously in convicting these people.

I would like to touch a little more on this matter of "twisting" policies. This is, as Mr. Woodard explained, where the victims have a policy and the agents come in and cause a lapse of that policy. The policy coverage is lost and the agent sells a new policy to the victim. There are several facets of that. We ran into a situation where one man owned three companies. The agent would run in and sell the woman a policy and all the companies had similar names—usually all of them had similar names—and one of the names would be the same, and then they would vary it a little. They would come in and sell the little old lady one policy for whatever they could get, $300 or $400 or more.

Company Switches

Thirty days before that policy ran out, they would come in and say, "I am here to collect your insurance," and instead of renewing the old policy, they would write it on the second company, all owned by the same man, and then they would come in later and sell them this third policy on the same company owned by the same man. The old person would actually never have insurance that would cover them because the waiting period had not run out.

Then you have a situation—it is not always the companies and the agents working together in each situation—we learned about where one company had sold out to a new purchaser. Then the exowner got the agents to go out in the field to twist off all the policies that they had sold to the new company. They put the policies back into another company that the person owned that had sold out the first company. So the new company wound up with a shortage of customers and the little old lady has suffered because she was not covered by the insurance because of the waiting period. So it was a fight

with the companies; in effect, but the little old ladies are the ones who really suffered.

I think he touched pretty well on the similar name pitch, where they come in and say, "Well, we are from American" or "We are from Southwest" and so forth, and that convinced most of the elderly policyholders. That meant some prominent well-recognized company to the victims. We are not saying that all of the companies are that way. Companywise, there are a small minority of these companies that I think, as far as I can see, were doing this, but these unlawful practices do hurt a lot of the companies that are legitimate.

Senator CHILES. Did you find companies that were trying to police their agents?

Mr. CHEATHAM. In some areas and in some of these new companies; in some of the companies, if once we caught them, yes, they would come in and they would come down and testify for us. We would issue a subpena and they would produce the records, but without exception each one of these people, as we convict them and before they were sent to the penitentiary—we talked to them; they always told us: "We could not have done what we did had the company not known. In other words, the company had to approve it. The company officials had to be approving it or we could not have accomplished this, other than maybe on a very short term basis." If the company checks their records properly, it does not take them long to recognize these repeaters.

Another one of the schemes we ran into was where one agent would come in and sell the hospitalization policy to the little old lady. We had one who had to have an eye operation that was not paid for because of this. She bought the policy and she kept it long enough to where she was covered, fortunately. The second agent came in and told her that, "No, I am terribly sorry, but one of our agents sold you a policy on the wrong form and you are really not covered like you should be and we are going to sell you this new policy. The waiting periods will be waived and you will be covered." She bought the new policy and the old policy lapsed.

Incidentally, she was telling the agent all the time: "I have to have this eye operation. I have a cataract operation coming up and I want to be sure I am covered." He assured her that she was covered, and, of course, when it reached the company they complained and he came back and said, "I am sorry, you have not had this policy long enough to be covered." So she lost her coverage for her cataract operation.

We have touched on the "no waiting period" and this, to me, is one of the real problem areas with these senior citizens. I am not an insurance man and there may be problems there, but if there were any way that these elderly people, buying policies—if the company were required to not insure them until they could get by this waiting period or, once they accepted the business, that they would not have the waiting period, not all of it but a lot of this type of fraud would probably be eliminated.

We had another pitch that sold a lot of policies. The agent would take a husband or a daughter or a close friend and, in trying to sell the policy, they would tell them, "Well, you know, my husband here or my daughter had an illness last year and the company paid more than the whole hospital, and doctor bill too—we have actually made

money on it," and of course the husband and daughter didn't even have insurance with the company. You would be surprised how that causes people to buy insurance. They want to be sure that they are completely covered and, of course, they are not.

We had some agents who would sign up a group of elderly people. If they were not able to place it with one company, they would then forge the signatures on new applications. We had old people who wound up with insurance with companies that they had never even heard of before. We had a number of instances of that.

Basically, that is all.

Senator CHILES. Tell me something, on the goose list. How did that work and where did you get that?

"GOOSE LIST" EXCERPTS

Mr. CHEATHAM. This was recovered from a group of these people who we caught. The man who made this particular list up had lost his license in Texas and his presence in Texas was not very—in other words, they were looking for him and he left to go to Oklahoma, as I recall. Before he left, he prepared the list and gave them this list to use in Texas. If you would like, I can show you this.

Senator CHILES. Yes, sir, if you would.

Mr. CHEATHAM. This will show you how "benevolently" some of these agents feel toward some of these old people.

Without using the name, he says: "This one is a good deal, but she likes Reserve Life, so handle with ease. Sell on idea of lowering rates that she now pays."

Here is another one. "This lady is as goosey as two young skunks. Cinch sale—$200, $250."

Here is another one. "There are two sisters here and another one that lives somewhere else. They pay for her, too. Good for $2,000, $3.000. Cinch."

Here is another one. "This woman is easy. Go in and sell her for her sister that don't live with her. She likes to hear a pitch. Also likes insurance that covers cancer and preexisting conditions."

Here is another one. "Everybody knows this one so don't take a check for more than $200, $300." In other words, otherwise you might get a hot check for your premium, because some of them have gone in there and got money from her already.

"This is just a plain old goose. Check bank balance."

Here is another. "This lady has a sister that lives with her. They are goosey, but they like Reserve Life. Real good, so you need to put a story on them. They are not stupid, so handle with care."

Here is another one. "This lady is goosey, but she is a younger one. Also, she has about five to six policies with Reserve Life."

Here is another one. "This one is a younger woman and goosey as hell. Has a husband, but she takes care of all insurance. Sell preexisting policy. She's sick. Not a big deal, but a cash sale. Don't 100 percent."

Now I guess I better touch on that slightly. Most of these agents on a new policy will receive anywhere from 60 percent to 90 percent, and we found a few, I don't think any more, that would even get 100 percent of the first year's annual premium. If they go in and sell a policy and don't turn it in at all and keep all of the money, then they are more likely to get caught. But if they go ahead and

put the policy in with the company, even though it does not pay, then if somebody complains they can claim that the little old lady misunderstood them in what they told her because there is the policy that they sold. But they are cautioning them on this one, "Don't 100 percent her"; don't keep all the money, or otherwise you might get caught.

Then we have them, for example, where we had one little old lady in one of the other towns in my district who had been sold so much that she had a great big suitcase full of policies. Every time some of these agents go in and sell her some more, they would ask to look at her policies and then they would carry an armful of those policies out and throw them out down the road, so if relatives came and found the suitcase they would not find all this mass of duplicate policies.

Back to the goose list.

Here is another. "This lady has always bought good. She wants a policy that pays for rest home; she won't have anything else. Go to back door."

Here is one. "This is the goosiest thing you ever saw. Run check through regular channels, no more than $500 at a time. This one is pretty well known by all the high rollers."

A lot of these agents refer to themselves as "high rollers."

So again—well, it is self-explanatory, I think.

This one says: "This one is a cinch. Make like you are lowering her premium."

In other words, she is paying too much for a premium so we are going to sell you a policy that won't cost you as much.

There are a lot of other examples in here, some of which are not fit to read in mixed public. The committee is welcome to have a copy and read them if you like.

[The list follows:]

"GOOSE LIST" SUBMITTED BY MESSRS. CHEATHAM AND WOODARD

[ADDRESSES AND TELEPHONE NUMBERS DELETED]

MAGGIE. This is a *cinch* sale, easy to talk to.

MYRTLE. This one is a good deal but she likes Reserve Life, so handle with ease—sell on idea of lowering rates she now pays.

JEWELL. This is a man and wife. They like Reserve Life, but I think they can be sold on anything because they are paying a lot for this insurance; however, the rate's about $50 less than they are paying.

HARRIET. This woman is a good deal but you have to sell—so set in tough so you can close.

WILMA. This one is tough but has always been sold heavy, but you have to stroke it on her ———.

EULA. This lady is as goosy as two young skunks. Clinch sales. $200—$250.

EFFIE. Don't know this one but she is a buyer. I never could get her at home.

LUCILLE. This is a sale. not too big, but a cinch.

NOVA. This is a cinch sale good for $150–$200—silly as ———.

GLADYS. This one is a cinch for all she has—check bank account. I sold $350. Check good.

AUDIE. This is a woman (Audie) good deal.

EVA. This is a jam-up good one for anyone.

LOTTIE. E. J. has sold this deal four or five times. He can't write nothing but goosies. Try her.

BESS. You ought to know this one, but don't fail to call on—she is a dandy.

WILLYNE. These are two sisters here and another one that lives somewhere else; they buy for her too—good for $2,000 or $3,000. Cinch.

LONNIE. This is a good deal.

ADDIE. This is a small deal, but is a sale.

ZELA. This lady is a goose. Talk to her about her quilts that she makes. Buy one from her—pay her half and stroke it on her ———.

OLGA. This woman is easy. Go in and sell her for her sister—that don't live with her—she likes to hear a pitch; also likes insurance that covers cancer and preexisting conditions.

RUTH. This one is a younger woman and goosy as hell—has a husband, but she takes care of all insurance. Sell preexisting policy. She is sick; not a big deal but a cash sale. Don't 100 percent.

PAULINE. This is a goose, but watch out for her daughter. This is not a hot one, but her daughter is a smart ———.

MARY. Everybody knows this one, so don't take a check for more than $200–$300.

IRENE. This is a good deal, but sure likes Reserve Life, so handle with care.

BESSIE. This is just a plain old goose—check bank balance.

ADDIE. This is a good deal but not too big—$150 or so.

CORA. This lady has a sister that lives with her—they are goosy, but they like Reserve Life real good, so you need to put a story on them—they are not stupid, so handle with care.

VERA. This one has bought a lot of insurance but I don't remember anything about her. I am kinda slack this morning.

INEZ. This is one of E. J.'s old deals.

EUNICE. I don't know about this one for sure, but she pays quite a bit for insurance.

MABEL. This lady is goosy, but she is a younger one. Also, she has about five or six policies with Reserve Life.

IRMA. This one is just a plain old goose; not too big, but sale inevitable.

RUTH. This is a good one; handle easy, nice to talk to.

LEONA. This is a good deal; pays cash, but she has a sister that lives in FTW who also has Reserve Life. But be sure, don't call on her; she is a great letter writer.

ZULA. This one will buy, but not a big deal. Everything counts in love and war.

EDITH. This one is a cinch sale; goosy as ———.

ZORA. This one is goosy for a policy that pays everything for home and office calls.

DELSIE. I sold this lady a couple of times. She is good, but not too big.

RUBY. This one is a good deal, but not too big.

ULYSSIS. This is an old man and is a good deal. Go in and talk about playing guitar; he likes that kind of ———. Has daughter, but she don't mess with his business.

LAURIA. This is a sale, but don't have very much money (sorry about that).

FLORENCE. This is a lady that pays a lot for insurance with E. J., so put a story on this one.

FLANNIE. This is an old time buyer, goosy as ———. Be sure and call her before going in because of the law up there—they will strap it on your ———.

ROY. This man has been missed, but he wasn't handled right. You can't rush him; he likes to hear preexisting condition.

ISA. This is a good one.

MOLLIE. This lady has always bought good. She wants a policy that pays for rest home. She won't have anything else. Go to back door.

MONDRE. This is a good deal. Her nephew works in bank; go through channels; have no trouble with check.

JANIE. This is a goose (get it on).

MINNIE. This one is a good deal. No address; lives west on MWC Highway. Sweet deal.

ALICE. This one looks like a good deal. I didn't find her at home. Has been very big for years.

MARGARET. Good deal; not too big—cinch.

INEZ. Small deal, but go sell.

MARTHA. This is a good deal. She talks about getting struck by lightning out by the clothesline. You have to put it on her ———, but never no trouble with business.

AL. This is a man with money and will buy. I know another one that you would like to know about up here.

RUBY. This one is hot as a three dollar bill, so send someone on this.

DORA. This is the goosiest thing you ever saw. Run check through regular channel, no more than $500 at a time. This one is pretty well known by all the high rollers, so don't go ape ———.

FRANCES This one has always bought from me, but is sure not a cinch for everybody. You have to stroke it on her ———. See how tough you are.
THELMA. This one might not be very good, but I had a big bunch of ——— over it, but I ——— her around pretty bad; sorry about that.
EILA. This one I sold, but no comments. Can't think.
MYRTLE. This one is a cinch. Make like you are lowering her principle.
VERA. Goose.
MAGGIE. Can sure be sold (I did).
VELMA. Not too big, but sold.

Mr. CHEATHAM. That is about as much as I can cover in a brief list. I am sure you might have questions and we would be glad to answer any of them.

Senator CHILES. Thank you, Mr. Cheatham.

I understand you convicted everybody you indicted out there.

Mr. CHEATHAM. Yes, sir. I will say we had to take a second run on several of them because of the technical problems.

Senator CHILES. But you took another run at it.

Mr. CHEATHAM. We took another run.

We had one we got the maximum conviction from the jury on, only to find that one of our jurors had been an exconvict. I messed up there, I will be frank. If I had known he was an exconvict, I would not have taken him, but apparently he didn't like little old ladies being defrauded either. In Texas one of the qualifications to sit on a jury is that you not be an exconvict. The defense found out that he had been placed on probation for an offense in one of the other counties, and that county had not sent the conviction in, so it was not on the NCIC or TCIC records, so we were not aware of it. They found it out and, of course, the judge had to give him a new trial because of that. There were several instances like that, but we backed up and started over.

Senator CHILES. Mr. Cheatham, based on your experience and what you found out in this case, do you think this kind of action is taking place just in Texas?

Mr. CHEATHAM. No, sir.

Senator CHILES. Does it lap over into New Mexico?

Mr. CHEATHAM. Well, let me explain it this way. I can only speak for the counties that I cover, but our evidence indicates that it is taking place over in New Mexico and in many other States.

Senator CHILES. Yes, sir.

Mr. CHEATHAM. But as we convict these people, usually part of my plea bargaining with them was that they make full disclosure of theirs and other activities all over Texas and anywhere else. We had some rather startling information from people going into New Mexico and Oklahoma. One agent had a bad record in both Texas, Oklahoma, and Arkansas, as I recall.

THICK COMPLAINT FILES

Incidentally, the State board has the files on these agents from the time that they have first filed an application to be appointed as an agent. They get complaint letters from little old ladies, and very few of them know to write in—only a small percentage—but it would shock you to see the thickness of some of these agents' files which were full of complaint letters from little old ladies.

We had one we convicted and, unfortunately, the judge saw fit to

give him probation rather than the penitentiary. By contacting Oklahoma and Arkansas authorities, we got massive amounts of complaint letters from each one of those States that the little old ladies or the elderly citizens had written in to the various State boards of insurance complaining of this person. I can only speak for Texas, and to a limited extent there, because I don't run the State board of insurance, but they don't have the authority themselves to prosecute a case criminally. They can take a license and that sort of thing, but we have found just a massive number of these complaint letters from the little old ladies. As I say, for each little lady who is able to write in, there are many hundreds who either would not know where to write or, because of their aging conditions, could not write; so it is pretty indicative.

Senator CHILES. Did anything happen to the companies?

Mr. CHEATHAM. I will have to speak to that with mixed emotions, I suppose, and of course I realize I am touching on a little gray area. The State board of insurance set up a task force when this was brought out in the newspapers. They did some investigation. I understand they intend to take some corrective action.

This man, Mr. McRae, who worked with us, I might add, has done an outstanding job. Unfortunately—and I could not say why—he has not been promoted up in the way that he should. In years past, he has been bringing these cases to me, but we didn't have anyone like Mr. Woodard who could take it over a statewide basis. We had to handle them all on a single-case basis. He did an outstanding job on it.

Senator CHILES. Who did he work for?

Mr. CHEATHAM. The State Board of Insurance of Texas.

I understand there were a number of companies examined by the State board and Mr. McRae indicates to me that he feels that they have made good strides toward correcting some of the problems. I think you get into the question of what type of correction you want. Is it sufficient just to take licenses and that sort of thing, or is it necessary to send people to the penitentiary?

I guess I kind of lean to the side that if you send them down to the penitentiary for a while they have less likelihood to repeat, but maybe I am too tough, I don't know. Some of them have indicated I am. There are others inclined to feel that if they correct it or take their licenses, that will be sufficient. I have my own feelings on it, but I realize that there are other feelings, and those who feel otherwise have their points. Every question has two sides.

Senator DOMENICI. Mr. Cheatham, has the State of Texas, in your opinion, made substantial changes in the way of insurance commission?

Mr. CHEATHAM. I think they have made some changes for the good. I could not say that they have gone as far as I personally feel they could, and I don't mean this as criticism. I think they have taken steps and made strides toward correcting this problem.

Senator DOMENICI. You lead me to conclude that we ought to take a look at the national criminal statutes to see if we cannot make the job a bit easier in terms of prosecuting. It seems like we have got to strain some statutes here to get prosecution.

Mr. CHEATHAM. You hit the point perfectly, Senator.

Senator DOMENICI. Well, do you have any suggestions in that regard, either of you?

Mr. CHEATHAM. That covers a lot of territory.

Senator CHILES. Well, you certainly raised points that we are going to look at as to whether there should be.

FAMILIARITY WITH COMPANIES HELPS

Mr. CHEATHAM. Let me say, and I don't want to take too much of your time, but before Mr. Woodard came in and helped us or was able to, Mr. McRae—I cannot commend him highly enough for his work. Frankly I would rather have him than 50 others on the State board of insurance. He has a knack about him. He is a handwriting expert, for example; he knows these companies; through the years he has become familiar with them. He knows what companies are borderline; he knows what companies are fudging on some of their policies.

He can take a bunch of these applications and pull them out and say, "This one and this one and this one I don't believe are going to be good ones," and I have not seen him miss yet, he is that good. What I am saying is that in the past years he would call me up and say, "Wiley, I believe I have a couple of cases down in your district," and he and I would work together and we got convictions on all of those, but they were single-shot deals; they were one little old lady.

Very often when we convicted that agent, he would tell us of others whom he had defrauded. We would try to get their money back, and this is another problem. If I might bring it in, there are many of these little old ladies who don't want their relatives or friends to know they have been duped. We have several who said, "Well, I would rather lose the money than have to go up and testify and have my friends find out that I got talked into this thing."

Back to the main point, we were able to convict these people on a single-shot basis, but we didn't have the needed area coverage. We could not bring in, for example, the help when you have one little old lady competing in her testimony with a smooth insurance agent. It is very difficult if you don't have the supportive documentary evidence to get a conviction. But when you have help from someone like Mr. Woodard, as he is able to do, he could go out and get the other 20 who were sold, say in the same week out of my district, and we can bring as many of those little old ladies as we can. Some of them are too sick to travel, that is the problem, but if we can bring in extraneous offenses, we can bring those 20 little old ladies in and say they were told the same thing. As a result, the jury knows that little old lady they are trying the case for is telling the truth and, in that respect, it has aided us immensely to have the assistance of Mr. Woodard who has a broader scope of coverage than they have.

Senator CHILES. If some of these cases could have been prosecuted in the Federal courts when you were talking about Oklahoma, Texas, and New Mexico, could you have brought those all together in a major conspiracy case?

Mr. CHEATHAM. I would like to bite into one like that, but my State office is not——

Senator CHILES. I am just asking, would that have helped resolve the kind of problem when they were getting beyond your jurisdiction?

Mr. CHEATHAM. Very definitely. One of the problems he has touched on here—if you have an 85- or 90-year-old woman, it is a little difficult to bring her 150 or 200 or 300 miles to Fort Worth, for example, to testify. It creates a problem, and this is one of the reasons I think that they elected to have us prosecute them at a local level where it was a shorter distance for little old ladies to travel.

Senator DOMENICI. Let me ask you one other question. You mentioned that on a number of occasions, after you started prosecution, you found a number of complaints on file with the insurance commission in your State. You indicated those complaints would come from only a small percentage because a lot of people won't complain. Did you find that the insurance commission followed up on the complaints?

Mr. CHEATHAM. They would send an investigator out and take a statement from the little old lady, almost without exception, and then, depending on what they found, they would contact the insurance company and probably ask them to send them copies of their records, and that sort of thing. They have provision for hearings for the taking of agents' licenses. They have that; they do that.

Senator CHILES. What kind of crime is it in Texas for selling insurance after your license has been taken?

Mr. CHEATHAM. There is a statute, but my recollection is, and I could be wrong, but I think it is a misdemeanor. When you get into that area, if these fellows are netting $85,000 a year, as one man admitted to me, it does not hurt him to pay a $500 fine or something like that.

Senator CHILES. I agree if it is simply a misdemeanor.

MAIL FRAUD STATUTE APPLIES

Senator DOMENICI. Mr. Woodard, you have adequacy on the Federal statutes to address this issue?

Mr. WOODARD. Well, the mail fraud law covers any scheme, and the fact that an insurance policy is sold on a fraudulent pitch would satisfy that part of the statute. The other element is, of course, the use of the mails. Fortunately, all these schemes or agencies or insurance companies use the mail, so these cases could have been prosecuted at Fort Worth. The problem is the gathering together of those 70-, 80-, 90-year-old women, who are generally unwilling to go a long distance to participate in a week-long trial or even a 3- or 4-day trial. They can come in to their county seat, and that, I think, is the main reason that the U.S. attorney in Fort Worth felt that the local prosecutions were the best resolution. I think the law covers this type of scheme. This is commonly used, especially in the younger victims' situations.

Senator CHILES. The goose list—this is not the only list of this kind?

Mr. CHEATHAM. Oh, no. They collect what we call lapse cards from the companies. I have another man that, when he finally got convicted and capitulated, he turned over his entire files to us. I have one, for example, that is a steel filing cabinet with four drawers about so long and a fifth steel cabinet, and they are com-

pletely full of index cards like this. They will index them alphabetically by name and by area so that they know when they go to Livingston, Tex., they will have a list of all the little people there and their addresses. When their policies expire, what type of insurance they have, the name of their sister, of a dog or whatever it might be, they have there.

If I could touch on answering part of the question that you asked him, and I don't mean this as criticism or anything like that, but in both Federal and State courts now we all have such full dockets; we have so many cases that they have to eliminate some by whether they are stronger or weaker cases. We have to do this to a certain extent. I think, in addition, these type of cases are not like a simple burglary, or they are not the easiest cases to try; they tax your wits and your efforts and it takes a lot of preparation to try these cases. We are all human beings with human frailties and I think there is a tendency not to take this type of case because, for one reason, many elderly people are sick and senile. They don't always make good witnesses, so you may have to interview 50 victims before you find one that is still alert enough to be able to withstand the rigid cross examination of a defense lawyer. So this is part of the problem.

Senator DOMENICI. Let me ask both of you one last question from my end. In this area that you work, would you be able to assess for the committee whether or not this is a major problem in terms of scope, of selling this kind of policy to the elderly?

Mr. CHEATHAM. I would consider it so, and also for the whole State of Texas; it is amazing. I mean, when you talk to these people and then go back and get the rest of their scheme on one particular deal, it will run—well, we have one here from 50-some-odd victims. What we did in that case, we found out that there was no insurance company to refund these victims. We have sent each one of them to the penitentiary in one case; given them a probation in another, so that when they get out they have to be supervised and make restitution.

We have on their probation—I have one of them here if the staff or you would like to see it as an example. We have all the elderly people's names and their towns and the amount of money they paid in and didn't get anything for. It runs from south Texas where we live all the way up through Texas and into Oklahoma. As I recall, we have four to six victims in Oklahoma. They may have been all old and passed away by the time they get the money paid back, but the probation office is due to collect money to pay back to them if they live long enough, and of course when these people get out, it takes them a long time to make the payments. We are requiring, where we can, duplicate convictions; we sent them to the penitentiary, which helps to keep them from doing it again, and we can probably give them probation in another case and require restitution. This requires some doing, but it works.

STANDARDIZATION WOULD HELP

Senator CHILES. Do you think it would help if we had standardized policies so that it would be clear to these older people what is in a policy, what kinds of benefits are available to be paid?

Mr. CHEATHAM. Yes, this would help. The prior Commissioner had a program to try to simplify the policy, but I would point out again that many of these people are not capable, at their age and degree of health, to comprehend. I am not a senior citizen yet but there are a lot of these problems I have extreme difficulty understanding. In fact, when we get ready to try a case I will get a man from the State board of insurance to come down and testify just what that policy will or will not do, in comparison with what the agent advised it would do. It is a difficult area.

Senator CHILES. I want to thank you both again for your testimony and for the job that you did here. I think you made the old adage "What is sauce for the goose is sauce for the gander," and I think you could compile a little book on the 16 ganders that you all worked on.

Mr. CHEATHAM. It is very heartbreaking, Senator, to go in and talk to these elderly people and see what little they have left, and to realize that they are being bilked out of that.

Senator CHILES. I think the information that is on this goose list gives you an idea of the type of people who are preying on the elderly, and their total and complete lack of any kind of feeling whatsoever. I can't think of anything much more heinous than people who would run this kind of scheme.

Mr. CHEATHAM. They better not do my mother and father that way, that is all I can say.

Let me say this. We do have a lot of other files that might or might not be helpful to your staff. I have indicated to your staff that if they need them, I can make them available.

Senator CHILES. We will be in touch with you.

Mr. CHEATHAM. Thank you, sir. I enjoyed coming before you. I hope I have been helpful.

Senator CHILES. Our next witness will be the Honorable Elizabeth Hanford Dole, Commissioner, Federal Trade Commission.

Mrs. Dole, I again thank you very much for the work that you have been doing in trying to protect the elderly in consumer affairs.

STATEMENT OF HON. ELIZABETH HANFORD DOLE, COMMISSIONER, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JEFFREY EDELSTEIN, ATTORNEY-ADVISER; ANNE DENOVO AND GAIL SHEARER, OFFICE OF POLICY PLANNING; AND MARK ROSENBERG, OFFICE OF GENERAL COUNSEL

Mrs. DOLE. Thank you, sir.

I am pleased to be with you today and I would like to introduce several people who are with me.

Anne Denovo, on my left, is the author of the staff report [1] which I will be discussing a little later in my presentation.

Jeffrey Edelstein is an attorney-adviser to me at the Commission.

Gail Shearer is right behind me and is with our Office of Policy Planning.

Mark Rosenberg is here as well, from the FTC, from our General Counsel's Office.

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[1] See appendix 1, p. 275.

I want to thank you for inviting me to testify here today on behalf of the Federal Trade Commission. I welcome this opportunity, for I share with you a deep personal concern about the problems of the elderly. I am pleased that, thanks to your efforts, the issue of medicare supplement, or medi-gap, insurance is beginning to receive the attention it so urgently needs.

More than half the people in this country aged 65 and over have private health insurance in addition to medicare. They purchase it because they worry about meeting the medical expenses which medicare does not cover, and with good reason. On the average, elderly individuals spend $1,360 per year on health care—three times as much as the rest of the adult population. In 1976, medicare paid only 38 percent of their health care costs.

At this committee's hearing on May 16, both State officials and consumers told of the abuses associated with the marketing of medicare supplement insurance and, of course, we have heard more about it this morning. There was testimony that some dishonest agents take advantage of the isolation or physical disability of many older people. Some agents engage in "stacking" or selling several policies with overlapping coverages to the same person.

Another common marketing abuse as we have heard this morning is "twisting" or persuading people to cancel their policies and buy new ones which subject them to new exclusions and waiting periods. Some agents also misrepresent that they are from medicare or Social Security or that the policies they sell have been approved or sponsored by the Federal Government. The Federal Trade Commission commends those State insurance commissioners who have increased their enforcement efforts in order to put an end to misconduct by agents.

"Impossible To Make Rational Purchase Decisions"

It is also important to recognize that there is such a dearth of consumer information in the medicare supplement market that it is almost impossible for consumers to make rational purchase decisions; agent misconduct is thus facilitated. A great variety of differing policies effectively precludes buyers from comparing benefits or premiums, resulting in lack of price competition and the sale of duplicate coverage to hundreds of thousands of people who are under the impression that they are filling all the gaps in medicare. Other areas of widespread misunderstanding are the limited nature of medicare supplement coverage, the relatively high cost of coverage for the initial deductibles compared to insurance against catastrophic medical expenses, and exclusions for preexisting medical conditions.

This morning, Mr. Chairman, I would like to describe some of the common informational problems in the medicare supplement area, and then review briefly the public policy alternatives and some recent State initiatives. These subjects are discussed at length in a staff report[1] which is nearing completion and which we hope to release to you next month. Finally, I would like to discuss the possibility of an impact evaluation of various state approaches—con-

[1] See appendix 1, p. 275.

ducted, perhaps, as a cooperative Federal-State effort—to determine the most effective method of making medi-gap supplement insurance policies comprehensible to everyone.

Reasons for Federal Attention

Why should the Federal Government become involved in this area?

First, the medicare supplement market is a by-product of the Federal medicare program. Supplemental insurance is confusing because medicare's benefit structure is complicated. Commissioner Harold Wilde of Wisconsin has observed that the Federal Government has a moral responsibility to cope with the problems medicare has caused.

Second, there are arguments for a uniform approach to medicare supplement regulation, which Federal study could facilitate. Continuing variation in State standardization regulations carries the spectre of insurers having to market different medi-gap policies in every State, with obvious increasing costs. In addition, it would appear that uniformity would benefit consumers by insuring that the categories for medi-gap insurance will be the same should they move to another State. These and other issues should be assessed in the impact evaluation to determine if there are particular reasons why uniformity is desirable in this segment of the insurance market.

Third, most States would not be able to enforce their medicare supplement regulations against mail order insurers not licensed in their States. Many supplement and indemnity plans are sold by mail.

As you know, the McCarran-Ferguson Act generally immunizes the "business of insurance" from the Sherman-Clayton and FTC Acts to the extent that such business is regulated by State law. However, Federal agencies can make valuable contributions to the deliberations in this important area by undertaking studies such as the impact evaluation that I have mentioned and making recommendations to Congress and to the States.

Let me discuss just for a moment the complexity of the market.

Three types of health insurance policies are commonly sold to the elderly. Medi-gap or medicare supplement policies pay service benefits to fill some of the gaps in medicare; generally, they pay some or all of medicare's initial and daily deductibles and coinsurance.

The second and third types—hospital indemnity and dread disease policies—may be sold to adults of any age, but many companies emphasize sales to the elderly. Unlike medi-gap policies, indemnity policies pay a certain dollar amount per day of hospitalization, typically $20 to $50, to offset daily hospital costs which usually run up to $150 or more. Finally, dread disease contracts cover only some of the expenses incurred for care of a particular illness, such as cancer.

No Standardization

Even in the medi-gap category alone there is virtually no standardization. Let me give you just a few examples. Some medi-gap policies cover only the part A initial and daily hospital deductibles; some place low dollar limits on coverage for the 20 percent coinsurance under part B; some cover virtually the full 20 percent part B coinsurance, but others only for those medical services rendered in a

hospital setting and not for the same procedures performed outside a hospital. Some sell several policies with piecemeal, but overlapping, coverages. Some mix service and indemnity benefits.

It is difficult enough for anyone to have a thorough understanding of medicare's complex benefit structure and its gaps. Now add to that the bewildering variety of ways each different insurer fills some of those gaps. Then, when hospital and nursing home indemnity plans and dread disease contracts complicate the picture, comprehension and comparison become almost impossible for consumers.

Confusion caused by the multiplicity of policies often leads consumers to buy two or more policies in an effort to obtain complete coverage. It has been estimated that 23 percent of the people over 65 who have private insurance have two or more policies covering hospital costs, resulting in some degree of overlapping coverage. Medigap policies generally include coordination of benefits clauses. This means that in the areas of overlap, only one policy will pay for each gap. For instance, a person who buys three policies which cover the $144 part A deductible will not receive $432 in the event of hospitalization. Only the first policy will pay $144 in benefits. The buyer has wasted the portion of the second and third premiums which paid for the duplicate coverage of the initial deductible. Those elderly persons who live on fixed incomes can ill afford to spend their money on such worthless duplication.

Both indemnity and dread disease plans will pay benefits in addition to medicare and any other private insurance, giving "extra cash." However, these policies often produce few benefits in relation to the amount of money invested; they typically have very low loss ratios.

Even the elderly person with only one medi-gap policy may have a low value product. Since comparison shopping is foreclosed, many medicare supplement insurers are not obliged to price or operate competitively. Recently the outgoing chairman of the board of the Health Insurance Association of America criticized those companies whose loss ratios are "far too low," saying they "give a bad name to the whole industry."

Incomplete Benefits

Many people purchase supplemental coverage in the belief that their private insurance will take care of all of the medical expenses medicare will not pay. Often agents tell their prospects: "This policy will cover everything that medicare doesn't cover." In reality, many medi-gap policies exclude from coverage the very same areas which medicare will never cover: Out-of-hospital prescription drugs, most nursing home care, routine physical examinations, eyeglasses, hearing aids, and dental care. Medicare will not pay for the portion of physicians' fees which exceed a "reasonable charge," as determined by the medicare carrier. We are not aware, either, of any medicare supplement insurer who will pay those excess charges.

Of course, medicare's determination of reasonable charges is a measure designed to control costs. We are not suggesting that medigap insurers should provide reimbursement for excess physicians' charges. Nor do we mean to say that supplemental policies should fill every gap in medicare. The problem is the common misperception that medicare supplemental coverage is comprehensive. Actually its

role is limited; private health insurance accounts for only 5 percent of the health care expenses of the elderly. How many people would buy medi-gap policies if they knew how incomplete their coverage might prove to be?

Consumers may not realize that some kinds of medicare supplement coverage are more expensive than others. For example, they pay more for coverage for the initial deductibles than for insurance covering those catastropic medical expenses which could mean financial disaster. The California Department of Insurance estimates that it costs, on the average, $30 per year to buy insurance for the $60 annual part B deductible.

It is important that consumers know how much first-dollar insurance coverage really costs them, as well as which medi-gap policies provide it and which do not. Some people, however, want first-dollar coverage for health care expenses because it gives them a sense of security, and they may not realize that not all medi-gap policies cover the initial deductibles. Once again, the problem is lack of information. And if consumers knew the true cost of first-dollar coverage, perhaps they would not choose it.

Many medi-gap policies exclude coverage or require waiting periods before they will cover preexisting conditions as you have already heard this morning. Under "pre-X" clauses, an insurance company can deny coverage for conditions which existed before the policy went into effect. Since many elderly people have multiple health problems, a policy may lose much of its value if the insurer interprets a pre-X clause strictly to deny claims for any illness which developed out of preexisting conditions. Some companies insure all applicants regardless of medical history, then deny their claims citing preexisting conditions. Because pre-X clauses are not uniform, it may be extremely difficult for the consumer to anticipate what his premium dollar is buying.

In attempting to solve the consumer information problems in the medicare supplement area, the States have developed three possible approaches. The first of these is the establishment of minimum standards. California has set a benchmark minimum loss ratio of 55 percent for medicare supplement policies. An Illinois statute requires that all such policies delivered in that State must fill certain gaps, including the initial part A deductible, part A copayments, and part B coinsurance.

New Rule Sets Up Four Benefit Levels

A second approach is to bring about standardization by establishing categories for policies and requiring that each policy carry an appropriate label. Wisconsin's new rule sets up four benefit levels for medi-gap policies, which must now bear the corresponding number. Categories 1 to 3 range from most to least comprehensive. Policies in category 4A supplement only part A of medicare; those in category 4B supplement only part B. California has also established, in a different way, three categories for medicare supplement policies, labeling them "in-hospital only," "in-and-out-of-hospital," and "catastrophic."

The third type of public policy initiative involves efforts to provide information to consumers in order to permit the market to

function more effectively. The most common method is a disclosure requirement. Wisconsin requires agents to give out an 18-page booklet and California mandates the use of general one-page disclosure forms.

Senator CHILES. I am going to have to interrupt you right here to answer the rollcall.

Is your time requirement all right now?

Mrs. DOLE. Yes. Thank you.

[Whereupon, at 11:07 a.m., the committee recessed until 11:25 a.m.]

Senator CHILES. Please go on.

Mrs. DOLE. OK. I believe I was just discussing the third type of public policy initiative which involves efforts to provide information to consumers in order to permit the market to function more effectively. In Oregon, insurers or agents must fill in the blanks on a disclosure chart showing medicare benefits, gaps, and policy benefits. New Mexico requires a slightly different disclosure chart. In my opinion, a chart would be particularly useful if it could show not only medicare's coverage and gaps and the policy's benefits and costs, but also the expenses the consumer would still have to pay out-of-pocket.

I should emphasize that these State approaches—minimum standards, standardization combined with labeling, and disclosure requirements—are not mutually exclusive. It may well be that a combination of these regulatory measures would be most effective.

At present when an agent or an advertisement exaggerates the worth of a medi-gap policy, the prospective buyer typically has nowhere else to turn for impartial information to correct the misunderstanding. Other methods have been suggested besides mandatory written disclosures to assure that buyers get the information they need, such as individualized insurance counseling and consumer education measures to furnish facts which insurers do not generally provide: For example, medicare coverage and gaps; eligibility for medicaid; health risk information—for example, average length of hospital stay for the over 65 age group—and rating of companies' records in handling claims. In addition, nontraditional avenues for increasing consumer awareness, such as the use of television spots, should be explored.

EVALUATION OF STATE APPROACHES NEEDED

What is needed to ferret out the problems and evaluate the public policy implications of alternative solutions? We believe the answer is an impact evaluation of existing State regulations of medicare supplement insurance with central focus on the effectiveness of different regulatory systems in facilitating the purchase of medicare supplement insurance which meets consumers' needs and expectations.

Considerable groundwork would be necessary to narrow the focus of such a study. Basic facts about the medicare supplement industry, such as total premium volume, are presently unavailable. It is evident that duplicate coverage is a serious problem but no one knows its precise nature or extent. It would be important to learn from

consumers what information they feel is essential to make wise purchasing decisions.

A full scale impact evaluation would help to answer the complex and important policy questions which abound in the medicare supplement area: Is it possible to provide complete yet comprehensible explanations of medicare and the multitude of ways private insurers fill some of its gaps? Is standardization necessary to make the market's offerings understandable? Should public policy try to influence the consumer's choice between costly first-dollar coverage and what economists might call more rational insurance for catastrophic medical expenses? What are the arguments for and against the sale of dread disease or indemnity policies?

An impact evaluation would be timely because several States' regulations have become effective within the past year. As I have already indicated, Wisconsin and California have established totally different systems of standardization and labeling. Oregon and New Mexico have different disclosure requirements, but no regulations involving standards. Illinois sets minimum standards but does not prescribe any particular disclosures. An evaluation should point up the strengths and weaknesses of each State's system and should assess the desirability of a model regulation.

An impact evaluation could also provide information about the effectiveness of various disclosures and recommend followup consumer education and counseling measures. And if current debates lead to the establishment of some form of national health insurance, it appears that the results of such a study would be valuable to policymakers, since a similar supplemental market might well develop under any system providing a less than comprehensive benefit package. The results of the impact evaluation would be available, of course, for the use of State regulators and legislators, Congress, and the public.

Cooperative Federal/State Approach

How should this impact evaluation be performed? Perhaps a cooperative Federal/State approach would be best, with participation by the National Association of Insurance Commissioners, the Federal Trade Commission, and the Department of Health, Education, and Welfare. A joint HEW–FTC–NAIC project would bring together different types of expertise, each of which would contribute greatly to such a study. The NAIC and State insurance departments have firsthand experience with insurance regulation and access to data. In fact, on June 12 the accident and health subcommittee of the National Association of Insurance Commissioners voted to create a task force to investigate regulation of health insurance sold to the elderly and identification of other health insurance products "which do not fulfill the public's interest." HEW would contribute knowledge about the medicare program and the FTC's expertise in the areas of consumer protection, information disclosure, and competition would be pertinent. We would welcome the opportunity to work with the NAIC and HEW in such an undertaking.

In conclusion, Mr. Chairman, I am convinced that inappropriate medicare supplement insurance purchased at this point can impose severe hardships on the elderly. We must begin now to determine

the best approaches for resolving these problems, and I hope that my testimony this morning will make some contribution to that endeavor.

Senator CHILES. We thank you very much for your comprehensive statement, and I think you have certainly contributed to what we are trying to do here. We would like to have you make the staff report[1] you mention a part of our hearing record. Would that be made available to us as soon as possible?

Mrs. DOLE. Yes.

Senator CHILES. When do you expect to have that?

Mrs. DOLE. During the month of July that will be available.

Senator CHILES. We will leave the record open until that time because I think it would be valuable to have.

Mrs. DOLE. We will certainly send it down as soon as it is ready.

Senator CHILES. You say what is needed is an impact evaluation of existing State regulations of medicare supplement insurance. Will the Federal Trade Commission undertake this study?

Mrs. DOLE. The Commission has expressed an interest in such an impact evaluation, Mr. Chairman. At this point the Commission has not actually set aside the funds for this study or assigned personnel to it, but we will be engaging in budget determinations fairly soon now. Our staff is looking into this and, I am sure, will have some recommendations for the Commission to focus upon as far as personnel and funding.

Senator DOMENICI. Will the Senator yield?

Is there anyone else to your knowledge, Commissioner, that is undertaking the study—any other institution?

Mrs. DOLE. No, sir, I don't believe so. This study might analyze all of the State regulations. The breadth of the study would be one of the considerations. Should each State regulation be evaluated or should just certain ones be chosen and a more selective approach taken? As far as I know there has been no across-the-board approach of this sort.

Senator CHILES. Senator Domenici and I both think that the information to be derived from such a study would be most helpful, not only to the States themselves but to all of the parties concerned. I like very much your approach of having that be a cooperative study with the State commissioners and others that you pointed out in your study. I think so many times they tend to feel that anything the Federal Trade Commission is doing is perhaps to step on their turf.

"A NATIONAL PROBLEM"

I think it has been pointed out that regulation of insurance is a State problem, but what we are dealing with here is very much a national problem stemming from the gaps in medicare coverage. Having the State insurance commissioners participating as we look at standards and possible model legislation will be very important so that improvements in regulations can eventually result.

What would the evaluation cover and how long do you think it would take?

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[1] See appendix 1, p. 275.

Mrs. DOLE. The best estimate at this point would be 15 to 17 months. This would involve a period of establishing a design for the impact evaluation with perhaps a pilot study during that phase; we estimate the first phase would take about 9 months. An impact evaluation is a very complex matter. It is not an easy undertaking.

Senator CHILES. I am sure is isn't. I want to ask you about a few parts which the study could include.

Mrs. DOLE. All right.

Senator CHILES. We have taken testimony suggesting that perhaps the commission structure set by the insurance companies could encourage policy sales by the setting of high commissions on first-year policies. Would a study like this be able to examine this area?

Mrs. DOLE. I think that such a study would focus on what information is in the market—is there a dearth of information, what misinformation exists at this point. Certainly to the extent that the commission structure is causing misinformation in the market and to the extent that a dearth of information is making it possible for abusive practices to take place, that would be encompassed in the study. I don't know if you want me to elaborate further. I didn't complete my answer on what the impact evaluation would entail.

Senator CHILES. Excuse me.

Mrs. DOLE. Just to give a little more information on that point, the impact evaluation would involve, during the first phase when the design is being established, deciding how to approach the matter; whether it should focus on all of the States or certain selected States; matching the States so that those with regulations are compared with similar States which have no regulations. Where a State already has a regulation in effect, there may be base line data which was accumulated before the regulation took effect. If not, I think by comparing similar States with and without regulations, we can get the equivalent of base line data. Decisions would have to be made in that area, and we would try to obtain from insurance companies and from the State commissioners data that would be useful.

Surveys of consumers would take place in phase 2—finding out when they purchased their medi-gap policies, what sort of information they relied on, what the source of that information was. Did the policy actually meet their expectations? How much overlapping coverage was there? We know there is certainly a problem of overlapping coverage, but we don't know the extent. To summarize, there would be a number of various issues which would be focused upon in the design phase and then, in phase 2, there would be actual surveys of consumers. Phase 2 would also involve analyzing the data and writing the report. Ultimately, perhaps, we might work with the States to develop some sort of uniform regulatory model.

Senator CHILES. Do you favor the use of minimum loss ratios as a way to solve the problem?

Mrs. DOLE. The loss ratio would certainly be a focus of the study because some of the States which have recently adopted regulations do have loss ratios. For example, California has a loss ratio of 55 percent; I believe Michigan has a 65 percent loss ratio. This regulatory approach would certainly be a part of the study.

INFORMATION LIMITED

At this point data is limited because, for example, the premium volume and the sales volume is not available for medi-gap or medicare supplement insurance. The reason is that the companies report data to the State insurance commissioners under the heading of health insurance, but they don't break it out into medicare supplement insurance. Data is not broken out now except in several States where there is a minimum loss ratio.

Senator CHILES. The States would have to get that information.

Mrs. DOLE. It would be important in any sort of undertaking to understand the volume of sales and the volume of premiums. This type of information would certainly be needed.

Senator CHILES. Do we have information now on how many dread disease policies are sold?

Mrs. DOLE. No, we don't. It is the same problem. It is in aggregate form under the heading of health insurance. That is the way it is reported generally to the State commissioners. It is not broken out according to dread disease or indemnity policies or medicare supplement policies.

Senator CHILES. Do you envision that our senior citizens could help in that survey effort that you are talking about?

Mrs. DOLE. I certainly would anticipate that.

Senator CHILES. That is to say their national organizations.

Mrs. DOLE. I certainly think so. Consumer surveys would be a very important part of an evaluation.

Senator DOMENICI. Commissioner, let me ask you this. As the chairman has indicated, I certainly join with him in an effort to do what we can to expedite the kind of evaluation you are speaking of. Would there, in your opinion, be any congressional action necessary to expedite this kind of evaluation?

Mrs. DOLE. I don't foresee any particular action at this moment. I can't think of anything specific at this point to suggest. I certainly think that we should follow closely what you do in the committee. You may decide to have additional hearings and to collect and disseminate additional information. I would encourage you to continue to do that. This would certainly be helpful as the impact evaluation gets underway.

Senator DOMENICI. What if we were to communicate as a special committee to the Commission, indicating that we are holding these hearings, that we are already convinced that it is a major problem, that we don't have enough information to address the problem properly and that we encourage the Federal Trade Commission system to assist in getting information. Would that be helpful?

Mrs. DOLE. At this point, we must determine what information is needed. The impact evaluation will pinpoint exactly where we should go, and at this point I don't think we could say just what is going to be necessary. Then, of course, there will hopefully be the opportunity to get a lot of the data from other sources, perhaps the State insurance commissioners. There will hopefully be voluntary cooperation on the part of the companies and ultimately, if we have to use a compulsory process, it is my view that the Commission has authority to obtain the necessary data. I don't

think that we really know now just what specifically would be needed until we pinpoint the areas that will be focused on.

Senator DOMENICI. Let me ask you one other question. I am fully aware of your genuine interest in this area and I commend you for it. It has got to be one of the most difficult to address, yet obviously one that is peculiar and different in terms of insurance in this country—in fact, so different in my opinion that it would ultimately require a significant departure, regulatorywise, from other insurance selling. It is obvious that we have a victim sphere here that is very vulnerable and very different because of the nature of being old and alone.

Mrs. DOLE. Yes, I agree.

"INSURANCE COMPANIES MUST BE MORE CONCERNED"

Senator DOMENICI. What I am most impressed with after two hearings, participating as much as I can, is that somehow or another we are able to get the so-called fly-by-night agents, be they criminals or operating without a license, or the like. However, it seems that ultimately the companies that insure have to do the policing. If they end up writing a policy, they are the ones that are going to have to have more stringent rules and more stringent evaluation before they issue the policies and the like to catch their own malfeasance in the field. We cannot get at the company. When called in before a Commission, the companies state that a refund has been made, et cetera. When companies such as New York Life Insurance and General Life Insurance—unscrupulous agents like these would have been caught. They just don't go around defrauding people like this, selling them 15 policies, and the like, or 20.

It does appear to me that some way or another we have got to get every insurance company that sells this kind of insurance and issues the basic policy more concerned about policing what is going on in the field.

Mrs. DOLE. I think that what you are doing by holding these hearings should assist a great deal in that effort. I would say that in addition to the agent abuses we certainly have to keep in mind the great dearth of information in this area and, of course, that is one of the reasons that agent abuses can take place. By means of the impact evaluation, we can take a good hard look at whether it is going to be possible to remedy the problems here through provision of information or whether perhaps we will have to move to some form of standardization. We do not know at this time what the answer is going to be, because the problem is so extremely complex.

As a prospective medicare supplement purchaser, you have to understand the medicare system. You have to understand what medicare does and does not cover. You have to be able to compare between the many combinations of policies that are offered. You have to understand the difference in dread disease and indemnity policies as well as medicare supplement policies.

On top of that, there is a body of general information which is important to understand. For example, when an elderly person is considering whether a medicare supplement policy is needed, it is helpful to know what the average length of stay in the hospital is for a person over 65, and it is very important to know that if you

are eligible for medicaid, you probably should not be purchasing additional policies.

Various Remedies Possible

There are many different pieces of information which are most important to an intelligent decision, and we will have to explore whether or not it is possible to remedy problems through disclosures and through information as some of the States are trying to do, or whether standardization is the right approach, or perhaps even a cost index. There are various options, and at this point I think we need to know more about the industry to understand how these various remedies would impact on the market.

Senator Domenici. There might even be some prohibitions. We might end up where certain kinds of policies are useless and cannot be written, is that not correct?

Mrs. Dole. That would be one focus, I would think, as you explore all of the various options.

Senator Domenici. Thank you, Mr. Chairman.

Senator Chiles. On page 3 you speak about a dearth of consumer information in the market. Since these policies are, as you say, a product of Federal action, should the Social Security Administration make greater efforts to supply such information?

Mrs. Dole. Mr. Chairman, that has occurred to me as one possible means of providing information; through that channel to the persons who are in need of the additional insurance data could be pinpointed directly. I would think that if HEW is interested in being a part of this impact evaluation—and I hope that they are because of their expertise in medicare—this idea could be explored.

Senator Chiles. Again, we want to thank you very much for your statement and the efforts that you have made in this area. We look forward to working with you.

Mrs. Dole. Thank you. I appreciate the opportunity to appear this morning.

Senator Chiles. Our next witness will be Mr. Joseph C. Mike, insurance commissioner of the State of Connecticut, and chairman of the National Association of Insurance Commissioners Accident and Health Subcommittee.

Mr. Mike, we appreciate your appearance here today and note that you have a lengthy statement on this subject. We would like to put that in the record[1] in full and, if you could summarize that for us in some way, we can have a chance to ask you some questions.

STATEMENT OF JOSEPH C. MIKE, INSURANCE COMMISSIONER, STATE OF CONNECTICUT, AND CHAIRMAN, NAIC ACCIDENT AND HEALTH INSURANCE SUBCOMMITTEE; ACCOMPANIED BY RICHARD HEMINGS, NAIC COUNSEL

Mr. Mike. Thank you very much, Senator.

My name is Joseph C. Mike and I am the insurance commissioner of the State of Connecticut and the chairman of the Accident and Health Insurance Subcommittee of the National Association of Insurance Commissioners.

[1] See p. 252.

Accompanying me this morning is Richard Hemings, the NAIC counsel.

The NAIC is a voluntary association of the chief insurance regulatory officials of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. It is a pleasure to be with you this morning to relate the concerns and activities of the NAIC with respect to sales of so-called medicare supplement health insurance coverages.

We share your concern over confusion accompanying the medicare program and marketing practices, and the inappropriate and duplicate private health insurance coverages being purchased by medicare eligible persons. We trust that constructive and cooperative efforts of the Federal Government and the States will minimize the problems and confusion of the medicare population. Several States have already acted individually to set medicare supplement standards, and the NAIC will now prepare recommendations for all States. In addition, all States do act on consumer complaints regarding misrepresentation, false advertising, and other unfair marketing practices that may accompany sales of medicare supplemental coverages.

Medi-Gap Task Force

At its June 12, 1978, meeting, the NAIC's Accident and Health Insurance Subcommittee resolved to examine the need for, and draft in accordance with perceived needs, rules governing the sale of medicare supplement health insurance, and we established a task force that has been charged with that responsibility. It is my expectation as chairman of the subcommittee that within 6 or probably 12 months that task force will have prepared for our subcommittee a recommendation. We would be most receptive to input and advice from your committee. You and your staff are invited to participate in our proceedings and, in the meanwhile, we do recommend or suggest or urge that any complaints that you have that you feel warrant further individual investigation be referred to the regulatory agencies in the State from which the complaint came and give us a chance to do something with it.

Senator Chiles. We will certainly do that. I appreciate very much that you have asked our committee and our staff to participate and I can tell you that we will look forward to taking you up on that. If you let us know when your first meeting is going to be held, we would like to have somebody there covering that.

Mr. Mike. We will be very glad to do that.

Let me turn now to our current understanding of the problems and our respective roles in resolving outstanding problems. The problems that we see are divisible into two categories: First is the question of whether and how to fill medicare gaps and limitations and, second, is how to control the unfair trade practices of medicare supplement insurers and agents.

Medicare supplement insurance is, as suggested by the term, designed to fill residual gaps and limitations not covered by medicare. One obvious option open to the Federal Government is to broaden the scope and extent of medicare benefits to lessen the apparent need for supplemental private insurance.

Senator CHILES. If you note, we are dealing with a $51 billion deficit in the Federal Government.

Mr. MIKE. Yes.

Senator CHILES. I don't think that you are going to find, as much as a lot of us would like to see it, all those gaps covered. So you are right, that would be a very nice way to cover the problem, just not to have any gaps, but each one of those gaps, of course, involves millions of dollars and our biggest problem right now is the cost of medical bills. We are now seeking the development of reasonable costs and guidelines.

We have not found any device that puts any downward pressure on rising health costs. So to say that we are going to cover those gaps right now is impossible. In other words, our biggest problem is to stay level to where we are and not create some more gaps. I foresee that that is going to be the problem with the current state of the economy. Proposition 13 has some effect here as well as it does in California. So I think that we have got to talk about the alternative No. 2, because I don't see that there would be any possibility in dealing with alternative No. 1.

Mr. MIKE. Absolutely.

The next statement I had was a deferral to the Senate. Obviously there are additional problems involved with attempting to address the gaps of medicare.

Senator CHILES. Yes.

Mr. MIKE. Two initial questions that appear though are: (1) Do those over age 65 need a private insurance supplement; and (2) should the Federal Government broaden the medicare benefits?

As far as the marketplace is concerned, the answer to the first question is yes, absolutely. As far as the people who purchase medicare supplements are concerned, there is no doubt in their minds that they need private supplements.

Most medicare eligible Americans have private health insurance. There are, nevertheless, some serious doubts in our minds that the public fully understands the workings of the health care system, the functions of medicare, and the value or the benefits of the private health insurance they have. I will explain those concerns in a moment in answer to the second question.

Senator CHILES. They need the coverage, but do they need the coverage that they are now getting if they knew what it, in fact, was and what they were paying for?

"NOT AN OPEN AND FREE MARKET"

Mr. MIKE. The ideal solution is for most of the beneficiaries to understand what they are now getting and what they are now purchasing. We would not have a fraction of the problems we have now if the market functioned the way theoretically an open and free market does function. I am sure it does not in this case.

People are moved by emotion, by fear, and by a great lack of understanding of the product that they are buying to protect them from all those fears. We defer to you and your ability to balance the need of the elderly with the national capacity to underwrite such coverage.

In general, medicare cost sharing serves the dual purpose of cost

containment of health services and limiting the program's financial strain on the Federal Government. Although the health care cost containment objective is, in our view, socially desirable, both for the medicare population and the general public, the public has become accustomed to first dollar coverages.

One of the major benefit provisions of most supplement policies is coverage of the deductible and coinsurance amounts. We do not intend to prohibit insurance for medicare cost sharing amounts. However, the value of such insurance is open to question.

If first dollar coverage is economically inappropriate, then the insurance industry, State and Federal Governments, unions, and employers are to blame for allowing or encouraging its prevalence. The NAIC is on record in encouraging the use of consumer cost sharing as a device to assure use of the restraining influence of household budgets to minimize the inflationary propensity of the health care system.

I would like to stress that point just a little bit because within my role as insurance commissioner in Connecticut I am also a member of the Connecticut Commission on Hospitals and Health Care, and one of the problems we constantly run into is the fact that the public is insulated very heavily from the cost of the health care he is provided. It is very difficult for them to see the flow-through between the health care system which needs to be controlled very badly and the insurance coverage.

We get a great many complaints every year over the increases in Blue Cross/Blue Shield coverage and most of the people who complain to our department are unable to make the transition to the budget of their own hospital or the questions of duplication in the health care system itself.

We think it is essential that we avoid, in all cases, 100 percent comprehensive coverage. There has to be a responsible feeling on the decision to purchase the health care that his insurance is helping to pay for. If we can return to a more basic principle of insurance that protects you from a severe economic loss—not any economic payment—then I think the system is going to be much better off. Unfortunately, that is not a very popular idea. The theoretical ideas of cost sharing are not accepted by the market.

I think perhaps some education as to the relative cost of first dollar coverage might be very illuminating to the public. That is something we think ought to be attempted.

The population that is being treated with medicare supplemental coverage is extremely vulnerable. Many of them remember quite readily a time prior to medicare when a senior citizen could not obtain medicare to protect him from any loss, and many of them are very much afraid of being a drain on the family and loved ones and afraid of catastrophic health losses. They also become a population that will respond readily to any kind of marketing attempt to provide health insurance, and they are a fertile ground for any kind of slippery operation that may be in place.

We in Connecticut have prohibited specified disease policies. This is not necessarily a unanimous position. There are some people who feel that as long as the public is desirous of making a certain purchase, it should be available. I would note, in 1969 and 1972, Connecticut also prohibited senior citizens supplemental medical indem-

nity-type policies, but the pressure from the population to drop that prohibition was enormous.

Senator CHILES. But you don't have the dread disease policies now.

Mr. MIKE. No, we do not. I think myself that the best thing we can do is attempt to prohibit them countrywide. I really believe the best answer to the concerns addressed by the person to purchase dread disease is to purchase full comprehensive coverage. It is marketed by emotional appeal and scare tactics.

SUBSTANDARD POLICIES

Senator CHILES. Does the association have any position on that?

Mr. MIKE. It has been to identify dread disease as nonstandard, substandard insurance policies. The task force I referred to has been given a twofold charge. The first is to take on the question of medicare supplemental coverages. The second question that will dovetail and follow the first one is to take on the broader question of those insurance policies that are not in the public interest. They are going to examine questions, I hope, like indemnity contracts, specified or dread disease policies, minimal benefit policies, the $10 a day hospital policy—that kind of coverage.

There is a great question now whether the public does benefit by it, regardless of how strong the desire to purchase it is. In keeping with my positions on the cost of the health care system, I see a real problem with indemnity policies. Indemnity policies, unfortunately in many cases, are often an incentive to consume a greater portion of the health care system and it is the kind of coverage that someone could very easily develop into a profitable operation. Somebody could make money by being in the hospital an extra day or two. That kind of economic situation lies in the face of any attempt at cost containment. That is a very difficult question.

In order for the consumer to intelligently decide whether to buy insurance coverage of the medicare cost sharing amounts, the consumer must understand what medicare provides. We agree with the chairman of this committee who, in 1974, acknowledged that "One of the most compelling points for the Congress to consider is the great need for more intensive educational efforts upon the part of the Federal Government to inform older persons about medicare itself."

A peculiar aspect of the medicare program is that the basic benefits payable have changed almost annually, due to rising deductibles and coinsurance, since the inception of medicare. This results in a great problem. We not only have an element of the population that every year must learn about medicare as they reach the age where they qualify for it, and that previously were probably not as well aware as they should be of what medicare provides, but we also have a problem where the instruction may change from year to year. There is a constant need to inform.

I am an individual who believes that too much emphasis is placed only on the simplification of insurance. The unfortunate fact is insurance is, by and large, not a simple proposition. It is very easy to say we are going to simplify the language of this policy and leave it at that. More is needed. Simplification is desirable and necessary,

but I think, especially in the situation of the senior citizen, an ongoing counseling service is going to have to be provided. I don't see any way around it.

Our department has been discussing the situation with the Commission on Aging in Connecticut and we feel that that kind of educational function is valid and it must be encountered. Once that happens, we are also going to find greater exposure of the practices of agents and companies in the market. I will get to that in 1 minute because we have an enforcement difficulty that I don't think will go away at any level.

The other thing that bothers me a great deal is the ability of the physician to take or leave assignments and the reimbursement formula that leaves gaps between the allowable charges and actual fees. It seems to me that the system is aggravated when you allow the physician to accept a charge for one particular service and not for another. It becomes difficult for the patient to be able to determine whether medicare will pay his full bill or whether he is going to be hit with an additional charge that even an additional supplemental carrier won't provide. I hope that is a question that is taken up further. I think a physician ought to make a determination whether he will participate in the program or not, not on a case-by-case basis, whether he feels it is advantageous for this individual or this procedure, to take the assignment.

The consumer does not adequately understand the impact of nonassignment on the part of the physician. He does not understand the ability of the physician to charge him extra; the inability of most supplemental insurance to cover that.

Some possibilities for State regulators' consideration are mandatory disclosure of premiums allocable to the cost sharing amounts under any private supplement and controls on policy replacement procedures. These are some of the topics that we expect the task force is going to be undertaking.

In addition to medicare "gaps" attributable to purposeful cost sharing requirements, there are other gaps and limitations such as the maximum 90 inpatient days per episode of illness covered by part A; or the gaps caused by "reasonable and necessary care" payment limitations; or the numerous health care services not covered and not intended to be covered by medicare such as drugs, dental services, and full nursing home services.

"Market Can Be Influenced by Public Demand"

Given the existing set of medicare benefits, we believe the proper role of the States to be that of assisting the consumer in determining what gaps are suitable for private insurance coverage. So long as the public understands the benefits and limitations of the medicare program, the nature of private health insurance, and need to contain health care costs, the market for sensible and appropriate medicare supplements can be positively influenced by public demand. Public understanding should be a primary objective of both the Federal and State Governments with respect to medicare and sales of private insurance supplements.

When it comes to enforcement, there is an additional problem. Now we have the authority to enforce not only the insurance stat-

utes, but to seek enforcement of the criminal statutes over the marketing practices specifically of the agent force.

I should note that in Connecticut the Blue Cross program writes the vast majority—I would say almost 90 percent—of the supplemental coverage. They don't have a waiting period and they are not encountering any of the problems with not having preexisting conditions and with open enrollment. Because of that, a great many of the insureds are with the Blue Cross program. Their rates are reviewed annually. They are costly and our marketing problems are less than many.

That is not to say they don't exist. They exist primarily with special operations. We find that a particular company may become active in some approach that we don't care for or believe to be illegal or some particular agency may undertake an approach that we find it necessary to enforce our laws against.

We have a significant investigation going on right now that involves the State's attorney's office and the State police. It is a problem much like all of the other episodes that have been outlined here and in the previous testimony. We feel the situation is obviously illegal, but it is an enforcement difficulty, it is a crime, and I don't see any good way to avoid the commission of a crime. The best we can do is to attempt to enforce the statutes as fully as possible and detect problems as quickly as possible.

I would be a fool to sit here and maintain that we could prevent the situation from ever occurring again. What we feel is necessary is for the population to understand what their rights are and what their rights should be; to understand what kinds of coverages they should be obtaining and what they should not be expected to do. To the extent that we can make the population, if nothing else, very cynical and provide for them counseling services, we can expose the marketing practices to our scrutiny and be even more effective in enforcement.

"Not Aware of Victimization"

Many senior citizens are not aware of the fact that they are being victimized, pure and simple. A lot of the situations where the individual had all those insurance policies stashed away in a trunk were the same as people we found in our cases. We had to go in and explain to the persons, once we found the operation and started to track down its victims, why they were being victimized and show them exactly what was wrong with what they had and where the problem was. In many cases the persons became so embarrassed about it that they would be reluctant at best to participate in the investigation further.

So there has been a special problem. We cannot look at the figures and say it is a small problem. Most of the figures don't come to light. Most of the problems are difficult to detect and we have to ferret them out. That is why I think to the extent the public is more well educated everyone will benefit.

At least six States have promulgated regulations specifically dealing with the matter of medicare supplement insurance and, in my lengthier testimony, I have submitted outlines of what those States have done and also submitted examples in an addendum of the kinds of regulations that are already in force, are already adapted by the

NAIC, and enforced by most of the States affecting the behavior of agencies and companies.

It is premature to suggest which, if any, of these specific State regulatory approaches may be followed by the NAIC. A fair conclusion is that each attempts to summarize what medicare provides and to enhance the consumer's ability to determine what is appropriate to supplement medicare. This general objective will undoubtedly be shared by any model regulation proposed by the NAIC.

Thank you.

[The prepared statement of Joseph C. Mike follows:]

PREPARED STATEMENT OF JOSEPH C. MIKE

Mr. Chairman and members of the committee, my name is Joseph C. Mike, Connecticut Insurance Commissioner, and chairman of the Accident and Health Insurance Subcommittee of the National Association of Insurance Commissioners (NAIC). The NAIC is a voluntary association of the chief insurance regulatory officials of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. It is a pleasure to be with you this morning to relate the concerns and activities of the NAIC with respect to sales of so-called medicare supplement health insurance coverages.

We share your concern over confusion accompanying the medicare program and the inappropriate and duplicate private health insurance coverages being purchased by medicare eligible persons. We trust that constructive and cooperative efforts of the Federal Government and the States will minimize the problems and confusion of the medicare population. The marketing abuses and purchaser confusion accompanying medicare supplement health insurance sales appear to have ripened into problems appropriate for State regulatory action. Several states have already acted individually to set medicare supplement standards and the NAIC will now prepare recommendations for all states. All states actively regulate trade practices to deal with unfair marketing methods, unfair advertising, unfair claims settlement practices, and improper agent conduct.

As you may already know, the NAIC conducted its 1978 annual meeting in Washington during the second week of June. At its June 12, 1978, meeting, the NAIC's Accident and Health Insurance Subcommittee resolved to examine the need for, and draft in accordance with perceived needs, rules governing the sale of medicare supplement health insurance. It is my expectation that within 6 to 12 months the NAIC will be in a position to recommend a model regulation to individual States. During the public hearings to be held on this subject in future months, we would be most receptive to the recommendations and advice of the Senate Special Committee on Aging. We cordially invite members of the committee or your staff to participate in NAIC proceedings on formulating State regulatory initiatives in response to problems associated with medicare supplement sales. In the meantime, the NAIC recommends and respectfully requests that you refer individual medicare supplement complaints that come to your attention to the States for appropriate consumer assistance.

The States currently have in effect broad and detailed authority to regulate advertising, unfair trade practices, and other aspects of insurance company marketing. To the extent that fraud, abuse, and other unfair marketing practices are at the heart of problems with medicare supplement sales, individual states already have regulatory tools in place that are adequate to the task of addressing marketing abuses. When consumer complaints are filed with the State insurance departments, or when unfair market conduct is otherwise brought to our attention, we can and do deal effectively with individual instances of company or agent marketing abuse. However, on the basis of our regulatory experience, it has become clear that one of the best means to accomplish consumer protection is to arm the consumer with adequate knowledge of insurance products and educate him to appropriately identify his needs. Medicare is a complex Government health insurance program. It has become apparent that beneficiaries do not adequately understand what benefits they have much less what they need in the way of private supplements. Confusion in the minds of medicare supplement purchasers, inability to determine one's insurance needs, and inappropriate selection of health care may be aspects of

the problem that the Congress and the States can constructively address, but perhaps not entirely solve. However, we see the need for educational and consumer assistance programs as a major element of the medicare supplement problem. We will develop recommendations for State action. Let me turn now to our current understanding of the problems and the appropriate roles of the State and Federal Governments in resolving the significant problems.

The problems that we see are divisible into two categories—whether and how to fill medicare gaps and limitations; and controlling unfair trade practices of medicare supplement insurers. I have attached to this statement a brief review highlighting state regulatory measures applicable to the marketing of health insurance in general. The focus of my statement to you today will be what additional positive steps may now be taken on medicare supplement problems.

Medicare Gaps and Limitations

Medicare supplement insurance is, as suggested by the term, designed to fill residual gaps and limitations not covered by medicare. If complete, comprehensive coverage were provided to the elderly under medicare, there would be no market for private medicare supplement coverages. Therefore, one obvious option open to the Congress is to broaden the scope and extent of medicare benefits.

It may be interesting as a historical footnote to relate the insurance industry's expectations expressed in 1965 on the role of private health insurance under medicare. In commenting on the NAIC on the then-proposed medicare program offering both hospital and optional medical coverages, the industry suggested that "there will be little, if any, room left for private health insurance for those over 65 and coverage now in force would be eliminated." [1] Credit either the ingenuity of the suppliers of private health insurance or the demands of the elderly for first dollar comprehensive health insurance, or both, there is clearly a market for medicare supplement policies despite the bleak predictions of health insurers in 1965. According to the Health Insurance Institute, at the end of 1975 some 12.6 million older people, six-tenths of the over-age-65 population, had private health insurance to supplement medicare.[2]

Two initial questions that are woven through all of the issues now before you are: (1) Is there a real need for private medicare supplement insurance; and (2) should the Federal Government broaden medicare benefit structures? As far as the marketplace is concerned, the answer to the first question apparently is a resounding yes. Most medicare eligible Americans have private health insurance. There are, nevertheless, some serious doubts in our minds that the public fully appreciates the workings of the health care system, medicare, and private health insurance. I will explain our concerns in a moment. The second question, the appropriateness of broadening medicare coverage, is a matter for congressional discretion. For reasons that are undoubtedly well known by you, we cannot in general recommend expansion of the medicare system. We defer to the ability of Congress to balance the needs of the elderly with the capacity of the government to fulfill those needs.

The intent of the medicare legislation was to provide a broad program of hospital insurance protecting the over-65 population against the costs of inpatient hospital services, posthospital extended care, posthospital home health services and outpatient hospital diagnostic services. The hospital insurance plan was to be supplemented by a voluntary medical service plan to protect against the costs of physician services, home health services, and numerous other medical and health services. According to the 1965 House report on medicare legislation:

"The combined coverage of the two insurance plans would result in protection for the elderly of a quality that only a few older people can now afford. Most elderly people could be expected to have the protection of both of these insurance programs. The provision of insurance against the covered costs could encourage participating institutions, agencies and individuals to make the best of modern medicine more readily available to the aged." [3]

In spite of the fact that medicare was intended to be relatively complete and adequate, a high proportion of medicare eligibles supplement the program with private insurance.

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[1] 1965 NAIC proceedings II at 333.
[2] Health Insurance Institute, "Source Book of Health Insurance Data," 1976-77, at 21.
[3] H. Rept. No. 213, Mar. 29, 1965, p. 2.

COST SHARING GAPS

In general, medicare cost sharing serves the dual purpose of cost containment of health services and limiting the financial strain on the Federal Government in providing medicare benefits. We believe the health care cost containment objective is socially desirable both for the medicare population and the general public. However, the public has become accustomed to first dollar coverages.

As noted by one of the foremost authorities on social insurance, Robert J. Meyers, in his 1970 book entitled "Medicare":

"The high rate of continuance of supplementary private health insurance of all types is a vivid testimonial to the belief of a large segment of the population that relatively full insurance coverage is desirable if it can be afforded. This support is also noteworthy in view of the facts that much of the supplementary coverage represents first-dollar costs that are readily budgetable and that the ratio of the value of the benefit protection to the premium paid is now relatively low as compared with what it was under some full-coverage policies and plans in existence prior to medicare." [4]

This committee has been made fully aware of the fact that one of the major benefit provisions, if not the major benefit, of most supplement policies is coverage of the deductible and coinsurance amounts.[5]

If first dollar coverage is economically inappropriate, the insurance industry, State and Federal Governments, unions, and employers are to blame for allowing or encouraging its prevalence. The NAIC is on record in encouraging the use of consumer cost sharing as a device to assure use of the restraining influence of household budgets to minimize the inflationary propensity of health insurance.[6] If the Congress can be entirely convinced of the need for medicare deductibles and coinsurance, private insurance coverage of such cost sharing measures could be prohibited.

However, whatever the theoretical virtues of mandatory cost sharing, the public is not likely to accept prohibition of first dollar coverages absent a convincing and prolonged public education program accompanied by repeal of the tax subsidies of employer and individually purchased health insurance. The problem is further complicated by the fixed income of retired persons coupled to rising cost sharing requirements of medicare. Therefore, we conclude that a sizable market will continue to exist for first dollar medicare supplements whether they are appropriate or not. Nevertheless, a public campaign to persuade and educate the medicare population on the economics of health insurance we believe is in the public interest.

In order for medicare eligibles to be able to evaluate their needs for medicare supplements, perhaps the most pressing deficiency of the medicare program is public misunderstanding. The chairman of this committee, Senator Frank Church, in 1974 acknowledged in unmistakable terms that—

"One of the most compelling points for the Congress to consider is the great need for more intensive educational efforts upon the part of the Federal Government to inform older persons *about medicare itself* (original emphasis)." [7]

A peculiar aspect of the medicare program, one that distinguishes medicare from other forms of hospital, medical, and surgical policies, is that the basic benefits payable have changed almost annually due to rising deductibles and coinsurance since the inception of medicare. Given changing benefits, the ability of physicians to take or leave assignments for medicare patients, and the reimbursement formula that leaves gaps between the allowable charges under medicare and actual health care provider fees, one can easily understand the confusion in the minds of medicare eligible patients. Moderating the increases in cost sharing amounts under medicare, and setting easily understood deductible and coinsurance requirements would go far in our opinion to ameliorate present misunderstanding and to improve the ability of the medicare population to select desired supplements. We recommend congressional review of the cost sharing provisions of medicare.

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[4] Robert J. Meyers, "Medicare," (1970) at 308.

[5] Ellenbogen, "Private Health Insurance Supplementary to Medicare," (1974), prepared for the Senate Special Committee on Aging at 5.

[6] See NAIC Model Comprehensive Health Insurance Bill, Sec. 6C, "Proceedings of the NAIC II." 407–437.

[7] Ellenbogen. "Private Health Insurance Supplementary to Medicare," Special Committee on Aging, U.S. Senate, (1974) at iv.

Disclosure of what medicare pays and what private supplements pay is a major objective of virtually all of the State medicare supplement regulations now in place in six States. These State plans will be discussed in greater detail later in my statement.

GAPS AND LIMITATIONS OTHER THAN COST SHARING

In addition to medicare "gaps" attributable to purposeful cost sharing requirements, there are other gaps and limitations such as the maximum 90 inpatient days per episode of illness covered by part A; or the gaps caused by "reasonable and necessary care" payment limitations; or the numerous health care services not covered and not intended to be covered by medicare such as drugs, dental services, and full nursing home services. Are these additional gaps suitable for private insurance supplements? Should there be broader medicare coverage of both existing and additional benefits? The answers to these questions, as you well know, are not easy.

On the issue of broadening medicare coverages, we are aware of the remarkable rate at which costs of existing medicare and medicaid programs are increasing. Combined medicare and medicaid expenditures by the Federal Government have risen from $9.9 billion in 1970 to an estimated $32.2 billion in 1977.[8] Within only a few short years after the enactment of medicare legislation, future cost projections were being revised markedly upwards because of soaring costs attributable to provide cost increases and greater than anticipated utilization.[9] The problems created by health care cost increases are directly related to public and private, third-party reimbursement. Obviously, congressional interest in increasing medicare benefits must take account not only of the needs of the elderly but also the ability of the Government to support broadened coverages and contain health care costs.

If private insurance is feasible for services not already covered by medicare, the individual need for services must necessarily be of an insurable nature. Insurance deals with pooling similar risks of loss. The individual risk is the occurrence of a fortuitous event. If individual needs for dental services, drugs, or custodial care are either predictable or within the control of the patient, such services are by definition not insurable. While there are developing in the private market insurance programs for dental and drug services, the existence of such programs is largely attributable to the tax subsidies available in employer-paid benefit programs rather than a natural market for insurable services. Since many of most medicare patients are no longer employed, private insurance to supplement medicare with dental, drug, or custodial care services may simply be uneconomical. Premiums for such insurance may tend to match or exceed the individuals direct payment costs for such services.

In a similar vein are hospital and medical costs determined under medicare to be unreasonable and/or unnecessary. It is questionable both as a matter of public policy and economics to encourage private insurance for care, sought not for medical necessity but for convenience of the patient. In short, which total health care expenses of our medicare population may substantially exceed the amounts paid by medicare, it does not necessarily follow that the remaining expenses not paid by medicare can or should be privately or publicly insured.

However, there are gaps within medicare that are suitable for private insurance coverage. For example, the occurrence of a catastrophic illness or accident may lead to hospitalization beyond the period of coverage provided by medicare part A. This kind of risk is perfectly insurable, and private supplements to cover this kind of risk are undoubtedly beneficial. So long as the public understands the benefits and limitations of the medicare program, the nature of private health insurance, and need to contain health care costs, the market for sensible and appropriate medicare supplements will be shaped by public demand. Public understanding should be a primary objective of both the Federal and State Governments with respect to medicare and sales of private insurance supplements.

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[8] U.S. Department of Commerce, Bureau of the Census, "1977 Statistical Abstract" at 249.

[9] Staff of the Subcommittee on Health and the Environment of the House Committee on Interstate and Foreign Commerce, "Data on the Medicaid Program: Eligibility, Services, Expenditures, Fiscal Years 1966–76," 94th Cong. 1st sess. 3 (1976).

REGULATORY ACTION TO ASSURE A PROPER PRIVATE INSURANCE MARKET FOR FILLING THE GAPS AND LIMITATIONS OF MEDICARE

At least six States have promulgated regulations specifically dealing with the matter of medicare supplement insurance: California, Colorado, New Mexico, Oregon, Washington, and Wisconsin. As noted at the outset, it is the intention of the NAIC to consider the need for a similar model medicare supplement regulation.

Let me briefly summarize the existing State regulations:

(a) *California.* The California regulation basically sets benefit standards and calls for disclosure. The standards for "medicare supplement" coverages in California require:

(i) Application of a 55 percent loss ratio requirement for policy approval; and

(ii) Coverage of the coinsurance amounts applicable to both parts A and B which are automatically adjusted to medicare changes.

The standards prohibit:

(i) Coverage of the part B deductible if the insured is not hospital confined in the year;

(ii) Preexisting condition exclusions less favorable to the insured than a definition limited to conditions apparent 6 months before coverage and then excludable only for 6 months;

(iii) Exceptions, limitations, or reductions in coverage in a manner inconsistent with medicare;

(iv) Coverage of accidents on a different basis than sickness.

The disclosure requirements of the California regulation call for three categories of coverage: (i) in-hospital; (ii) in and out-of-hospital; and (iii) catastrophic coverage. Insurers in California are not required to make the catastrophic coverage available. A basic purpose of the California regulation is to require both parts of medicare be supplemented by any policy permitted to be sold as a "medicare supplement," subject to the proviso that coverage can be limited to expenses incurred as an inpatient. The catastrophic category is to provide blanket coverage after a "corridor deductible." In each category, prescribed statements clearly identify what is and what is not covered by the supplement.

(b) *Colorado.* The approach taken in Colorado is to require delivery of a prescribed notice form to medicare eligible applicants for any accident or health insurance that may replace or be added to existing insurance. The selling insurer is required to determine when a replacement or supplement may occur and then provide the notice form. The form cautions the applicant on benefits that may be lost on replacement and calls for a disclosure by the insurer of "any duplication or overlapping of coverages and deductions by reason of coordination of benefits."

(c) *New Mexico.* New Mexico has taken a straightforward disclosure approach in its medicare supplement regulation. In order to sell "medicare supplement" insurance, the insurer must provide a summary of Federal medicare benefits and applied-for policy benefits.

(d) *Oregon.* Oregon similarly requires delivery of a prescribed disclosure form that details medicare benefits, supplement policy benefits, and provides general purchase advice.

(e) *Washington.* In a manner similar to New Mexico and Oregon, Washington requires delivery of a prescribed disclosure form providing general consumer information and disclosure of medicare benefits with a continguous supplement policy benefit disclosure.

(f) *Wisconsin.* Wisconsin has set standards for medicare supplement rules that divide policies into four classes. The defined categories of coverage are designed to enhance consumer understanding and promote comparison. The first and most complete category of coverage under the Wisconsin regulation is medicare supplement 1. The category 1 coverage must provide a policy limit of at least $22,500 of supplemental coverage for specified medicare parts A and B eligible expenses. In addition, coverage of 75 percent of prescription drug expenses and 50 percent of psychiatric treatment expenses (up to $1,000) is required. Policies qualifying under the designation medicare supplement 2, medicare supplement 3, and medicare supplement 4 must provide specified but less complete benefits than the first category. Medicare supplement 4 may be issued in an A or B variety providing part A supplemental benefits or part B benefits. Wisconsin further defines permissible exclusions and limitations, requires de-

livery of outlines of coverage and consumer booklets, and prohibits sale of hospital confinement indemnity policies under the designation medicare supplements.

It is premature to suggest which, if any, of these specific State regulatory approaches may be followed by the NAIC. A fair conclusion is that each attempts to summarize what medicare provides and to enhance the consumer's ability to determine what is needed to supplement medicare. This general objective will undoubtedly be shared by any model regulation proposed by the NAIC.

SUMMARY

The perceived inadequacy of medicare benefits by our Nation's senior citizens is evident in the numbers of medicare supplement policies sold by the private insurance industry. A major question facing the Congress is whether to broaden medicare benefits to more completely provide the health insurance security sought by the elderly. Inextricably linked to the question of how comprehensive public benefits should be is the issue of how to assure that medicare beneficiaries are able to determine their medicare supplement needs and to select the appropriate private insurance supplement.

The apparent problems giving rise to these hearings on medicare supplement insurance are, in our view, attributable to confusion over what medicare provides, a lack of understanding of the economics of health care delivery, and difficulties with the private insurance mechanism. The members of the NAIC stand ready to assist you and the Nation's elderly in resolving each of these problems. In particular, State regulatory attention is being given to the need for medicare supplement standards and more adequate disclosure. To facilitate this effort, it is obviously desirable that the Congress clarify to the extent practicable what gaps and limitations are intended to exist under medicare and why. Broad regulatory authority is already in place in the States to control fraudulent, abusive, or misrepresentative marketing practices of insurance companies and their agents. We are hopeful that our collective efforts will substantially eradicate the conditions that have given rise to problems of our elder citizens in purchasing appropriate supplements to medicare.

Attachment.

SUPPLEMENTAL STATEMENT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

A. HIGHLIGHTS OF MARKET CONDUCT REGULATORY AUTHORITY OF STATE INSURANCE DEPARTMENTS, RELATED HEALTH INSURANCE SALES

Where unfair trade practices by agents or insurers occur in the marketing of medicare supplement insurance and are brought to the regulator's attention, the States have ample regulatory authority already in place to address the problems. Even though only six States have acted to implement medicare supplement regulations, the remaining States can and do act under existing regulatory authority to revoke licenses, to impose fines and penalties, to issue cease and desist orders, and take other appropriate remedial action. In order to convey the nature and scope of State regulatory authority, there follows a brief description of several State insurance regulatory developments related to health insurance marketing.

(1) Unfair trade practices

Every State has enacted an Unfair Trade Practices Act in some form applicable to the business of insurance. Typically, these acts are patterned after the NAIC Model Unfair Trade Practices Act adopted in 1947.[1] In recent years, it was determined that the model law needed updating so as to more specifically address current problems of the insurance consuming public. After an extensive review in 1972, the NAIC substantially revised the model law. As currently recommended to the States, the model act speaks specifically to the fair treatment of policyholders and defines unfair claim settlement practices in considerable detail. The unfair trade practices act is clearly a consumer oriented legislative act. Regulatory procedures are authorized to determine the existence of unfair or deceptive practices in the business of insurance along with strong enforcement procedures. Cease and desist orders, license revocation, and sub-

[1] Reprinted in "Proceedings of the NAIC II," 509–15 (1960).

stantial fines and penalties are authorized by the model act. The unfair methods of competition, or unfair or deceptive acts and practices specifically defined in the act fall in these eleven general areas:

(a) Misrepresentation and false advertising of insurance policies;
(b) False information and advertising generally;
(c) Defamation;
(d) Boycott, coercion, and intimidation;
(e) False statement and entries;
(f) Stock operations and advisory board contracts;
(g) Unfair discrimination;
(h) Rebates;
(i) Unfair claim settlement practices;
(j) Failure to maintain complaint handling procedures; and
(k) Misrepresentation in insurance applications.

In addition, the NAIC model act authorizes the insurance commissioner to examine and investigate other practices which may be determined to be unfair or deceptive whether or not they are specifically defined as such in the act. This comprehensive authority to regulate insurance trade practices is second to none in terms of its broad scope and enforcement authority. In short, we have substantial authority to deal with unfair or deceptive insurance sales practices involving medicare supplement sales or any other line of insurance. If particular complaints are brought to your attention, the appropriate member of the NAIC will certainly provide its regulatory assistance on request.

(2) Health insurance advertising

In recent years the bulk of the problems associated with health insurance advertising have related to mass marketing activity through the mails, newspapers, radio, and television. Until fairly recently when an insurer entered a State through these techniques, as distinguished from personal solicitation by agents within the jurisdictional boundaries of the State, there had been serious questions as to the State's constitutional authority to reach such insurers. However, two court decisions in the middle 1960's have been favorable to the State regulatory position and have eliminated most of the questions related to the States' regulatory authority over mail order insurers.[2]

Health insurance advertising became increasingly important in the years after the NAIC 1956 rules governing advertisement of accident and sickness insurance were adopted. The expanding availability of group coverage, the advent of governmental programs, and the growth in sales of individual policies not only offer the public the diversity of choice, but also serves to complicate the consumer's decisional process. The consequent need for better information led to the disclosure requirements established by the 1972 NAIC advertising rules. As the volume of health insurance marketed through direct response techniques mushroomed, such advertising evolved from a sales aid for the agent to a major marketing effort. This led to the amending of the NAIC model rules governing advertisements of accident and sickness insurance (with interpretive guidelines) in 1974 to reflect specific requirements for direct response advertisements.[3]

The rules seek "to assure truthful and adequate disclosure" through the establishment of minimum standards and guidelines in the conduct of advertising. Certain information is required to be disclosed in a nonmisleading manner, and certain words, phrases, and illustrations are prohibited. Specific practices are also governed by the rules. For example, each insurer is required to maintain a file containing its various advertisements, and each file is subject to insurance department examination. An authorized officer is required to certify the insurer's compliance with the advertising rules. Furthermore, the rules contain an optional provision which would enable the commissioner to require that direct response advertising material must be filed for review 30 days prior to use.[4]

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[2] See *Ministers Life and Casualty Union* v. *Haase*, 30 Wis. 2d 339, 141 N.W.2d 287, appeal dismissed for want of a substantial Federal question, 385 U.S. 205 (1966); and *People* v. *United National Life Insurance Co.*, 56 Cal. 2d 577, 427 P.2d 199, 58 Cal. Rptr. 599, appeal dismissed for want of Federal question, 389 U.S. 330 (1967). For a detailed discussion of the constitutional issues, see Hanson and Obenberger, "Mail Order Insurers: A Case Study in the Ability of the States to Regulate the Insurance Business," 50 Marq. L. Rev. 178, 215 *et seq.* (1966).

[3] 2. "Proceedings of the NAIC" 420 *et seq.* (1974).

[4] *Id.*

Thus, with the removal of the constitutional doubt as to the State insurance regulatory authority, the NAIC and the individual States have moved quite aggressively to improve health insurance advertising. The adoption of the NAIC rules in 1972, as amended in 1974, marked the culmination of an extensive and successful effort by the NAIC to improve the quality of the existing insurance market. Most States have promulgated advertising regulations, typically patterned on the NAIC model rules, which have contributed to a more informed buyer and have deterred sellers' advertising abuses.

(3) Complaints

Closely related to the Unfair Trade Practice Act and the advertising rules and regulations is the assumption of responsibility by State insurance departments for establishment of a mechanism for handling policyholders' complaints. State complaint services in recent years have been expanded and emphasized. Among other things, State insurance departments have implemented toll free telephone lines and more efficient complaint handling procedures in order to make their policyholder service units more accessible to citizens. Processing complaints not only serves to assist individuals with their particular problems but also provides a means to monitor an insurer's conduct in a more efficient fashion.

Two NAIC developments in this area are noteworthy. First, under the authority of the revised Unfair Trade Practices Act, a model regulation has been developed and adopted which requires an insurer to maintain records of policyholder complaints made to the insurer.[5] Such records are subject to insurance department review. Second, the NAIC has developed a uniform complaint handling system that is in widespread use throughout the States. Complaints which are received by an insurance department are in many States compiled in a uniform format[6] by company, type, line, reason, disposition, etc., so that data can be reviewed for regulatory purposes.[7]

B. GENERAL BACKGROUND ON HEALTH INSURANCE POLICY APPROVAL STANDARDS AND NAIC ACTIVITIES

(1) Premium rate controls

As a general matter, States do not regulate rates of life, health, and accident insurance in a manner similar to that of property and liability insurance. In most States, property and liability insurers must file insurance rates for prior approval by the insurance department, although there is a trend toward open competition rating in those lines. Blue Cross and Blue Shield rates are directly regulated in many States, in contrast to commercial health insurance, because of their tax exempt status, the service benefit nature of coverage, and their leverage over providers of health care.

Although health insurance rates are not regulated directly by the States as a general matter, most States require rates to be filed with the insurance department. As part of the policy form approval procedure, many States provide that forms will be disapproved if the benefits provided are unreasonable in relation to the premiums charged. All States require the filing of actual loss experience on policies. The requirements of a reasonable relation between premiums and benefits in many States has led to the development by the NAIC of loss ratio benchmarks that, as advisory guidelines, are recommended to the states for consideration in reviewing health insurance policy filings.

The NAIC currently has a technical task force that is reviewing the NAIC loss ratio guidelines in effect since 1953. New guidelines for premium increases on individual health insurance forms are being prepared which would, if adopted, require submission of an actuarial memorandum specifying the anticipated loss ratios, an actuarial certification that policy filings comply with State law and provide benefits that are reasonable in relation to premiums. Furthermore, the new guidelines would provide specific loss ratio benchmarks ranging from 50 to 65 percent depending upon the type of coverage and renewability features.

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[5] The model regulation as amended is reprinted in 1 "Proceedings of the NAIC" 282–310 (1974).

[6] 1 "Proceedings of the NAIC" 287 (1974).

[7] Such a program can focus attention upon particular patterns of complaints and can identify policyholder problems that may be rectified by contract modification or marketing technique changes. It is also possible to note those insurers that are creating more policyholder complaints than their volume of business would anticipate and react as need be. *Hearings*—NAIC, *supra* note 67, at 2653.

(2) Minimum standards requirements

Another area of recent State insurance regulatory activity, focusing specifically on health insurance, relates to development of minimum standards for health insurance policies. In this regard, during its December 1973 meetings, the NAIC adopted the Model Individual Accident and Sickness Minimum Standards Act.[8] The essence of the Minimum Standards Act is found in section 4 which requires the commissioner to establish minimum standards in relation to benefits for seven specified categories of coverage: (1) Basic hospital expense coverage; (2) basic medical, surgical expense coverage; (3) hospital confinement indemnity coverage; (4) major medical expense coverage; (5) disability income protection coverage; (6) accident only coverage; and (7) specified disease or accident coverage.

No policy or contract can be issued or delivered in the State which fails to meet the minimum standards for the categories of coverage into which it falls.[9] Other pertinent sections of the Minimum Standards Act include section 3, which directs the commissioner to promulgate regulations to establish standards that "set forth the manner, content, and required disclosure for the sale of individual policies" and Blue Cross and Blue Shield contracts,[10] and section 5, which provides that no policy or contract shall be issued or delivered in the State unless an outline of coverage is provided to the applicant.[11] Following the adoption of the model act, the NAIC immediately began work on a model regulation to implement the Minimum Standards Act. After a series of public hearings, a minimum standards regulation was adopted during the December 1974 meeting of the NAIC.[12]

In essence, the model act and the implementing model regulation establish the framework to: (1) enable the standardization of the definition of policy terms, (2) compel policies to meet minimum standards for the category into which they fall, and (3) compel disclosure to the consumer to better enable him to know what he is purchasing.

The minimum standards act and regulation does apply to individual medicare supplement policies despite the fact that a separate category for medicare supplements is not provided. In accordance with the current recommended draft of the minimum standards regulation, medicare supplements generally would be required to be sold as "limited benefit health insurance" coverages with and outline of coverage disclosing principal policy benefits and limitations.

In the event the NAIC resolves to provide specific rules for medicare supplements, the existing minimum standards act and regulation could be amended to include the new rules. The NAIC will give deliberate consideration to this option. The minimum standards regulation already includes provisions governing use of preexisting condition limitations, waiting periods, cancellation and renewal provisions, and other policy terms and conditions relevant to medicare supplement issues.

(3) Policy readability

A final regulatory development that is notable is the adoption earlier this month by the NAIC of a model Life and Health Insurance Policy Language Simplification Act. In response to the difficulties of policyholders in reading and comprehending life and health insurance policies, the NAIC has adopted a model law that sets new standards for policy drafting. The standards include, for example, a requirement that policies achieve a minimum Flesch test readability score, and the act sets standards for type face, inclusion of tables of contents, and avoidance of undue prominance given to policy text or riders. The purpose of the new act is to improve policy language in order to facilitate the insured's understanding of the coverages provided. It is our hope that regulatory developments such as the readability model will enrich the ability of all insurance policyholders, including medicare supplement purchasers, to choose the correct coverage for their needs and better understand their insurance benefits.

[8] The model act is reprinted in 1 "Proceedings of the NAIC" 414 (1974).

[9] *Id.* at 416–17.

[10] This authority extends to, but is not limited by, several enumerated provisions and terms found in health insurance policies. Through this provision the commissioner can standardize definitions for particular terms, and specifically prohibit policy provisions which are "unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary." *Id.* at 415–16.

[11] The commissioner shall prescribe the format and content of the outline of coverage including the category of the policy, a description of the principal benefits and coverage, a statement of exceptions and limitations, etc.

[12] The model regulation is reprinted in 1 "Proceedings of the NAIC" 54–77 (1977).

Senator CHILES. Thank you very much for your statement.

We have another rollcall in process so we are going to have to leave in just a few minutes.

Senator Domenici will leave now and maybe by the time he gets back I can go over.

How long do you anticipate the study of your task force to be?

Mr. MIKE. We had hoped 6 to 12 months would be sufficient time for the task force to bring its recommendations back. The NAIC meets twice a year and the task force is bringing their results to the subcommittee meetings. We had frankly hoped that by next summer we would have the recommendations and the subcommittee could begin action.

Senator CHILES. I just want to point out to you I tried at the last meeting that we had, and before you had your meeting—and I think I speak for Senator Domenici, too; I am sure I do—we strongly feel that the regulation of insurance has been and should continue to be a State question. I am the product of the State legislature myself, having spent 12 years there before I got sent up here, and I think the States are best able to do that.

NATIONAL PROBLEM

When you get a problem like this and we see the extent of the problem, it is clear that it is a national problem that we are dealing with. I think that those of us who want to see the States continue to regulate insurance have to be for action that you are talking about like your task force where we can see model laws develop and see the States move in unison to taking care of the problem like this. It has always been in an area like this where States often fail in their responsibility, that someone decides, well, that is something that the Federal Government has got to get into.

When I was in the State I used to talk about intrusion, but the longer I looked at it the more I saw it was, in many instances, where the States failed that the Federal Government moved into a vacuum, and moving into that vacuum we had more power come up here. I think we have got more now than we can say grace over. I would like the States to do more, but I think this would be one of those areas that, if the problems continue, it could well bring the regulation of insurance into the Federal Government arena.

I think that would be very important, so I want to tell you I am delighted to see that you have appointed a task force. I think your statement here today is certainly strong in the efforts you want to see that task force take. I just hope that that message will go to all of the insurance commissioners in all of the States.

This is a problem that you do have to work on. We do have to come up with solutions to it. We are talking about sooner or later having some kind of a national health insurance. We must get our house in order before the national health insurance comes down the pike.

I think it is awfully important that we do get some good work out of your task force. As I said, we do look forward to trying to work with you in any way that we can.

You were here and had an opportunity to hear Commissioner Dole and her testimony this morning. I would like to know just what

your feeling is in regard to what she was talking about in having a joint study in which the FTC would seek participation from the States and from the insurance commissioners of the State in trying to do an impact study.

Mr. MIKE. Obviously, I cannot speak officially for the organization.

Senator CHILES. I understand.

Mr. MIKE. We welcome anything that is going to provide further information to this task force to enable it to do its job better. We are recognizing that if we take the narrow view of attempting to jealously guard the States' rights to guard insurance to the exclusion of all other considerations, we are going to be overlooking a great many problems here and we are not fearful with involvement with the Federal Government. We think the public can benefit greatly by it and we would honestly welcome anything.

Senator CHILES. I think that is a very healthy attitude and I hope that you would circulate to the other States this kind of offer that she is talking about, because it seems to me that there are certain resources that are available to the Federal Trade Commission and certain resources that are available to us through certain powers that we have. By the same token, the States have much of the information. The basis of the information and by putting all of those parties together, I think we can come up with a much better and rational plan. Again, it would be up to the States to implement that plan.

Mr. MIKE. I intend to invite Commissioner Dole to submit to the NAIC a proposal with some detailed information for the organization to consider—that is, the executive staff. I am not an officer of the organization, but merely a subcommittee chairman. We can begin to discuss and implement something as quickly as possible.

Senator CHILES. I think that would be very, very helpful.

I want to thank you very much for your appearance and for your testimony. We will certainly look forward to working with you.

Mr. MIKE. Thank you very much.

Senator CHILES. I am going to go and vote. Senator Domenici will be coming back shortly.

Mr. Garcia, we will be taking your testimony.

[Whereupon, the committee took a short recess.]

Senator DOMENICI [presiding]. Senator Chiles will vote and, if he can, he will return. We are going to proceed with our last witness for the day.

As our last witness for the day, it is our privilege to have Manuel A. Garcia, Jr., superintendent of insurance, New Mexico.

If you are ready, Mr. Garcia, you may proceed.

STATEMENT OF MANUEL A. GARCIA, JR., SANTA FE, N. MEX., SUPERINTENDENT, DEPARTMENT OF INSURANCE, STATE OF NEW MEXICO

Mr. GARCIA. Mr. Acting Chairman, it is a real privilege for me to be here and to present to this committee some of the problems that we have in New Mexico and also to present to this committee some of the solutions we have had with some of these problems.

Sometime during the latter part of 1976 and during 1977, the problems and abuses began to come to our attention in the form of complaints from some of the elderly citizens of New Mexico. The complaints that we received involved two areas of abuse: First, policies were being sold which did not fill the gaps left open by the Social Security Act, and these provided a vast area for misrepresentation by sales persons. Second, the overselling of insurance policies to the elderly.

I would like to proceed to present to this honorable committee the case histories, and you have already heard case histories from other witnesses involving the elderly. I would like to summarize the three cases we just picked at random. We had others, of course, but we thought these were significant.

The first case we had in the complaint, I might add, was received in our department by an officer of a life underwriting association in that part of the State. Our investigation proceeded and we found that this elderly person had purchased, in a period of 2 years, over 30 policies of various types. The total premium involved was $3,843.18.

After the department took over the investigation, we determined the information we needed to proceed. We summoned the representatives of various insurance companies to come to our department and discuss the matter. I might add that this not only involved one company, it involved nine separate companies. After presenting these companies with the problems and what our desires were, we were able to get a refund of $3,369.16 for that person. There was a balance of the premium that was not returned because these were some of the policies that the party decided to keep.

The second case we were involved in was an elderly gentleman in the northern part of the State of New Mexico. The complaint in this instance came from the Department of Health, Education, and Welfare of the Dallas, Tex., office, and the complaint recited that there was an agent identifying himself as a social security representative collecting medicare premiums.

"Soliciting Funds To Support Medicare Program"

We undertook an investigation immediately and discovered that there were 157 individuals who had purchased this medicare supplement plan from this particular agent. The information and copies of the applications were solicited and received from the insurance company represented by this particular agent. Of course, part of his deception was to indicate to these people that the medicare program was on the verge of bankruptcy and that he was soliciting funds to maintain the medicare program until the Congress could appropriate more funds.

Our representative out of the department worked with the different county welfare offices and counsel. We suggested that the letter be sent to all the people involved who purchased these plans; however, on the advice of their legal counsel, it was decided that instead of a written letter, we would issue a radio and newspaper release[1] that would be circulated through the northern counties and

[1] See p. 267.

throughout the State, warning people to take precautions against purchasing these plans from individuals passing themselves as social security representatives.

After discussions with the insurance companies, the company was willing to make refunds to all these purchasers, but we only had 22 formal requests for refunds. Those refunds were made. The agent's license was suspended. We offered him a hearing. We had no response from him at all as to his cancellation or as to his interest in a hearing. This agent is no longer doing business in the State of New Mexico so far as we are concerned.

The third case involved, again, an elderly lady in the southern part of the State who, over a 2-year period, had purchased 16 various policies, for a total of $7,431. We again conducted a full investigation, discussed the problems with the companies involved, and were able to secure a $7,171 refund; $260 was not recovered due to a company insolvency.

Senator DOMENICI. Commissioner, are those 16 policies all from the same company?

Mr. GARCIA. There were various companies involved. I don't have a breakdown as to how many.

Senator DOMENICI. How did you find out about that one?

Mr. GARCIA. We got a call from a friend of the lady involved.

These three examples as well as many of the others that you have heard this morning are from other sources. These examples are the ones that were encountered in New Mexico in the area of supplemental plans and the resolutions that were completed by the Department of Insurance for the State of New Mexico. These cases don't represent all of the problems. We have many other cases where we have been successful in terms of returning refunds on premiums.

We have done other things to proceed to try to eliminate some of these problems in the medicare gap and medicare supplemental plans. First, we published in the news media cautions and warnings of the pitfalls of purchasing medicare supplements. Although we felt that this type of release is not the most effective, we did feel it would reach certain segments of the public that would be involved in this and would bring to light some of the problems they may encounter by overzealous sales persons for this type of plan.

Second, we oriented all of the personnel who worked in the government service offices or service centers on how to identify the problems and how to aid in getting this information to the department of insurance as soon as possible. Three members of our department were sent to many population centers to explain problems to assembled groups and to make this information available to radio and the press.

FULL-TIME INVESTIGATOR

During these meetings it was encouraged that citizens bring their complaints and questions to the department of insurance as soon as possible, and I can report that these efforts have been successful in the use of these facilities. We added to our staff in the department a fulltime investigator who is now readily available to us so he can go out and investigate these problems. Prior to this we had to rely on telephone contacts et cetera.

We have also published, along with our regulation we promulgated to the different companies and agents, that any time we find an agent or a company who is guilty of this behavior, we will proceed immediately to either suspend or cancel their license to do business in the State. There is a suspension revocation. We have means through the National Association of Insurance Commissioners by which we can pass that information on to other people, especially neighboring States.

Information also received by this department would indicate that a company also involved in pursuing this type of practice would immediately be investigated and a hearing brought forth.

I mentioned previously that the department had promulgated the regulation in November 1977. We have attached this to my statement. The purpose of this regulation is to let the buyer of medicare supplements in the exhibit attached physically see this graphic form the benefits of such medicare supplemental plans and in addition how it compares to what coverage is provided for under medicare.

We feel in New Mexico that medicare supplements, when they are properly sold and controlled, are very essential to the health and welfare of the elderly citizens of the State. We do intend to continue our efforts in other areas to control and oversee these programs to the benefit of a very important segment of our society in New Mexico.

I would like to field any questions that you might have Senator.

[The prepared statement and attachments of Manuel A. Garcia, Jr., follow:]

PREPARED STATEMENT OF MANUEL A. GARCIA, JR.

Mr. Chairman and members of the Senate Special Committee on Aging, I welcome this opportunity to come before you and present some testimony involving medicare and medicare supplement plans and the problems that some of the elderly in New Mexico have encountered in this area. We will testify on the actions which the State of New Mexico, through its insurance department, has taken to protect the elderly medicare policyholders in New Mexico.

Sometime during the latter part of 1976 and during 1977, the problems and abuses began to come to our attention in the form of complaints from some of the elderly citizens of New Mexico. The complaints that we received involved two areas of abuse; first, policies were being sold which did not fill the gaps left open by the Social Security Act, and these provided a vast area for misrepresentation by sales persons. Second, the overselling of insurance policies to the elderly.

I will proceed to present to this honorable committee the case histories, the problems encountered, the abuses that were involved, the action that the State Department of Insurance for the State of New Mexico took, the resolution to these problems, and how we proceeded to take care of regulating this area of the private health insurance business. In addition to that, we will proceed to show you the regulation adopted by the State of New Mexico and the control that we have with the insurance industry in the area of medicare supplemental coverages.

The first case that we will refer to was C. P. of Carlsbad, N. Mex. Mrs. P. was involved in a very severe case of overselling in the area of medicare supplements. A formal complaint was received by the department from the vice president of the Life Underwriters Association in Roswell, N. Mex., a city north of Carlsbad, N. Mex., where Mrs. C. P. lived. There was no question after reviewing the grievance that Mrs. P. in a period of over 2 years, had over 30 policies of various types. The total involved premium was $3,843.18. A complete investigation was undertaken by the department investigator and, after determining the factual information necessary, several home office representatives were summoned to the department of insurance for dis-

cussion of this matter. Every insurance company involved was informed of the obvious abuses of agency practices regarding the duplication of coverage to Mrs. P. and a full refund of premiums to Mrs. P. was requested. We were successful in having $3,369.16 recovered for the insured from the various companies. The balance of the premium was in policies retained by the insured, and we closed our case.

The second case involved an elderly gentleman in the northern part of the State. The formal complaint was received from the Department of Health, Education, and Welfare, Dallas, Tex., office.

The complaint recited the following: The agent was identifying himself as a Social Security representative collecting medicare premiums. An investigation was undertaken by our department investigator and it was discovered that a total of 157 individuals had purchased this medicare supplement plan from this agent. This information and copies of the applications were solicited and received from the insurance company represented by this particular agent. A part of his deception was to indicate to these people that the medicare program was on the verge of bankruptcy and that he was soliciting funds to maintain the medicare program until the Congress could appropriate more funds. Our representative worked with the different county welfare offices and the State welfare office and their legal counsel. It was suggested by our department that a letter be sent out to all of the purchasers of these plans. Instead of a written letter, however, it was then decided that, for legal reasons, a general news release via radio and newspaper would be circulated in those northern counties warning people to take precautions against purchasing medicare supplement coverages from individuals passing themselves off as Social Security representatives. Although the insurance company was willing to make refunds to all purchasers, only 22 made formal requests for refunds. All of these refunds were made. The agent's license was canceled and an offer of a hearing was afforded the agent, although there was no response from him as to his cancellation or to his hearing. This agent is no longer doing business in the State of New Mexico.

The third case involved, again, an elderly lady in the southern part of the State who, in a 2-year period, had purchased 16 various policies. The total premium paid out was $7,431. After a full investigation by our department and contact with the proper company representatives, a refund was recovered for that insured totaling $7,171. The $260 not recovered was due to a company insolvency. The case was closed on April 19, 1978.

These are but three examples of the problems encountered by New Mexico elderly citizens in the area of medicare supplemental plans and the investigation and resolution as attempted and completed by the Department of Insurance for the State of New Mexico. These cases, of course, do not represent our only efforts; we have many cases which are as successful as the ones aforementioned and a few cases that will be resolved in the very near future. The efforts made by this department did not really stop there; we did several other things:

(1) We published in the news media cautions and warnings[1] of the pitfalls of over purchasing medicare supplements. We feel that this type of release is not the most effective; however, it will reach a particular segment of the insuring public and we are in hopes that it will at least bring to light some of the problems that they may encounter by over-zealous salesmen of these type of plans.

(2) We have oriented all of the personnel who work in the Governor's service centers how to identify the problems at hand and how to aid in getting this information to the department of insurance as soon as possible.

(3) Members of our department have been sent to many population centers to explain the problem to assembled groups and to make this information available to radio and the press. During these meetings, we have encouraged citizens to bring their complaints and questions to the department of insurance and I can report that this effort has been successful and that use of these facilities will be utilized further in the future.

(4) With a staff investigator readily available to this department, we can now accumulate detailed factual information necessary to curb these types of abuses on any of the insuring public of the State of New Mexico.

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[1] See p. 267.

(5) At any time that we find an agent or agents guilty of behavior of this fashion we will immediately suspend or cancel their licenses to do business in the State. The suspension or revocation of the license is then passed to all States involved through the facilities of the National Association of Insurance Commissioners.

(6) Information received by this department that would indicate that a company is involved in such practices, will immediately be investigated and brought to task.

Additionally, the department of insurance promulgated the attached regulation.[1] You will note that this regulation became effective on November 28, 1977. The purpose of this regulation is to let the buyer of medicare supplements physically see, in a graphic form, the possible benefits of such medicare supplements.

We feel that medicare supplements which are properly sold and controlled are essential to the health and welfare of the elderly citizens of the State of New Mexico.

We intend to continue our efforts in controlling and overseeing these programs to the benefit of a very important segment of our society in New Mexico.

Attachment.

STATE OF NEW MEXICO,
DEPARTMENT OF INSURANCE,
Santa Fe, N. Mex., November 18, 1977.

NEWS RELEASE

Within recent days the department of insurance has received a large number of reports that persons over age 65, and others have purchased or reported to have purchased health insurance and have not received policies of insurance.

These or reported agents have:

(1) Not properly identified themselves.

(2) Secured personal checks drawn to themselves. These checks have been cashed, and no policies delivered.

(3) Persons posing as agents in a number of cases have no license, nor can they be located, and the department of insurance has no record of them.

(4) Other purported agents are operating with material either stolen from a licensed company, or the material has been reproduced from copies of forms secured.

(5) Other purported agents are signing and forging the names of licensed agents.

(6) Other purported agents are offering policies of insurance in companies not licensed to do business in New Mexico.

(7) Other agents or purported agents are representing themselves as being from the Social Security Administration. No agent may do this.

The department of insurance recommends that if any client is unsure of the person presenting themselves as agents that they should:

(1) Ask for positive identification, and retain evidence of identification.

(2) Call the company being represented to affirm that the agent is as represented.

(3) If a policy is purchased, *always* make the check payable to the insurance company and put on the check what is being purchased.

(4) Secure in writing or in printing the benefits being offered.

(5) If there are any doubts concerning either the agent or the company, call or write to: Superintendent of Insurance, P.O. Box 1269, Santa Fe, N. Mex. 87501. Telephone No. (505) 827-2451; or the Governors Service Center nearest your home.

The department of insurance is earnestly attempting to stamp out abuses and fraud, and to protect the interests of the buying public.

The department of insurance is equally interested in protecting the licensed and legitimate agents and companies who are offering the necessary insurance coverages.

KENNETH C. MOORE,
Superintendent of Insurance.

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[1] See p. 268.

ARTICLE 11, CHAPTER 58, RULE 4

DEPARTMENT OF INSURANCE REGULATIONS GOVERNING ACCIDENT AND HEALTH INSURANCE MEDICARE SUPPLEMENTS.

11-4-1. Authority.—This rule is promulgated pursuant to section 58-2-13, NMSA, 1953.

11-4-2. Scope.—This rule applies to any insurer which delivers or issues for delivery in this State an individual policy of sickness and accident insurance which is a medicare supplement. It also applies to any nonprofit health care plan which delivers or issues for delivery in this State an individual subscriber contract which is a medicare supplement.

11-4-3. Definition.—"Medicare supplement" means a policy or subscriber contract which relates its coverage to eligibility for medicare or medicare benefits, substantially or in part, to fill the gaps in the coverage supplied by medicare, part A and/or part B.

11-4-4. Disclosure requirements.—

(A) After 150 days following the effective date of this rule, no insurer and no nonprofit health care plan shall deliver or issue for delivery in this State an individual policy of sickness and accident insurance, or an individual subscriber contract, which is specifically designed as a medicare supplement unless a summary of Federal medicare benefits and policy (or subscriber contract) benefits is furnished to the applicant or subscriber at the time the application is made, or to the policyholder or contract-holder at the time the policy or subscriber contract is delivered.

(B) Such summary shall contain in substance the information shown or called for in attachment A, which is attached hereto and made a part hereof. The summary may include other information which the insurer desires to include, but such other information may not be presented in such a way as to obscure the comparison of medicare benefits and policy benefits.

(C) Federal medicare benefits are not stable and do fluctuate in accordance with congressional action. It is, therefore, necessary that any company or plan writing medicare supplements revise the form from time to time so that it does not furnish a form which is out of date.

(D) The policyholder of a medicare supplement which is subject to this rule shall be permitted to return the policy or subscriber contract within ten (10) days after its delivery if such person is not satisfied with it for any reason. If it is so returned to any office or agent specified by the insurer or plan (such as the insurer's or plan's home office or branch office or the soliciting agent) with written request for surrender, it shall be void from the beginning and any premium paid for it shall be refunded. A notice of such right to return the policy or subscriber contract and receive a refund of any premium paid shall be included in or printed on or attached to the policy or subscriber contract or included in the summary.

(E) The details on the disclosure form as outlined in attachment "A" shall be of a size of not less than ten (10) point type.

11-4-5. Effective date.—This rule shall take effect on November 28, 1977.

I, Kenneth C. Moore, superintendent of insurance of the State of New Mexico, pursuant to the authority granted me under section 58-2-13, NMSA, 1953, do hereby promulgate the following rule (article 11, chapter 58, rule 4) of the official compilation of rules and regulations, to take effect on November 28, 1977, after filing with the record center as provided by the provisions of State Rules Act (71-6-23, 71-6-24, 71-7-1 to 71-7-10, NMSA, 1953).

I, Kenneth C. Moore, superintendent of insurance of the State of New Mexico, do hereby certify that the foregoing initial rule has been issued and entered in the office of the Superintendent of Insurance in an indexed, permanent book which is a public record.

In Witness Whereof, I have hereunto set my hand and caused my official seal to be affixed at the city of Santa Fe, N. Mex., this 26th day of October, A.D. 1977.

KENNETH C. MOORE,
Superintendent of Insurance.

Certificate of Filing: I, Kenneth C. Moore, superintendent of insurance, State of New Mexico, do hereby certify that the foregoing initial rule (11-4-1 to 11-4-5) has been filed on October 26, 1977, with the records center.

KENNETH C. MOORE,
Superintendent of Insurance.

ATTACHMENT A.—SUMMARY OF MEDICARE BENEFITS AND POLICY BENEFITS

(1) *Inpatient hospital benefits (Part A of Medicare)*. Benefits are paid for covered hospital charges for hospital room and board and miscellaneous services during each "benefit period" as follows:

Day of confinement	Medicare now pays	Policy pays
Days 1-60 each benefit period	Covered charges, but not the first $144	
Days 61-90 each benefit period	Covered charges except $36 a day	
Days 91-150 while lifetime reserve remains	Covered charges except $72 a day	

(2) *Skilled nursing facility confinement benefits (part A of medicare)*. Benefits are paid for covered skilled nursing facility charges, if the patient is an inpatient in an approved skilled nursing facility and confinement begins within 14 days of a hospital stay of at least 3 days for the same injury or sickness, as follows:

Day of confinement	Medicare now pays	Policy pays
Days 1-20 each benefit period	All covered charges	
Days 21-100 each benefit period	Covered charges except $18 a day	

(3) *Medical benefits (part B of medicare)*. Benefits are provided for "reasonable charges" for covered physician's services, medical supplies, and other covered services, each calendar year.

Medicare now pays 80 percent of the "reasonable charges" but not the first $60 each year.

The summary shall also contain:

(a) A description of any other benefits provided by the policy or subscriber contract.

(b) A description of the exceptions, reductions and limitations contained in the policy or subscriber contract.

(c) A statement that the summary is only a brief summary of certain policy or subscriber contract provisions, and is not a part of the contract of insurance. The policy (or subscriber contract) itself sets forth the rights and obligations of the insured (or subscriber) and the insurer (or plan).

(d) A statement that medicare benefits change from time to time, according to Federal law and with rules and regulations of the Social Security Administration.

(e) The name of the insurer or health care plan and address must appear on the summary of benefits.

Senator DOMENICI. Let me just ask now on the disclosure part of your new rule, does the company that desires to sell and is making the disclosure submit the disclosure statement to the insurance commissioner's office or the superintendent's office for his approval?

Mr. GARCIA. Every one of these companies that is now selling these plans must provide us with a disclosure statement that is very similar, but that would cover specifically these items required in this disclosure.

Senator DOMENICI. You cited three cases that were rather severe and told us about the disposition of them. You have heard the testimony here today about how rampant this kind of misconduct is, downright criminal behavior in the State of Texas. Would you have an opinion as to whether or not abuse is still widespread in the State of New Mexico or not?

CANNOT MONITOR WITHOUT FORMAL COMPLAINT

Mr. GARCIA. Well, we don't have any way to monitor it in our department unless we get a formal complaint. I would answer the

question this way, and that is that the number of complaints has diminished since this regulation was promulgated. I am not going to be naive enough to think that there are not additional problems; I am sure there are. We don't think that there are many of this magnitude. I think there may be isolated problems, perhaps one agent has taken or perhaps two agents have oversold. We have no way of knowing until we get a complaint in the department.

Senator DOMENICI. You have been present and heard testimony regarding the difficulty of trying to police this kind of activity. Do you have any opinions as to whether or not some kind of standardization would be in the public interest and, if so, should it be national and, if not, how do we get it out there?

Mr. GARCIA. As I see our position in the State of New Mexico and with the regulation in the disclosure statement we have, we appear to be treating the symptoms rather than the disease. I really think that the standardization, perhaps on a Federal level or through the NAIC—the type of plans that are being sold throughout the country—is probably related. My feeling, however, is that the vast area of problems is not that one company is involved in all of this; there are several companies involved. I think we have to proceed to educate the consumers further and I think this should be a joint effort between the Federal Government and the State government to publish, in laymen's terms, the kinds of coverages they have under medicare, and also under the different plans. Yes, I would think that the standardization of some type to be very desirable.

Senator DOMENICI. Do you have any suggestions as to ways that this cooperative effort on educating or advising the people might be implemented? Do you have any examples of what might be done that is not being done?

Mr. GARCIA. One of the things I believe has made our approach to these problems successful is that traditionally in New Mexico—the people of the State have always been able to go very directly to the department of insurance with their complaints. The Governor's service centers have also certainly been in that position. If we had a joint effort to provide an easy avenue to report these problems to the proper authorities or to the proper departments, I think it would be worthwhile. I think this is the solution.

Senator DOMENICI. With reference to the authority that you have as superintendent, is your jurisdiction limited to taking action against the agents or companies in terms of their permission to sell, or are there some criminal statutes that you enforce?

Mr. GARCIA. No. Basically our jurisdiction and our authority would be to either suspend or revoke licenses and impose fines and ask that they be continued. However, I might add that in many cases the suspension of the license should not be taken lightly because, after all, these people are making a living in this and if they suspend the license, they are out of business until they have a hearing.

Senator DOMENICI. You indicated that in three examples you were able to get the cooperation of the companies and in two instances refunds were made—rather significant refunds. Now the companies that actually insured as contrasted with the agents out in the field, did the companies indicate that they were totally un-

aware of the kind of conduct that their agents were pursuing, or did they take part of the blame for their own procedures, or lack of them?

NEED MORE AGENT CONTROLS

Mr. GARCIA. Well, we were very quick to point out that the actions of their agents were the actions of the company. They were not aware in many cases that this was going on. You see, when you spread the problem out among, say, nine companies as I indicated in the first example, you don't have repeaters of the same company. There may have been one or two cases where maybe two different agents of the same company were involved that was not isolated to one company, which makes the regulation or the control of this problem difficult because you have several companies. Even when you standardize, you still would have agents representing different companies over-selling. I really think that more stringent regulations with reference to the agent himself may be the solution so that he is aware that he can't go out and repeat this type of thing.

Another solution might be to some way formulate some kind of an information pooling system between companies so as to cross-index—perhaps the same person would come up with the same type of coverages. If that would be so, then the companies would index it and if there is repetition they can do something with it.

Senator DOMENICI. Do you have authority to do that under your present laws?

Mr. GARCIA. I think we could extend our authority on that point. It is a little complex and we are doing some studies on it now. I don't know how it will come out.

Senator CHILES. I was just interested in what Senator Domenici was asking you. Part of the problem seems to be that there is no real down-hill risk for the companies themselves. They say, "Well, the agent did that, we didn't know, and as soon as we found out we took some kind of action against him." Yet you heard from the testimony—especially our district attorney from Texas today said when he started questioning these agents they said: "There was no way we could do this. If they were paying any attention at all, they would know what we were doing."

Mr. GARCIA. I might answer that this way, if a company in our State were to continue with this type of practice, we do have available to us the authority to convene a hearing to explain why they are continuing these types of practices. The Insurance Unfair Practices Act, which is our statute law—we do have that authority.

Senator CHILES. I think something like that is very necessary to require that the companies exercise some policing power themselves because obviously they really could do it better because they know these fellows.

Mr. GARCIA. The only problem with that, it takes a little time because you have to develop a pattern of practices with the company.

Senator CHILES. Right.

Mr. GARCIA. So far we have not been successful in establishing that kind of a pattern with any one particular company. Several companies have been involved.

Senator DOMENICI. Can you pull the insurance company's license instead of the agent's license?

Mr. GARCIA. Obviously we have to provide them with due process and provide them with a hearing, but that is within our authority.

Senator DOMENICI. You have not had to do this to this point?

Mr. GARCIA. No. I think the meetings that we have had with the companies and the agents have been really informal conferences to discuss the problems and to set forth our desires. In these cases it has been to get refunds from people. I might add that in one or two cases the companies discharged their agents because of these practices and no longer wanted them on the payroll.

Senator DOMENICI. I have one last question with reference to information available to help us arrive at some conclusion as to the dimension of the problem. Do you have, within the recordkeeping capacity of the insurance commission or insurance superintendent's office, knowledge as to how many policies in the area of medi-gap coverage, and what type coverage for cancer and the like are issued in the State of New Mexico?

Mr. GARCIA. That information is available. We would probably have to program the State computer systems or the data processing people to get some help on it. I believe we could get most of that information.

How Rampant Are Abuses?

Senator DOMENICI. I think what we know at this point would indicate that the malfeasance and abuse is going to be directly related to the number of senior citizens who are buying this kind of insurance. It just strikes me that the problem is so difficult that if we could know how many people are buying a typical kind of senior citizen health coverage it would aid us in determining how rampant the abuses are apt to be. Do you think you might request that of the computer system and see if you could get it to us?

Mr. GARCIA. I will sure give it a try.

Senator DOMENICI. I personally would like to have it because I think it would be almost directly related to the kinds of abuses that are out there.

Let me ask you one other question. Do you have any way of assessing how effective your disclosure procedure is? Are you monitoring it in some way? It sounds great and I compliment you for it, as I have publicly in the State, but do you know whether it is having a real impact?

Mr. GARCIA. Well, the only way we know that it is having some impact is in the reduction of the number of complaints. We have no way of really monitoring the results. We do know for a fact that companies that are writing these plans in New Mexico are providing each person who they sell this plan to with this disclosure form. If you will note, the disclosure form is very simple and we wanted to keep it that way so it would be easily understood. We don't purport that it covers all of the problems and answers all the questions, but at least a person has some idea of what they are buying but no way of monitoring the results.

Senator DOMENICI. One last question. Do you prohibit, at this point, any kinds of coverage? You have previously heard the insurance commissioner say that in Connecticut they prohibit several

kinds because they conclude, as a matter of public policy, they are useless, I assume.

Mr. GARCIA. No, we don't prohibit any of them. However, that is under study in the department now and we would like to consider that further.

Senator CHILES. We thank you very much for your appearance here and for the work that you have done in New Mexico. We look forward to continuing to work with you on this problem.

Mr. GARCIA. Thank you very much.

Senator DOMENICI. Thank you very much.

Mr. GARCIA. I might add that being last has some advantages. I have the committee almost to my self, it looks like. And some disadvantages. Everybody has already talked about some of the things I was going to talk about.

I thank you very much.

Senator DOMENICI. Yes, sir.

Senator CHILES. This will conclude our hearings in this area, but we will keep the record open for approximately 30 days.

Senator DOMENICI. Thank you, Mr. Chairman.

[Whereupon, at 12:45 p.m., the committee adjourned.]

APPENDIXES

Appendix 1

POLICY PLANNING ISSUES PAPER: PRIVATE HEALTH INSURANCE TO SUPPLEMENT MEDICARE, PREPARED BY THE FEDERAL TRADE COMMISSION

(By Anne DeNovo and Gail Shearer, July 1978)

This issues paper expressed only the views of the authors, staff members of the Office of Policy Planning. It does not represent the position of the Federal Trade Commission or any Commissioner. The authors would like to thank Joanne Riley, Dhylia Hughes, and Sharon Lawson for their invaluable assistance in completing this project.

Executive Summary

I. *Description of problems in the market for health insurance for the elderly.*—Health care costs are a major expense item and source of concern for the elderly. Medicare covers only 38 percent of their health care costs. People over 65 must pay for medicare's deductibles and coinsurance and for many kinds of care which medicare will never cover, including drugs, dental care, eyeglasses, hearing aids, routine examinations and most nursing home care. Even after medicare and private insurance, the average per capita health care expenditure for the over-65 age group was $403—much more than they paid out-of-pocket before medicare.

Because of the gaps in medicare, the Nation's elderly have turned to private health insurance; more than 50 percent have at least one policy. The annual premium volume of this medicare supplement or "medi-gap" business is unknown, but it has been estimated at $1 billion. In addition, large numbers of policies are sold to the elderly which are not true medicare supplements, such as hospital indemnity plans and dread disease policies.

The lack of consumer information in the medicare supplement market is so great that it is almost impossible to make rational purchase decisions. Very few people understand the complexities of medicare and its gaps. There is no standardization of private insurance policies, so buyers cannot comparison shop. As a result, supplemental policies often do not compete on price and offer only a low rate of return.

In an effort to get complete protection, many people over 65 buy two or more policies which overlap. An estimated 23 percent of those who do buy private health insurance have some unnecessary duplication in coverage. Unscrupulous agents selling door-to-door or mail order advertisements often mislead or frighten them into "loading up" on two or more policies or replacing policies each year, a practice known as "twisting." When they file claims, many of them find that the coverage they thought would fill all the gaps in medicare falls far short of their expectations. Most supplemental policies will not pay for pre-existing conditions or the major gaps in medicare, such as nursing home care, excess provider charges and prescription drugs.

II. *State regulatory initiatives.*—In response to complaints, several States have tried very different regulatory solutions to the medicare supplement problem. A recent Wisconsin rule requires that all policies marketed as supplements to medicare meet the standards for one of four benefit levels and bear a number one through four (from most to least comprehensive coverage). At the time of their initial contact with a prospect, insurers and agents must distribute an 18-page booklet prepared by the insurance commissioner's office,

which gives advice about medicare, its gaps, the four categories and insurance buying in general.

California has established three descriptive categories for supplemental policies: in-hospital only, in- and out-of-hospital and catastrophic. The California Insurance Department has also set a benchmark minimum loss ratio of 55 percent. Insurers must deliver a one-page form with very general disclosures along with their policies.

In Illinois, a statute prescribes minimum standards for supplemental policies but does not provide for any special disclosures. Oregon, New Mexico, and Washington require delivery of a two-page disclosure form with medicare supplement policies. Each agent or insurer is supposed to fill in the blanks on a chart to show which medicare gaps the policy will fill. Unlike Wisconsin and California, they do not have any regulation which sets minimum standards or tends to standardize coverages.

In Colorado, agents and insurers must furnish a warning notice when the sale would involve an addition or a replacement.

III. *Policy questions surrounding regulation of health insurance for the elderly.*—It may be appropriate for the Federal Government to play a major role in this area because its own medicare program created the problem and because a uniform system of standardization is necessary to reduce buyers' confusion. The medicare supplement market also furnishes an opportunity to study and plan for the supplemental market which will develop under national health insurance.

Governmental initiatives could address medi-gap or true medicare supplement policies only, all health insurance policies sold to the elderly or all individual health insurance. The second approach would be most likely to eliminate the purchase of "unnecessary" duplicate coverage by the elderly.

Policymakers must also decide whether they should seek to provide a great deal of information for the sake of accuracy or simple disclosures, whether they should attempt to standardize coverages or permit unlimited variety and whether they should distinguish between "good" Medigap filling, such as catastrophic coverage, and "bad" coverage such as reimbursement of the initial deductibles.

IV. *Policy objectives and criteria for assessing options.*—In order to promote competition, any initiative with respect to supplemental insurance should provide complete information in a usable form, ensure access to that information, standardize coverage and eliminate duplication. To correct market failures, an action should also assure a reasonable return, minimize the opportunity for marketing abuses, ensure prompt and fair claims handling and minimize undesirable side effects. Alternatives should also be politically feasible, easy to enforce, inexpensive to administer and complementary with national health insurance.

V. *Public policy alternatives.*—Governmental action with respect to health insurance for the elderly could take three principal forms: minimum standards; a system of standardization combined with disclosures or labels; or provision of information to consumers.

In the minimum standards category, minimum loss ratios could eliminate low-value policies from the market. Uniform language in clauses which include pre-existing conditions could reduce buyers' confusion and companies' unjustified denials of claims. Other options are a requirement that policies supplement both parts A and B of medicare, minimum dollar limits and mandated benefits.

Options for standardization combined with disclosures include prohibiting references to indemnity and limited polices as medicare supplements, establishing descriptive categories (the California model), setting up benefit levels (the Wisconsin model), or using a system of unit pricing. Another method, a cost index, could provide a more accurate measure of a policy's value than the first three options, but it would be an extremely complex task to devise one.

In the third category, many forms of mandatory written disclosures are possible, but they may be ineffective because health insurance to supplement medicare is such a complex subject. Alternative consumer education measures are a buyer's guide, providing information which is not now available, use of non-traditional media such as television and individualized insurance counseling.

Other options which do not fit in any one of the three categories include regulation of advertising, requiring direct contact between the insurance company and its customer, and imposing a fiduciary duty on agents and claims

handling requirements on insurers. The last possibility, Federal Government sponsorship of optional medicare supplement insurance, would permit the Government to realize certain cost advantages, although the extent of coverage and the subsidy element required would be subjects of debate.

VI. *Policy recommendations.*—The writers of this issues paper recommend that an impact evaluation be conducted to determine the effectiveness of existing State regulations of insurance sold to supplement medicare. Such an impact evaluation would yield information about whether and how standardization might bring about competition in this market, and might also lead to recommendations for other consumer protection measures. If possible, the study should be a joint project with the participation of HEW, the NAIC, and the FTC; each has special expertise to contribute in this area.

I. DESCRIPTION OF PROBLEMS IN THE MARKET FOR HEALTH INSURANCE FOR THE ELDERLY

Because medicare does not provide complete coverage for their health care expenses, more than 50 percent of people over 65 purchase private insurance in an effort to fill medicare's gaps. At the end of 1975, 12.6 million held at least one supplemental policy.[1] Estimates of the premium volume of this medicare supplement business run from $0.5 to $1.0 billion per year.[2] Total expenditures for health insurance by the elderly may be considerably more than $1 billion, since this estimate probably does not include hospital indemnity or dread disease coverage, and is based on figures from 1974. No official information exists about total premium volume because insurance companies are not required to separate medicare supplement figures when they file individual accident and health data with State insurance commissioners.

A Background: Health Care Expenses of the Elderly and Sources of Funds

1. Health Care Expenditures

The elderly have to spend much more on health care than the rest of the population, due to their more frequent illnesses and the greater expenses of their care, which often involves hospitalization. In fiscal 1976, the average per capita expenditure for health care by people over 65 was $1,521—almost three times as much as adults aged 19–64 ($547) and nearly six times as much as young people under 19 ($249).[3]

Medicare, medical assistance, and other government programs paid 67.6 percent of those expenses. Private health insurance, the subject of this paper, covered only 5.4 percent. Elderly patients and their families were left to pay

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[1] The Health Insurance Institute of America states that in 1975 12.6 million people aged 65 and over had some hospital expense coverage to supplement medicare benefits. HIAA data also shows that 10.4 million had some surgical expense coverage, 9.7 million had some regular medical expense coverage, and 2 million had some major medical expense coverage. HIAA's tables eliminate duplication occurring where more than one insurer or more than one policy affords the same kind of coverage. Health Insurance Institute of America, *Source Book of Health Insurance, 1976–77* 10, 21–31. The 1974 national health survey of 40,000 households reported that an estimated 53.8 percent of those 65 and older had private hospital insurance coverage in addition to medicare. See 52 *Hospitals* (Journal of the American Hospital Association) 20 (May 16, 1978).

[2] The author of a working paper prepared in 1974 for the use of the Senate Special Committee on Aging estimated the annual premium volume at $0.5 billion by assuming that all elderly paid the same rates for non-Blue Cross policies as they did for Blue Cross coverage and that they all chose low cost options. Therefore her estimate was almost certainly low. See G. Ellenbogen, *Private Health Insurance Supplementary to Medicare* (a working paper prepared for the Senate Special Committee on Aging) 1, n.2 (1974) [hereinafter Senate Committee print]. Consumer Reports repeated the $0.5 billion figure in 1976. See Health Insurance for Older People: Filling the gaps in Medicare, *Consumer Reports* 27 (January 1976) [hereinafter *Consumer Reports*]. Insurance Commissioner Harold Wilde of Wisconsin estimates that senior citizens spend somewhere between $0.5 billion and $1 billion each year on private insurance to supplement medicare. H. Wilde, "Medicare and Medi-scare: The Responsibility of Government and the Insurance Industry," speech to the Milwaukee Association of Life Underwriters (December 15, 1977) [hereinafter "Mediscare"]. In September 1977, slightly more than 50 percent of the companies then writing medicare supplement policies in Wisconsin responded to a survey conducted by Commissioner Wilde's office. They reported premiums totalling $22 million.

[3] Gibson, Mueller and Fisher, Age Differences in Health Care Spending; Fiscal Year 1976, 40 *Social Security Bulletin* 1, 5 (August 1977) [hereinafter Age Differences]. Elderly Americans, who make up slightly more than 10 percent of the population, accounted for 28.9 percent of all personal health expenditures.

26.5 percent of the bills themselves. Their out-of-pocket expenditures averaged $403 per person—much more than they paid before medicare.[4]

2. Medicare Gaps

Medicare, the Federal Government's health insurance program for the elderly,[5] paid only 38 percent of health care expenses in 1976.[6] Although the medicare program was enacted to assure that senior citizens would have access to basic health care, especially in hospitals, it was never intended to cover all their expenses. At hearings held in 1965 on a proposal for medicare, the Secretary of HEW stated:

"The proposed program will serve as a foundation on which people can build greater protection through private health insurance and employer retirement plans, just as the present social security cash benefit system is serving as a base on which people build additional protection through private means." [7]

Medicare has never covered certain types of care. Furthermore, the medicare deductibles which patients must pay have been constantly increasing, and in general, medicare patients have borne a large portion of the inflation of medical costs. One commentator has characterized the result as "a cutback implemented without legislative or administrative action." [8]

Some explanation of Medicare is helpful in understanding exactly what it does not cover. The program has two parts. The first, part A hospital insurance (HI) helps to pay for in-patient hospital care, care in a medicare-approved skilled nursing facility or SNF, and some home health care.[9] Most people over 65 also enroll in the second part of the program, part B supplementary medical insurance (SMI), which covers physicians' services, outpatient and other non-hospital care.[10]

A chart showing medicare benefits and gaps appears as appendix A to this report.

(a) PART A GAPS

Hospital care accounted for 45 percent of the health care expenditures of the elderly in 1976. Medicare paid for 71 percent of their hospitalization expenses,[11] but medicare patients must pay the following expenses themselves:

(1) An initial deductible set to correspond to one day's hospital stay—$144 in 1978. Medicare then pays all charges until the 60th day of the hospital stay.

(2) From the 61st through 90th days, the patient must pay a daily deductible of $36 in 1978.

(3) After the 90th day the patient has 60 "lifetime reserve days" which can be used only once in her life. For each reserve day she pays a $72 deductible in 1978.

(4) After a patient has used up her 60 lifetime reserve days, medicare part A coverage ends. But only 0.03 percent of hospitalized medicare beneficiaries

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[4] *Id.* at 9. Philanthropy and industry paid 9.4 percent of the elderly's health care expenses. The $403.53 average out-of-pocket per capita expenditure does not include medicare part B premiums or private health insurance premiums. In 1966, before the institution of medicare coverage, the average per capita out-of-pocket expenditures for the over-65 age group was $236.72. This article includes figures for 1974, 1975, and 1976. For similar compilations for the fiscal years 1966-1974, see U.S. Department of Health, Education, and Welfare, *Compendium of National Health Expenditures Data* at 110-111 (1976).

[5] Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395. Medicare also covers people under 65 who have been disabled (as defined by the Social Security Administration) for at least 24 months and those with chronic renal disease. SSA estimates that in fiscal 1978 23.6 million aged, 2.4 million disabled and 24,000 renal disease patients will be enrolled in part A of the medicare program. Congressional Budget Office, Congress of the U.S., *Catastrophic Health Insurance* 25 (January 1977) [hereinafter *Catastrophic Health Insurance*].

[6] Age Differences at 10. Medicare's share would be 43 percent but for the part B premiums paid by beneficiaries.

[7] *Medicare Gaps and Limitations*: Hearing before the Subcommittee on Health and Long-Term Care of the House Select Comm. on Aging, 95th Cong., 1st Sess. 36 (1977) (appendix I: "The Aged and their Health Expenditures").

[8] Schneider, Medicare: Beneficiaries, Cutbacks and Supplements, 9 *Clearinghouse Rev.* 552, 553 (December 1975).

[9] See generally Department of Health, Education, and Welfare, Social Security Administration, *Your Medicare Handbook* 10–19 (January 1977) [hereinafter *Your Medicare Handbook*]. Part A is financed largely through social security employer and employee taxes. People over 65 who were in the social security or railroad retirement programs are automatically enrolled in part A. Others may purchase part A hospital insurance for a monthly premium—$54 until July 1, 1978.

[10] In 1975 97.4 percent of the elderly people covered under part A were also enrolled in part B.

[11] Age Differences at 11, 13.

ever reach that point.[12] Many of the hospitalization expenses not covered by medicare are due to the following gaps in part A coverage.

(5) Nursing home care. While 23 percent of the health expenditures of people over 65 goes for nursing home care, medicare only pays for a small percentage of those expenses—3.6 percent in 1976.[13] The medicare program places the following limitations on nursing home coverage:

(i) The patient must be in a skilled nursing facility (SNF) approved by the medicare program. State licensure of a nursing home is not sufficient for medicare reimbursement. Care in SNF's or intermediate care facilities (ICF's) which are certified by medicaid but not medicare is not covered. Availability of medicare-approved SNF care varies widely from State to State; in some regions it is almost impossible to obtain.[14]

(ii) Five conditions must be met, including physician's certification of need for skilled services.[15] If a utilization review committee or PSRO decides that skilled care is no longer necessary, medicare will not provide any further coverage.

(iii) Assuming that the patient is in a medicare-certified SNF and has met medicare's five requirements, medicare will pay for the first 20 days of her stay. (However, medicare will not pay for custodial care even if all the other conditions are satisfied. See 8 below.) From the 21st through 100th days, she must pay an $18 daily deductible. Part A coverage for "extended care" ends after the 100th day.

(6) Medicare places a 190 day limit on part A coverage for in-patient treatment in a psychiatric hospital.

(7) Part A will cover up to 100 home health care visits for skilled nursing care, physical therapy or speech therapy visits if six conditions are met (including prior hospitalization, physician certification, and participation in the medicare program by the home health agency).[16]

(8) Neither part A nor part B of medicare will ever provide any coverage for "custodial care," whether it is rendered at home, in a hospital, in a SNF or in some other facility. Custodial care has been interpreted to mean personal care which does not require the attention of skilled or specially trained medical personnel, such as help with walking, bathing, eating, and dressing.[17]

(b) PART B GAPS

Part B covers physicians' services both in and out of hospitals, as well as some diagnostic services by independent medicare-certified laboratories and some medical supplies, equipment and devices.[18] In 1976 medicare paid for only 55 percent of physicians' services, which account for 17 percent of the health care expenses of the elderly.[19] Medicare part B enrollees must pay:

(1) An initial deductible of $60 per calendar year.

(2) 20 percent of all charges (after meeting the initial deductible).

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[12] *Catastrophic Health Insurance* at 25 (estimated figure for 1966–71 period).

[13] Age Differences at 10, 11. It is common for institutionalized patients to spend their own resources for their care until they become eligible for medical assistance, which paid 48.4 percent of nursing home costs in 1976. Sometimes their families also pay many of the bills.

[14] As of July 1975, the number of certified SNF beds per 1,000 medicare enrollees varied from 1.4 in Oklahoma, 2.2 in Arkansas and 2.6 in Louisiana to 22.9 in New York, 37.9 in Connecticut and 40.8 in California. In Arizona (the State with the fastest-growing elderly population), there were only 19 medicare-certified SNF's. Staff of the Subcommittee on Health, House Committee on Ways and Means. *National Health Insurance Resource Book* 105 (1976) [hereinafter *National Health Insurance Resource Book*].

[15] The five conditions for part A SNF coverage are: (1) The patient must have been in a hospital for at least 3 consecutive days before her transfer to a SNF. (2) The patient must have been transferred because she needed care for a condition which was treated in the hospital. (3) The patient must be admitted to the SNF within 14 days of leaving the hospital (with certain limited exceptions). (4) A physician must certify that the patient needs and actually receives skilled nursing or rehabilitation services on a daily basis. (5) The SNF's UR committee or PSRO must not disapprove the patient's stay. See *Your Medicare Handbook* at 17–19.

[16] See *Your Medicare Handbook* at 36.

[17] See *Your Medicare Handbook* at 8–9. Since there is no general definition of the term "custodial care" in the statute or regulations, its meaning has been the subject of much litigation. Seen generally CCH *Medicare and Medicaid Guide* paras. 4105, 4110 and 4115 (1976).

[18] See generally *Your Medicare Handbook* at 20–33. Part B also covers some home health care services under specified conditions which are different from the requirements for part A coverage of home health care. *Id.* at 37.

[19] Age Differences at 11, 13.

(3) Any "excess charges" over the level the medicare carrier determines to be reasonable. (Blue Shield plans or other private health insurers, called intermediaries under part A and carriers under part B, administer the program under contract with HEW.) The Social Security Act provides that no payment shall be made under either part A or part B for services or items which are not reasonable and necessary for the diagnosis or treatment of illness or injury.[20] If the part B carrier determines that a physician's charge exceeds the reasonable level, medicare will not pay the excess. In general, the carrier will pay only the lowest of: (i) The physician's actual charge; (ii) the customary charge (usually the median of her past charges); or (iii) the prevailing charge, which is defined as the 75th percentile of the customary charges made in the area for the same service.[21]

Whether the patient bears the cost of any charges which medicare determines to be excessive depends on whether the provider exercised an option to accept assignment of medicare benefits. Under such an assignment, the patient transfers her right to medicare reimbursement to her physician; the physician agrees to accept the reasonable charge determined by the carrier as full payment for her services. When the physician accepts assignment, she cannot bill the patient for any amount the Medicare carrier determines to be excessive.[22]

The number of physicians who will accept assignment has been declining steadily to its present level of 50.5 percent.[23] At the same time, the excess physician charges on unassigned claims have been on the rise. In 1976, they accounted for 9.6 percent of expenditures for physicians' services to the elderly, up from 4.5 percent in 1970.[24] During the second quarter of 1977, carriers reduced the total dollar amount of unassigned part B claims filed with them by 20.7 percent.[25] This means that medicare patients can expect to pay on the average 36 percent of their physicians' bills themselves (20 percent coinsurance plus an average of 20 percent of the remaining 80 percent).

(c) ITEMS AND SERVICES NEVER COVERED BY MEDICARE

Neither part A nor part B ever reimburses for:

—Drugs which can be self-administered (drugs and drug sundries account for 8 percent of the health care expenditures of people 65 and over);

—Dental care (except jaw surgery) (dentists' services account for 2 percent);

—Eye or hearing examinations;

—Eyeglasses, hearing aids, dentures, and many other medical appliances (eyeglasses and appliances account for 1 percent of the elderly's health care expenses);

—Routine physical examinations and routine diagnostic tests performed in connection with such examinations;

—Immunizations;

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[20] Of course the statutory provision is longer than this paraphrase. See 42 U.S.C. Sec. 1862(a). Reasonable charge reductions occur under part A as well as part B, but usually the provider of services cannot bill the patient for excess charges. The "waiver of beneficiary liability" provision states that the patient cannot be held liable for payment for services she did not know or could not be reasonably expected to know were not covered by medicare. 42 U.S.C. Sec. 1395 pp. This waiver provision applies whenever medicare denies or reduces payment for a claim on the grounds that the care was custodial or that it was not reasonable and necessary. What happens when a hospital or nursing home patient gets "PSRO'd out" is beyond the scope of this paper, but generally she and any advocates she may have get at least a few days to make some other arrangements before medicare coverage ends.

[21] This is a gross oversimplification. See CCH *Medicare and Medicaid Guide* Secs. 3190 *et seq.* (1977).

[22] To be more exact, the waiver of beneficiary liability provision operates in the case of assigned part B claims.

[23] In 1969, more than 60 percent of medicare claims were assigned. *Washington Post*, February 11, 1978, at 1. Assignment rates show great variation between regions, from lows of 24.6 percent in Wyoming and 27.2 percent in Oklahoma to levels above 70 percent in the industrial northeastern States. Department of Health, Education, and Welfare, Health Care Financing Administration, *Part B Carrier Workload Report* (October 1977). In general physicians are unwilling to accept assignment if they believe they can collect excess fees from their patients. In addition to possible reductions of their charges, they face delays of up to 9 months in obtaining reimbursement if they accept assignment.

[24] Age Differences at 13–14.

[25] Department of Health, Education, and Welfare, Health Care Financing Administration, *Quarterly Report on SMI* Carrier Reasonable Charge and Denial Activity (April–June 1977). Part B carriers made some reduction of 79.9 percent of the unassigned claims filed, for an average reduction of $18.31 per claim. They reduced 76.4 percent of all assigned claims files by an average of $16.51. Excess charges are expected to reach $0.8 billion in fiscal 1978. *Catastrophic Health Insurance* at 25.

—Most foot care;
—Most chiropractors' services;
—Full-time nursing care at home;
—Homemakers' services or meals at home.[26]

B. Health Insurance to Supplement Medicare—Areas of Market Failure

1. Description of Private Health Insurance Available to Supplement Medicare

Health insurance policies marketed to the elderly are not standardized at all. They fall into three general categories: (a) Medicare supplement or medigap, (b) indemnity, and (c) limited policies.

(a) MEDIGAP OR MEDICARE SUPPLEMENT POLICIES

These terms usually refer to policies whose coverage is designed to fill the gaps in the benefit structure of the medicare program and which pay service rather than indemnity benefits. Sometimes the health insurance industry refers to this gap-filling as "wraparound" coverage.

(1) *No Standardization of coverage.*—Within this category the variations in benefits are almost infinite. Some retiring workers can convert their group coverage to a plan with reduced benefits calculated to supplement medicare. (Usually they have to pay the entire premium themselves on retirement.) In addition, most Blue Cross-Blue Shield plans offer medicare supplement policies, both on an individual basis and as conversion contracts offering continued coverage (at a higher premium) to retirees who had Blues coverage with their employment group. Each of the 77 Blues plans has a different medicare supplement for its State or region, and some have low and high cost options.[27] In 1974, 50.9 percent of the people over 65 with hospitalization insurance had individual or group Blue Cross or Blue Shield policies. An additional 13.9 percent had some other form of group coverage and the remaining 35.3 percent had other individual hospital expense policies.[28]

Many health insurers besides the Blues have marketed medicare supplement policies, and no two are alike. Some policies are available in all States; some only in certain regions or only to members of certain groups. Some mix service and indemnity benefits. Some cover only the part A deductibles without any benefits to supplement part B; some place low dollar ceilings on coverage of the 20 percent coinsurance under part B. At least one company offers catastrophic coverage only, but *Consumer Reports* could only find one company which would write new major medical coverage for people over 65.[29] *Consumer Reports*' charts and the brochure published by the Wisconsin Governor's Council on Consumer Affairs, reproduced as appendixes B and C, show a sampling of the bewildering variety of coverages on the market.[30]

(2) *Inadequate coverage.*—Although the definition of "inadequate" coverage is open to debate,[31] it is indisputable that medicare supplement policies often fail to cover the most important gaps in medicare. None covers physician's charges above the level medicare determines to be reasonable. None covers the items and services medicare will never pay for, such as routine physicals, eyeglasses, and medical appliances. Like the rest of the population, few older people have insurance coverage for prescription drugs or dental care—two important gaps in Medicare. As of January 1, 1975, only 16.9 percent of the population 65 and over had any coverage for out-of-hospital prescription drugs and only 1.9 percent had any coverage for dental care. 15.8 percent had some nursing home coverage,[32] but medi-gap policies usually cover at most the medicare

[26] See generally 42 U.S.C. Sec. 1862(a), 42 C.F.R. Sec. 405.310 and *Your Medicare Handbook* at 42–43. The percentages of total health care spending for the over-64 age group are from Age Differences at 11.

[27] See Senate Committee print at 1, n.1 and *Consumer Reports* at 28.

[28] Percentages derived from table 4, National Health Insurance Resource Book at 235, which also includes data on the number of people over 65 enrolled in different types of plans covering various kinds of physicians' services and other care.

[29] *Consumer Reports* at 27. Illinois Mutual Life & Casualty offers major medical. Guardian Life sells a "catastrophic" Medi-gap policy which does not cover the initial deductibles.

[30] The Wisconsin brochure attempts to compare only 11 of the policies most commonly sold in the State *by agents* in 1977; it does not include policies sold by mail. Forty companies sold medicare supplement policies there last year.

[31] It is possible to argue that any third party reimbursement of providers' charges above a reasonable level is undesirable because it would diminish their incentives to keep costs down. In any event, medi-gap coverages are incomplete in that they do not fill all the gaps. Therefore they are "inadequate" in the sense that they often do not live up to consumers' expectations that their supplemental insurance will pay for all expenses medicare does not cover. See section I.B. 4(d)—coverage not in conformity with expectations.

[32] *National Health Insurance Resource Book* at 232.

deductibles for SNF care. A few offer some non-SNF nursing home benefits (usually indemnity) by rider. None covers custodial care.

Appendix A summarizes in chart form medicare's benefits and its gaps and the medi-gaps which supplemental policies usually will not fill.

(b) INDEMNITY POLICIES

Indemnity policies pay a certain number of dollars per day of hospitalization, regardless of actual charges, whether or not medicare and/or some other insurance actually pays the hospital bills. Often the amounts are so low that they would pay only a small fraction of a day's hospitalization cost. Benefits of $20 to $50 per day are typical, while the average hospital cost per patient per day is now over $150.[33] Although owners of indemnity policies could use the dollars they receive to pay medicare deductibles and copayments, the rate of return on these policies is so low that they would do better to place their money in another form of investment. (See sec. 4(b) below.)

Adults of any age can purchase hospital indemnity policies. However, the companies selling indemnity policies make a special appeal to older people—especially elderly women with low incomes.[34] In the profile of its policyholders prepared for internal use, one company stated:

"* * * future ad copy should emphasize the necessity of coverage, especially when not immediately supported by a spouse * * *. Upper age bracket policyowners are more heavily female than male * * * females at this age may feel more insecure than males concerning health costs and hence purchase the coverage * * *. Ad copy should accentuate that coverage is excellent supplemental coverage to Medicare to the older female who has a lower income." [35]

In their pitch to the medicare eligible, indemnity insurers also point out that their policies have no complicated limitations, exclusions and exceptions, unlike medicare supplement policies, which are geared to medicare and sometimes repeat the statutory exclusions from medicare verbatim. Their advertisements emphasize the fact that medicare was never intended to afford comprehensive coverage and that medicare deductibles go up each year.

They repeat that their policies will pay benefits in addition to Medicare. They even attempt to present duplicate coverage as an advantage. One company included the following in its mail-order solicitation:

"Q. Then, with Magna-Medicare I can be sure I'm completely protected?

"A. Yes. It is the only plan in the Nation that after the first deductible, pays all medicare-covered in-hospital expenses whenever medicare does not * * *. So to be completely protected you must have Magna-Medicare even if you have other plans.

"Q. But then won't I have duplicate insurance?

"A. Magna-Medicare does not duplicate government medicare and pays you in addition to any other insurance you may have now or ever get in the future. If part of your expenses are paid by another plan, you can spend the extra money any way you want * * *." [36]

(c) LIMITED POLICIES

The most commonly sold kind of limited policy is the dread disease policy. It pays benefits, often indemnity, only in the event the insured contracts a certain named disease—most commonly cancer. People of any age may buy dread disease policies, but like indemnity insurers, sellers of cancer policies market them to older people, particularly women.[37] Their advertising plays on the fear, common among the elderly, of burdening family members with astronomical medical bills because of a long illness. Dread disease coverage also overlaps with medicare and any other supplemental coverage a policyholder may have.

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[33] In 1975 the average total expense per patient day was $151.42. U.S. Department of Health, Education, and Welfare, Public Health Service, *Health, United States*, 1976–1977 381 (1977).

[34] *Commercial Health and Accident Industry*, Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 92nd Cong., 2d Sess. 591, 829 (1972) [hereinafter 1972 Hearings].

[35] *Id.* at 829. (National Liberty Group.)

[36] *Id.* at 382 (Bankers Life & Casualty Co. of Chicago). This advertisement might well violate many if not all State regulations applicable to all insurance advertising, since it is clearly deceptive to state that the policy pays all in-hospital expenses whenever medicare does not and probably also misleading to say that no duplicate coverage is involved.

[37] *Id.* at 1150. (American Family Life Assurance Co. of Columbus, Ga.)

Consumers Union recommends against purchasing any cancer insurance policies, warning that the ones it had analyzed "offer only fragmentary protection against the cost of treatment." CU also cautioned that "they offer no coverage at all for numerous other diseases that can also be expensive to treat."[38]

2. *Marketing*

Most medicare supplement insurance is sold by mail or by agents. Both marketing methods are the subject of widespread abuse.

(a) AGENT PRACTICES

State insurance departments receive many reports about door-to-door sales of insurance to the elderly. The most frequent complaints are:

Taking advantage of the physical or mental impairments of the elderly. Some agents circulate lists of the names and addresses of old people who are physically ill or mentally confused, who will buy any policies offered to them.[39] At a hearing held on June 29 by the Senate Special Committee on Aging, District Attorney Wiley L. Cheatham of the 24th Judicial District of Texas, read from such a "goose" list where agents described the approaches they had used to defraud each victim. Some companies list policy exclusions in very fine print or pale gray lettering, both especially difficult for anyone with limited eyesight to read.

Agents like to visit old people who live alone and have no family or friends nearby. It is easier for agents to make people who live in isolation believe that the agents have their best interests at heart when they advise the purchase of several insurance policies.[40]

Twisting or roll over. Often an agent can persuade older people that they need to cancel the insurance they now have and replace it with whatever the agent is selling. Agents have every incentive to do this because medicare supplement policies typically have high first year commissions—65 percent is routine, 100 percent is not unheard of.[41] Some agents try to "roll over" their entire clientele each year.

This practice is particularly unfair because the new policies usually exclude pre-existing conditions from coverage for the first 6 months, sometimes longer.[42] Insurance Commissioner Harold Wilde of Wisconsin has expressed the fear that agents will use Wisconsin's new medicare supplement regulation as a pretext to persuade people to replace their policies, by telling them the old ones are "no good" now that the new rule is in effect.[43]

Loading up. Agents tell people that their present coverage is inadequate and sell an extra policy or two to fill the gaps, which usually results in wasteful duplication.[44] This pitch is especially effective in selling nursing home policies and riders, especially in States where people over 65 are acutely aware that there are few medicare-certified SNF beds.[45]

"Clean-Sheeting." Agents sometimes submit an application for insurance, after obtaining the elderly applicants' signature, which does not mention that the applicant has any pre-existing health problems, although she may have tried to tell the agent about them. The company accepts the risk, then delves

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[38] Cashing In On Fear: The Selling of Cancer Insurance, *Consumer Reports* 336, 338 (June 1978).

[39] "Mediscare" at 8.

[40] Wyden, Oregon Elderly Win Insurance Fight, *Aging* 13, 15 (Nov.–Dec. 1977).

[41] "Mediscare" at 4. Agents commonly tell policyholders that their insurance company is in financial trouble or has already gone out of business.

[42] See *Consumer Reports* at 29 and Senate committee print at 17.

[43] "Mediscare" at 10.

[44] If an agent talks an individual who already has a Medi-gap policy into buying an additional indemnity contract, the second policy will pay indemnity benefits in addition to the other insurance. Indemnity insurers would argue that people could use the "extra cash" they receive to pay medical bills not covered by medicare or other medi-gap insurance. However, the indemnity plans are structured to pay a certain amount per day of hospitalization, not to pay the types of expenses both medicare and supplemental insurance leave uncovered: drugs, nursing home care, many kinds of preventive care. Since people are more likely to incur such expenses when they are not hospitalized, indemnity-type insurance does not meet the need people may perceive to supplement medi-gap insurance they already have.

[45] Medicare and "regular" medicare supplement insurance policies cover only care in a certified SNF, not in any intermediate care facilities or nursing home licensed by the State. Sometimes the nursing home policies which unscrupulous agents sell limit their coverage to medicare-approved SNF's, in which case the purchaser is often paying for unnecessary duplicate coverage.

into the policyholder's past to find the pre-existing condition and deny coverage on the basis of a general exclusion in the policy. This unfair practice is a variation of, and facilitates, post-claims underwriting, discussed in section I.B.4.(d)(i) below.

Other fraudulent practices. Some agents have elderly buyers pay cash or make checks out to the agent instead of the company, then abscond with the money. Sometimes the same agents simply switch companies and repeat the same tactic.

Often agents do not identify themselves as insurance agents; sometimes they try to make people believe that they are "from medicare" or some other service agency or organization. Sometimes they make fraudulent representations that the policy is approved, sponsored or recommended by the medicare program, that the premiums will never go up, or that the policy will cover everything medicare doesn't. They fail to explain or even mention waiting periods and exclusions for pre-existing conditions, leading purchasers to think that their policies will provide 100 percent coverage immediately.[46]

Unscrupulous agents can revise their sales pitches to get around almost any regulation requiring certain disclosures or prohibiting certain representations. They can dilute, discount or disparage mandatory written disclosures in an oral presentation. Often they can turn a newly enacted standard-setting regulation to their advantage by telling people they must buy new policies which conform to the new law's requirements. Thus monitoring agents' conduct is a continuing necessity for effective enforcement of any regulation in the medicare supplement area.

(b) MAIL ORDER INSURERS

Most advertisements and personal solicitations for medicare supplement insurance play to some extent on fear. Mail order companies' advertisements are notorious for their use of scare tactics. Herbert Denenberg, former insurance commissioner of Pennsylvania, has testified:

"Everyone, of course, is terrified at the prospect of major illness, but none more than the elderly. They have finished their work years and have to depend on pensions and social security. A sudden sickness requiring prolonged hospital care will break many budgets.

The mail-order companies prey on the fear of these old people. They suggest to them, in the biggest headlines, that they must have health insurance or they will die in the paupers ward. Or the company reminds them that they certainly don't want to be a burden to their children or relatives. * * * Another effective scare tactic is to push the idea that present coverage is not enough, whatever it is. Hospital costs are skyrocketing, therefore your coverage must be insufficient. * * * This is an effective technique in promoting policies to supplement medicare. * * * Some companies use frightening photographs. Continental Casualty Company likes to illustrate its ads with a picture of a hospital bed. United Fire Insurance Company is fond of wheelchairs. * * *" [47]

A technique commonly used in mail order advertisements is the warning that enrollment will only be possible for a limited time, whereas in fact the company may offer the same coverage in another mass mailing shortly thereafter.

Many of the policies sold by mail are not true medicare supplements tailored to fill the gaps in medicare's coverage; often they pay only indemnity benefits which are unrelated to the gaps in medicare.

The largest mail-order company, Colonial Penn, sells its insurance through the American Association of Retired Persons (AARP) and the National Retired Teachers Association (NRTA). Through AARP, Colonial Penn markets several hospital indemnity policies with limited benefits, encouraging overlapping coverage.[48] The U.S. Postal Service has begun an investigation of AARP's non-profit status, which entitles it to special mailing rates.

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[46] See generally "Mediscare" and Fact Sheet on Medicare and Medicare Supplements (November 1977) (available from the Office of the Wisconsin Commissioner of Insurance).

[47] 1972 hearings at 447. See also Senate committee print at 19–23.

[48] Some of AARP's policies do not cover any of the gaps in medicare part B coverage. Some do not begin to pay benefits until the insured has been hospitalized for 8 days. Any Colonial Penn policy sold through AARP is virtually certain to duplicate some of the coverage of any other health policy a person over 65 may have. Anyone who holds more than one of Colonial Penn's hospitalization plans for AARP members has at least some duplicate coverage. See *Consumer Reports* at 32–34 and Colonial Penn Alleges Errors in CU Report, *Consumer Reports* (April 1976).

In a private lawsuit, a former executive director of AARP has also challenged its relationship with Colonial Penn, alleging a "scheme to persuade and delude the public that the associations (AARP and NRTA) are not insurance marketing devices * * * but rather are democratically organized and independently operated organizations." The complaint also charges that the defendants, including founder Leonard Davis and his close associates, caused AARP and NRTA to "recommend the purchase of insurance policies so as to benefit CPG (the Colonial Penn Group) regardless of the welfare, interests and needs of the associations' members," principally through advertisements in AARP publications and newsletters which appeared to be articles by AARP or NRTA staff members endorsing Colonial Penn's insurance.[49]

3. Inadequate Information

It is very difficult for senior citizens to make rational decisions about their health insurance needs and purchases because they lack the requisite information.

(a) IGNORANCE ABOUT MEDICARE

Most older people know little or nothing about the medicare program. Although they may be aware that medicare does not cover everything, they do not know enough about its gaps to evaluate their supplemental insurance needs. In 1974 the Senate Special Committee on Aging noted "the great need for more intensive educational efforts upon the part of the Federal Government to inform older persons about medicare itself."[50] There is no indication that these efforts have taken place; indeed, some older people may not even file claims for medicare benefits they do not realize they are entitled to.

(b) IGNORANCE ABOUT RISKS

Like the rest of the population, older people generally do not know the extent to which they are at risk for various types of health care expenditures. They lack easy access to information about average hospital cost per day, average hospital length of stay, average annual per capita expenditures for physician charges, or likelihood and length of a nursing home stay for their particular age group. Thus they have no basis for deciding whether they want insurance coverage for each kind of expense. Some low-income elderly may not know that they are eligible for medicaid, which would eliminate or generally reduce their need for private health insurance. In many States, medicaid programs cover all or almost all the health care expenses of eligible individuals. Even in States which require medicaid recipients to pay some of their medical bills, there may not be any coverage available to fill those gaps, because medicaid programs usually cut back on the same services that neither medicare nor supplemental insurance covers (dental care and dentures, hearing aids, eyeglasses, small copayments for prescription drugs).[51]

(c) NON-STANDARDIZED COVERAGES

Since medicare supplements and other insurance policies commonly sold to the elderly are not standardized, it is often impossible to compare coverages.

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[49] *Miller* v. *Davis et al.*, complaint filed May 2, 1978 in the Superior Court of the District of Columbia, paras. 12 and 47. See also Two Non-Profit Organizations Accused as a 'Cover', *Washington Post*, May 3, 1978 at A2, col. 1.

[50] Senate committee print at iv; see also 24.

[51] The kind of care covered by medicaid or medical assistance programs varies from State to State. Federal law mandates that all State programs pay for certain types of services, but States may elect to offer a higher level of benefits. For an illustrative list of State medicaid cutbacks instituted during the period from January 1 through October 1, 1975, see *Medicare Gaps and Limitations*: hearing before the Subcommitte on Health and Long-Term Care of the House Select Comm. on Aging, 95th Cong., 1st Sess. 45–50 (1977) (appendix I: "The Aged and their Health Care Expenditures," sec. II. D: "Experience of the aged with Medicaid."). Some cutbacks involve services which would be covered by medicare anyway for elderly individuals, such as in-patient hospital care; they would not affect the need for supplemental insurance. In States where medicaid pays all health care expenses, an eligible person obviously needs no health insurance. Even where a State medicaid program is limited to the statutorily required benefits, supplemental medi-gap coverage necessarily involves a high degree of overlap, which is particularly unjustifiable for people living on very low incomes. Indemnity policies will, of course, pay benefits even to medicaid recipients who have not had to make any out-of-pocket expenditure for their health care. But State medicaid programs may consider indemnity benefits as income to the recipients, possibly endangering their eligibility status or subjecting them to penalties for fraud if they neglect to report the indemnity payments as income.

Even where two of the available policies have roughly comparable benefit structures, they may be so complex that comparing them may not be cost-justified.

(d) SPECIAL LIMITATIONS OF THE ELDERLY

Some older people may have vision or hearing limitations which make it more difficult to get information. Some may have reduced attention spans or impaired memories. Many do not even realize that they have been victimized until the time comes to make a claim. Even then many are reluctant to complain and some of those who do make poor witnesses.[52]

(e) NO SOURCES OF INFORMATION

Very few people outside the insurance industry are at all knowledgeable about insurance matters. In addition, the elderly, especially in rural areas, often lack advisers and advocates. As a result, the insurance agent or mass mailing may be the only source of information about supplemental insurance available to an older person. Although family members offer assistance when they can, their knowledge about insurance and medicare is usually far from complete. And some old people have no family to turn to.

4. Consequences of Inadequate Information

Because they do not have sufficient information about insurance to supplement medicare, senior citizens end up wasting a large portion of the $0.5 to more than $1 billion they spend on it each year. The following characteristics of the market indicate its failures.

(a) NO PRICE COMPETITION

The lack of standardization and the complexity of the coverages available make comparison-shopping almost impossible. Therefore supplemental insurers do not compete on price. In Wisconsin in 1977, for example, Blue Cross' relatively comprehensive medicare extended policy sold for $95.40/year. The premium for Reliable's much more restricted elder care series III plan was $200/year for people under 75, $236/year for those 75 and over.[53]

(b) LOW RETURN

Medicare supplement insurance policies pay back in benefits only a relatively low percentage of dollars paid in premiums. Loss ratios for hospital indemnity, nursing home and low-value medicare supplement policies run around 40 percent. Expense factors of 50–60 percent are not uncommon. The highest loss ratios for individual medicare supplement policies are between 70 and 80 percent. In contrast, Blue Cross-Blue Shield group health insurance plans usually have loss ratios of 85–90 percent.[54]

Not only do medicare supplement premiums return relatively little value; they also take a large share of the fixed incomes of the elderly, typically between 5 and 10 percent for those people who choose to buy them.[55]

(c) DUPLICATE COVERAGE

Lack of standardization, consumer ignorance about medicare and insurance and agent incentives combine to produce unnecessary overlaps in coverage. The extent of this duplication is unknown. However, the Social Security Administration has estimated that in 1972, 2.6 million of the 11.2 million people who had some hospitalization coverage to supplement medicare held more

[52] "Mediscare" at 7.

[53] In some cases differences in underwriting criteria might explain price differences. The two insurers cited in the example do not refuse coverage to poor health risks, although they may exclude coverage for certain existing conditions or some applicants. See appendix C to compare benefits available under the two policies.

[54] "Mediscare" at 4–6.

[55] This estimate was calculated as follows: The national median income for unrelated individuals over 65 was $3,495 in 1976. In 1977, 1 year later, the annual premium for the most comprehensive medi-gap policy in Wisconsin (WPS medicare plus $22,500) was $342. Most other annual premiums were in the $200–300 range while the cheapest widely sold medicare supplement (nonindemnity) policy was Blue Cross' medicare extended at $95.40/year. Since many people had duplicative coverage, an estimate of 5–10 percent is not unreasonable. In addition they must pay a medicare part B premium of $92.40/year.

than one policy covering hospital costs, so that at least 23 percent had duplicate coverage.[56]

Confusion may lead consumers to buy two or more policies in an effort to obtain complete coverage. But medi-gap policies generally include coordination of benefits clauses. This means that in the areas of overlap, only one policy will pay for each gap. For instance, a person who buys three policies which cover the $144 part A deductible will not receive a windfall of $432 in the event of hospitalization. Only one of the policies will pay $144. The buyer has wasted the portion of the other two premiums which paid for the duplicate coverage of the initial deductible. Those elderly persons who live on fixed incomes can ill afford to spend their money on such worthless duplication.[57] Indemnity policies will, of course, pay benefits without regard to any other insurance a policyholder may have.

Cases have been reported where a single individual held six or more policies and paid over $1,000 annually in premiums.[58] At a hearing held May 16 by the Senate Special Committee on Aging, a witness testified that agents from a single company sold his 67-year-old mother 17 insurance policies in a 2-year period, so that she was paying 68 percent of her income in premiums when he discovered her predicament.[59]

(d) COVERAGE NOT IN CONFORMITY WITH EXPECTATIONS

Contrary to policyholders' expectations, even the better medicare supplement policies leave some major gaps uncovered (See sec. I.B.1(a)(ii)—Inadequate Coverage). As a consequence of the way medicare supplement insurance is marketed, many older people think they have much more extensive coverage than they actually do. Advertisements and agents tell them a policy will cover everything medicare doesn't.[60] They believe it because no other mechanism exists to provide them with usable information about what benefits it really will pay. Common areas of misunderstanding are:

(1) *Preexisting conditions.*—A clause excluding coverage for pre-existing conditions gives the insurer the right to refuse to pay any expenses for conditions or illnesses which began before the effective date of the policy. A strict interpretation of these clauses can lead to denials of claims for any illnesses developing out of conditions (such as hypertension) which existed before the policy went into effect. Since many elderly people have multiple health problems, "pre-X" clauses can make coverage so limited as to be meaningless for some of them. Insurance companies often use "pre-existing conditions" as a pretext for rejecting claims in a totally arbitrary manner.[61] Since people cannot know in advance to what lengths a company will go to deny claims because of pre-existing conditions, they can never be certain of what their coverage is worth.

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[56] Senate committee print at 7–8. Apparently the Social Security Administration stopped estimating duplication after 1972. See National Health Insurance Resource Book at 239. In 1974 the National Health Survey of 40,000 households yielded an estimate that 53.8 percent of those 65 and older had private health insurance in addition to medicare and that 12.1 percent of them had two or more plans. See 52 *Hospitals* (Journal of the American Hospital Association) 20 (May 16, 1978).

[57] Senate committee print at 16–17.

[58] See "Mediscare" at 6 and Wyden, Public Regulation of Private Supplements to Medicare and Medicaid in Oregon, 9 Conn. L. Rev. 450, 452, 456 (1977) [hereinafter Wyden].

[59] Statement of Robert E. Lowry from Raleigh, N.C., before the U.S. Senate Special Committee on Aging at a hearing on Medi-Gap: Private Health Insurance Supplements to Medicare, May 16, 1978. Senator Lawton Chiles, who presided at the hearing, also read a letter from an 87-year-old woman who had been sold 19 health insurance policies in 1 year's time, by six different agents.

[60] See, e.g. *International Security Life Ins. Co.* v. *Finck,* 475 S.W. 3d 363 (Tex. Civ. App. 1971). The court held that a representation that the policy in question would cover everything not covered by medicare was not mere "touting," "in making a sales pitch to an elderly person who does not have and needs hospitalization insurance," but rather an assertion of material fact which the plaintiff relied upon and which entitled him to damages when it proved to be false. 475 S.W. 2d at 369. However, the Texas Supreme Court reversed on the ground that the agent's representations were beyond his authority to make; therefore the plaintiff could not recover actual or exemplary (punitive) damages from the insurance company. He was limited to recovery of benefits due under the insurance policy, plus interest and a 12 percent statutory penalty—$378.19, instead of the $6,596.07 the jury awarded him. *International Security Life Ins. Co.* v. *Finck,* 496 S.W. 2d 544 (Tex. 1973).

[61] See 1972 hearings at 597 and 644–758 for some examples of arbitrary denials. In the *Finck* case, *supra* note 60, the defendant insurance company apparently denied every claim filed, citing a prior existing condition or some other technicality, so that policyholders had to enlist an attorney's assistance in order to collect.

Diversity among pre-X clauses reduces still further the older insurance buyer's chance of comparing policies. Many medicare supplement policies will not cover pre-existing conditions for a waiting period of 6 months or 1 year after the policy has been in force. Some companies exclude coverage for certain conditions by means of riders; the policy will not cover those named conditions even after any waiting period is over. Mail order insurers often accept all applicants without any medical underwriting, then shock policyholders by citing pre-existing conditions as a ground for denial of claims.[62] The language of their pre-X clauses is particularly impenetrable.[63] The practice of denying large numbers of claims from policyholders with pre-existing health problems is known as "post-claims underwriting." Some companies add complications which are almost impossible to ascertain in advance. One Wisconsin policy will never afford any coverage for a pre-existing condition if it was treated during the first 6 months after issuance of the policy.[64]

(2) *Nursing some coverage.*—Purchasers usually assume that nursing home coverage applies to care in any nursing home facility, not just in medicare certified SNF's. One Salem, Ore., social worker has stated, "I spend about 50 percent of my day trying to explain it * * * [T]heir policies do not cover what medicare does not cover—intermediate care." [65]

(3) *Excess over reasonable charges.*—People who purchase a policy to supplement medicare expect that when medicare refuses reimbursement for part of a physician's charges, the supplemental insurance will take care of it. When the private insurer denies payment as well, they are surprised and confused.

(e) CLAIMS HANDLING

Elderly policyholders often complain, to state insurance departments and others, that their supplemental health insurance claims were unfairly denied. One cause of this problem is widespread misunderstanding about policy coverage. For example, in one 26-month period, one hospital indemnity insurer paid nothing at all on 30,291 or 38.5 percent of the 78,577 claims received. 12,213 or 15.5 percent were rejected because of a pre-existing condition and 5,660 or 7.2 percent because there was no hospital confinement or surgery as required by the terms of the policy.[66] Where such a large number of claims clearly not within policy coverage were filed, it is evident that many policyholders were completely misinformed (or totally uninformed) about the extent of their insurance coverage.

Claims denials are often simply the events which make older people aware that the insurance they purchased does not meet their needs. But some denials (especially for pre-existing conditions) are surely questionable. Incomprehensible policy provisions and lack of the most basic knowledge about supplemental insurance make it very difficult for older policyholders to challenge arbitrary treatment.

Another source of frequent complaints is delay in settling claims. For unassigned part B claims insureds must file a claim with the medicare part B carrier, wait as long as 6 months for payment or denial, then file a claim

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[62] Senate committee print at 14–15.

[63] In 1972, National Home Life Insurance Company used the following pre-X clause in one of its indemnity policies: "After 2 years from the date of this policy becomes effective for a covered member, hospital confinement commencing thereafter while the policy is in force for such covered member, and as a result of any such condition for which such covered member was medically treated, or advised prior to the effective date, shall be covered hereunder." The president of National Liberty Group explained its effect as follows: "* * * if you had been treated for a heart condition, and you take out one of our policies, for the first 2 years you will not be covered for any heart condition if you go in the hospital." 1972 hearings at 592 (testimony of Robert E. Slater).

[64] WPS' medicare plus $22,500, sold by Wisconsin Physicians Service, a Blue Shield plan. In 1977, this policy offered the most complete medicare supplement coverage available; its big selling point was its coverage of out-of-hospital prescription drugs. Many health insurance policies issued to people under 65 require that policyholders go without treatment for a pre-existing condition during the first 6 months the policy is in force in order for that pre-existing condition to be covered. However, WPS considers taking medication for a pre-existing condition during the first 6 months a policy is in force to be "treatment" which would bar any coverage for that condition. For elderly policyholders with conditions which require regular medication (such as hypertension), WPS' coverage diminishes in value when they discover such limitations. (People who enroll in WPS' plan within 3 months of their 65th birthday are not subject to this particularly restrictive pre-X exclusion. Their pre-existing conditions are covered after 1 year even if they are treated during the first 6 months.)

[65] Wyden at 459–460.

[66] 1972 hearings at 598. (National Liberty) More than half the claims paid were less than $100.

with the supplemental insurance company and wait again.[67] Since medicare supplement insurers have little incentive to be responsive to their policyholders,[68] they can and often do pay claims very slowly.

II. STATE REGULATORY INITIATIVES

This section presents an overview of selected State approaches to the regulation of medicare supplement insurance.

A. Types of State Regulation

1. Traditional Approaches

Most States have statutes and regulations of general applicability which could be used in the medicare supplement area. All States have adopted some form of statute governing unfair methods of competition and unfair or deceptive practices in the business of insurance, naming misrepresentation, false advertising, boycott, coercion or intimidation, and unfair discrimination, among others.[69] Most States have more detailed regulations applicable to all advertising of health insurance, and some even specifically prohibit certain kinds of claims in advertising of medicare supplements.[70] However, most courts which have considered the question have declined to imply from such statutes a private right of action for unfair trade practices.[71] At least one court has noted such a state statute's expression of the public policy against misleading or deceptive advertising, in order to support the plaintiff's claim for misrepresentation in an insurer's advertisements for its indemnity plan. However, in such an action the plaintiff is limited to recovery of the benefits due under the policy.[72]

State insurance commissioners have the power the revoke licenses of agents who engage in fraudulent practices.[73] They are also empowered to license insurers to do business in their States and to deny or revoke licenses for failure to comply with requirements for minimum capitalization or reserves or for the reporting or other data.[74]

In addition, some States have the authority to disapprove policy forms which are inequitable, unfairly discriminatory, or misleading—because the benefits are too restricted to achieve the purposes for which the policy is sold, because the language is unnecessarily complex or for other reasons.[75] Some State statutes empower the commissioner to withdraw authorization of policies on a finding that permiums charged are unreasonable in relation to the benefits provided.[76] Some States interpret their statutes as requiring time-consuming individual evaluation of each policy and issuance of a written statement of reasons for disapproval.[77] For that reason this approach has not yet been widely used to ban low-value medi-gap policies.

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[67] When a provider accepts assignment, the claimant has to wait until the carrier issues an "Explanation of Medicare Benefits" form in order to send it along with an insurance claim. Even where the part B carrier and the supplemental insurer are one and the same, federal regulations require separate processing of medicare and private insurance claims.

[68] Elderly people are sometimes reluctant to cancel even when they learn that the policy is not what they thought they were buying or when they are dissatisfied with claims service. They are afraid that they will not be able to obtain any other health insurance because of advanced age or existing health problems.

[69] These statutes are similar or identical to the Model Unfair Trade Practices Act drafted by the National Association of Insurance Commissioners. See 2 *Proceedings of the NAIC* 509 (1960). The model act also provides a means for defining unfair practices in addition to those specifically listed.

[70] See, e.g. Calif. Admin. Code, Title 10, Ch. 5 (Rules and Regulations of the Insurance Commissioner), Secs. 2535 *et seq.*, especially Secs. 2536.2(a) 1 and guidelines 38–40, 2536.2(b)(2) and 2536.9.

[71] See the cases cited in *Crawford* v. *American Title Ins. Co.*, 518 F.2d 217, 229, fn. 32 (5th Cir. 1975) (Godbold, J., dissenting). Judge Godbold noted that in the cases where courts had implied a private right of action, the practice complained of was specifically enumerated in the state's unfair practices act. (He apparently views the *Craver* case, note 72 *infra*, as one supporting the implication of a private right of action only by analogy.)

[72] *Craver* v. *Union Fidelity Life Ins. Co.*, 307 N.E. 2d 265 (Ohio App. 1973).

[73] See, e.g. McKinney's Consolidated Laws of New York, Insurance Law, Secs. 113, 114, 117 and 119.

[74] See Lamel, State Regulation of the Insurance Industry (paper prepared for the U.S. Commission on Civil Rights) 12–13 (April 14, 1978).

[75] See, e.g. Wis. Stat. Sec. 631.20 (1975).

[76] See, e.g. Deering's Calif. Ins. Code Ann. Sec. 10293(a), (1969) (individual hospital, medical or surgical policies).

[77] Conversations with personnel of the Office of the Wisconsin Commissioner of Insurance concerning the requirements of Wis. Stat. Secs. 631.20(a) and (4), where the policy form has already been approved and is on file with the commissioner's office.

2. Standard-Setting: Minimum Loss Ratios

Some States require that individual accident and health insurance policies in general and/or individual medi-gap policies in particular return a certain percentage of dollars paid in premiums to policyholders in benefits. In Michigan the anticipated loss ratio for policies issued to individuals 65 and over must be at least 65 percent.[78] California is raising its "benchmark minimum loss ratio" for policies designed to supplement medicare to 55 percent effective January 1, 1979. Policies with lower loss ratios are deemed not to provide reasonable benefits relative to the premiums charged.[79] Recently, New Jersey Insurance Commissioner Sheeran banned the sale of 133 kinds of individual health and accident policies with loss ratios of less than 50 percent.[80] Many were limited policies which covered only specific dread diseases or certain accidents, a type of insurance marketed especially to elderly buyers. Reportedly, Florida and Nevada also have regulations or guidelines requiring that individual policies have loss ratios of more than 50 percent.[81]

3. Regulations Specifically Applicable to Medicare Supplement Insurance

In response to the volume of complaints from individuals and senior citizen's groups, some insurance commissioners (and State legislatures) have recently begun to devise new solutions specifically for the medicare supplement market. They have taken very different approaches. In general, State regulations which target medicare supplement insurance use one or a combination of three methods: (i) Setting standards or minimum benefit levels; (ii) promoting standardization through labeling; or (iii) requiring disclosures or provision of information by other means.[82]

B. Wisconsin: Four Grades Plus Extensive Disclosure

Wisconsin's new medicare supplement rule, Ins. 3.39, combines a labeling system with a requirement of extensive disclosure. The insurance commissioner's office hoped that it would result in "greater standardization of policies, improved consumer information and elimination of many of the worst policies from the market."[83]

Other States such as Michigan and New Jersey are considering adoption of the Wisconsin model.[84]

1. Standardization: Four Categories

Ins. 3.39 sets up four distinct categories of medicare supplement coverage. As of January 1, 1978, any policy "designed or structured to supplement medicare" must meet the standards for one of four classes of coverage in order to be approved for sale in Wisconsin. Approved policies must then bear a label (called a "designation") such as "medicare supplement 1."[85] Representatives of the insurance industry criticized Ins. 3.39 on the ground that it establishes minimum benefit levels and curtails individual choice. However, the rule does not impose a ban; it provides that no non-conforming policy "shall relate its coverage to medicare or be structured, advertised or marketed as a supplement to Medicare. . . ."[86] Technically, insurers could continue to sell policies which did not meet the prescribed standards as long as they did not present them as supplements to medicare.

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[78] Official Mich. Insurance Rules and Regulations R500.803 (1974).
[79] See appendix J, State of California, Department of Insurance, Decision in the Matter of of the Proposed Amendments and Additions to the Regulations of the Insurance Commissioner Relating to Individual Disability Policies to Supplement Medicare 1–2, 7–8 (March 21, 1978).
[80] See Sheeran Halts Sale of Health Policies, *National Underwriter–Life & Health Insurance Edition*, March 25, 1978, at 1, Col. 1.
[81] Appendix J at 7.
[82] Cf. Colantoni, Davis and Swaminuthan, Imperfect Consumers and Welfare Comparisons of Policies Concerning Information and Regulation, 7 *Bell Journal of Economics* 602 (1976).
[83] "Mediscare" at 10.
[84] Telephone interviews with Patience Drake, Michigan Insurance Department, and with Sharon Szabo, New Jersey Department of Insurance, February 13, 1978.
[85] See appendix D, Wis. Admin. Code Ins. 3.39(1)(a) (July 1977).
[86] Appendix D, Ins. 3.39(4).

(a) BENEFIT STRUCTURE

All four categories of medicare supplement policies are required to cover only "medicare-eligible" expenses. "Medicare eligible" means the same kind of expense that medicare would cover.[87] In other words, insurers need not provide for custodial long-term care, nursing home care outside a medicare-certified SNF, physicians' charges above the amount medicare determines to be reasonable, or any of the less obvious but more sizeable gaps left by medicare.

Policies do not have to include coverage for either part A or part B initial deductibles under any of the four categories. The Wisconsin regulators felt that high premium costs imposed by a first-dollar coverage requirement would outweigh any potential increases in clarification for prospective buyers.[88] Companies may cover the initial deductibles if they choose.

No medicare supplement policy may exclude coverage for pre-existing conditions for a period longer than 12 months after its effective date, unless the condition is specifically described.[89]

A medicare supplement 1, the most comprehensive policy, must cover "medicare-eligible" expenses under both parts A and B, including at least 75 percent of prescription drug expenditures, up to either (i) $22,500 for both parts A and B or (ii) $15,000 for part A and $7,500 for part B.[90] A medicare supplement 2 is similar, except that the minimum dollar ceilings are lower and the policy need not afford any coverage for prescription drugs, psychiatric care, or certain other benefits of limited significance.[91] The standards for a "medicare supplement 3" set still lower dollar limits and remove the requirements for coverage of part B-type home health care, some diagnostic tests and a few other benefits.[92]

The first three categories do not differ markedly except in their dollar limits. It remains to be seen whether companies and consumers will find them sufficiently distinguishable to bring about price competition within each category.

The fourth category is divided into two parts. A "medicare supplement 4A" provides coverage for hospitalization and other part A expenses only, up to a maximum of $15,000. A "medicare supplement 4B" offers coverage for part B-type medical expenses only, up to at least $7,500 per year. A medicare supplement 4B policy may provide catastrophic coverage by including a "corridor deductible" of up to $500, which means that a policyholder would have to pay $500 out-of-pocket before the policy would provide any coverage.[93]

The rule's drafters were persuaded by the industry's argument that a product with high deductibles could supplement part A only or part B only at a low price. They believed that the concept of catastrophic coverage only should be encouraged. They also thought that permitting a policy to supplement part A but not part B and vice versa would not necessarily result in consumer confusion. In an effort to prevent further fragmentation of coverage and reduce the possibility of duplication, a medicare supplement 4A may not include any coverage to supplement part B. Nor may 4B policies supplement part A in any way.

Because of a prior statutory requirement, medicare supplement policies (except 4B) must offer coverage for 30 days of skilled nursing care. This mandated benefit has been the subject of great controversy, because the insurance commissioner has interpreted it to mean that all medicare supplement policies must cover 30 days of skilled nursing care, whether it is rendered in a medicare SNF or any other nursing home.[94]

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[87] Appendix D, Ins. 3.39(3)(c).

[88] One of the authors of this paper, Anne DeNovo, became familiar with the viewpoints of the office of the Wisconsin Commissioner of Insurance during her participation in the hearing and meetings during the drafting process of Ins. 3.39 (as a law student intern with the Center for Public Representation, Madison, Wis.).

[89] Appendix D, Ins. 3.39(4)(a)(2).

[90] Appendix D, Ins. 3.39(5)(a).

[91] Appendix D, Ins. 3.39(5)(b).

[92] Appendix D, Ins. 3.39(5)(c).

[93] Appendix D, Ins. 3.39(5)(d). For a medicare beneficiary to be personally liable for $500 in medical expenses, she would have incurred $2,500 in total bills, because medicare would have paid 80 percent of the total.

[94] See, Warns on Insurance (letter from Harold R. Wilde, commissioner of insurance), *Wisconsin State Journal*, Madison, Wis., Feb. 25, 1978, Sec. 1 at 8, Col. 3; Wilde: Beware cut-rate insurance, *Capital Times*, Madison, Wis., Feb. 27, 1978, and Bruno's Rebuttal to Wilde, *Capital Times*, Mar. 3, 1978. Of the 45,500 skilled nursing home beds in Wisconsin, only 3,400, or 7.7 percent, are medicare-certified. Thus this interpretation of the mandated benefit for 30 days of skilled nursing care, Wis. Stat. Sec. 207.04, represents a very great increase in coverage.

(b) IMPACT

At the end of January 1978, only four of the 40 companies which had sold medicare supplement policies in Wisconsin in 1977 had medicare supplement policies approved for sale in the State in 1978. All five approved policies were in categories 2 or 3 (one company had both a 2 and 3); there were no 1's or 4's. Some insurers had expressed their intention to stay out of the Wisconsin market for a year to see what the effect of the new regulation would be, but by June, five more companies had had their policies approved, including one in category 4A. Eight more had filed policy forms and were awaiting approval.

Price dispersion is evident from the table of policies approved for sale in Wisconsin as of June 12, 1978 which appears as appendex E. Rural Security Life, Blue Cross of Wisconsin, and WPS (Wisconsin Physicians Service, the Madison area Blue Shield plan) sell the cheapest medicare supplement "2" policies, for $185.83, $210 and $211.20 per year respectively. The premium for the only other "2," sold by Reliable Life & Casualty, is $446.00 for ages 65–72, $502 for ages 73–79, and $646 for ages 80 and up. The least expensive policy in category 3 cost $230.28 for all age groups, whereas the two most expensive 3's cost $396 for ages 65–72, $438 or $442 for ages 73–79 and $586 or $594 for ages 80 and over. In general, anticipated loss ratios show a rough inverse relationship to price. In contrast, annual premium amounts increase with first-year agents' commissions.

Reportedly Blue Cross withdrew the medicare supplement 2 policy it had filed for approval upon learning that WPS' "2" policy would be selling for much less than Blue Cross had planned to charge, and came back with a premium about equal to WPS'. In 1977, WPS had sold a medi-gap policy whose coverage almost qualified it for a "1" rating, but in 1978 the company reduced its premium and eliminated some benefits to enter at the "2" level. Some companies doubled their 1977 premiums, blaming the price increase on the new medicare supplement regulation and the mandated benefit for skilled nursing care. The industry maintains that the mandated benefit raises premium costs by $55 per year on the average.[95]

2. Disclosure

Ins. 3.39 also requires the provision of a great deal of useful information about its four categories and medicare supplement insurance in general. Agents must give all prospective purchasers a copy of an 18-page booklet called "Health Insurance Advice for Senior Citizens" at the time they provide them with applications. This booklet is reproduced as appendix F.

The pamphlet, prepared by the office of the commissioner of insurance, explains the four new categories for medicare supplement policies. It includes general information about medicare gaps and insurance to fill them, emphasizing the fact that policies will exclude the same type of expenses that medicare excludes. The pamphlet also warns its readers about common frauds. It also cautions readers not to purchase any private insurance if they are eligible for medicaid and not to replace old policies simply because of the new medicare supplement rule. Commissioner Wilde has made the point that unscrupulous agents can and do use the new policies as a "reason" to persuade people to cancel the ones they have in force—perhaps subjecting themselves to new waiting periods for coverage for conditions they already have or even losing it entirely.[96] The back cover of the booklet is a policy checklist.

In addition to the pamphlet, agents must leave an outline of coverage with people who purchase a policy. The outline of coverage for medicare supplement policies must contain a clearly organized chart summarizing medicare benefits, the benefits the policy provides and the expenses which remain uncovered.[97]

All policies and outlines of coverage are supposed to include a "medicare supplement" label and a short, general caption. The caption should tell consumers to consult the pamphlet and say: "Do not buy this policy if you did not get this pamphlet and were not given a chance to review the outline of

[95] See "Warns on Insurance," note 94 *supra*.
[96] Testimony by Wisconsin Insurance Commissioner Harold R. Wilde, U.S. Senate Special Committee on Aging, hearing on "medi-gap" insurance 10 (May 16, 1978).
[97] Appendix D, Ins. 3.39(4)(b).

coverage provided you." However, the rule does not require that the outline of coverage be signed and returned. Nor does it accord individual consumers any remedy for failure to comply with the disclosure provisions.

3. Limited Scope in Ins. 3.39

The regulation applies only to individual medicare supplement policies, not group coverage or conversion contracts. The commissioner's office feels that it could not apply the rule to group mail order insurers not authorized to do business in Wisconsin without holding a hearing and making certain statutorily required findings of fact.[98]

The standardization provisions of the rule do not apply to hospital indemnity, dread disease or nursing home policies. Each of those policies must make certain written disclosures, including the fact that it is not a medicare supplement,[99] but their sale remains unaffected.

C. California: Minimum Standards, Three Descriptive Categories and Simple Disclosure Forms

Since 1974, California has prescribed minimum coverage standards and the use of one-page disclosure forms for each different type of individual health insurance. The regulations established separate categories for specified disease, hospital indemnity and medicare supplement expense policies. These minimum standards for medicare supplement, dread disease and hospital indemnity policies appear as appendix G, and the original text of the regulations requiring disclosures for those types of policies is in appendix H. California regulations also set a benchmark loss ratio of 50 percent for medicare supplement insurance. The department could presume that policies with lower loss ratios did not afford reasonable benefits in relation to premiums charged and withdraw its authorization for those policies.[100]

In late 1976, the department became aware that some individual supplemental policies were showing loss ratios of less than 50 percent, which was the "benchmark" minimum loss ratio at that time.[101] The department held investigative hearings on medicare supplement insurance in January 1977 and proposed revisions in its regulations in September. The notice of the proposed regulations and additions, dated September 29, 1977, is included as appendix I. The department held further hearings on the proposals in November, and issued final amendments on March 21, 1978, to become effective on January 1, 1979. The text of the revised regulations and the decision of the California Insurance Commissioner which accompanied them may be found in appendix J.

Public witnesses at the hearings were less concerned about the price of policies than their design and solicitation. Many testified that they found their policies incomprehensible and that they had purchased what they thought was complete supplemental coverage, only to discover when they filed claims that it filled only a few medicare gaps.[102]

1. Minimum Standards

(a) MEDICARE SUPPLEMENT POLICIES

The 1972 standards for supplemental policies paying benefits on an expense incurred basis set forth general requirements such as prohibitions of any de-

[98] Appendix D, Ins. 3.39(2). Also, Wis. Stat. 600.91(1)(6) makes the Wisconsin insurance code inapplicable to group or blanket insurance covering risks in the State if: (a) The policyholder exists primarily for purposes other than to procure insurance; (b) the policyholder is not a Wisconsin corporation or other resident and does not have its principal office in Wisconsin; (c) no more than 25 percent of the certificate holders of insureds are resident in this State; (d) on request of the commissioner, the insurer files with the commissioner a copy of the policy and a copy of each form of certificate; and (e) the insurer agrees to pay taxes on the Wisconsin portion of the business on the same basis it would do if authorized to do business in this State. . . . Under Wis. Stat. Sec. 600.01(2), the commissioner may subject such group insurance to the State insurance code, upon making a finding that the foregoing conditions are not satisfied or that circumstances require that the transactions be subject to the code in order to provide adequate protection to Wisconsin insureds and the public.

[99] Appendix D, Ins. 3.39(7), (8) and (9).

[100] See appendix J, State of California Department of Insurance, Decision In the Matter of the Proposed Amendments and Additions to the Regulations of the Insurance Commissioner Relating to Individual Disability Policies Designed to Supplement Medicare at 1–2, 7–8, (March 21, 1978).

[101] See appendix D at 1–2.

[102] Appendix J at 2.

ductibles (other than the initial medicare part A and part B deductibles, which did not need to be covered) and any exceptions inconsistent with medicare's exceptions.[103] Any coverage of medicare deductibles and part B coinsurance had to increase automatically whenever medicare raised those amounts.[104] The only permissible exclusions of coverage of pre-existing conditions were for: (i) conditions treated 12 months before the policy's effective date; or (ii) conditions treated 6 months before or 6 months after the effective date.[105] The regulations did allow policies to supplement part A only or part B only.[106]

The 1978 amendments require all medicare supplement policies to fill some of the gaps in both part A and part B of medicare. Insurers need not cover the initial part A deductible, but they must cover the initial part B deductible for any year in which the insured is hospitalized. All medi-gap policies must pay the part A copayments for the 60th through 90th day and the 60 lifetime reserve days of hospitalization.[107] They need not include benefits for skilled nursing care or home health visits, but the amended disclosure forms provide a space for showing those optional benefits.[108] Policies must reimburse part B coinsurance expenditures up to at least $1,000. Although some part B gap-filling is required, coverage of out-of-hospital medical expenses is not mandatory. Nor are companies required to cover physicians' charges in excess of the amount medicare determines to be reasonable, though they may offer a "catastrophic medicare supplement." (See sec. II.C.2(b) below.)

Some insurance company representatives testified that supplements for part A expenses only were their best sellers and that requiring all policies to supplement both parts A and B would make their policies prohibitively expensive. However, the California regulators noted that medicare covers a lesser percentage of medical expenses than hospital expenses and concluded that there is a greater need for supplementation of part B than part A. The final version of the minimum standards reflects their view that some mandatory part B coverage would not necessarily result in excessively high premiums, because insurers may omit expensive coverage of the initial hospital deductible if they choose.[109]

Public witnesses called for a ban on pre-existing conditions clauses on the ground that Medicare does not exclude such conditions from coverage, while industry representatives voiced concerns about adverse selection which would drive up premiums.[110] The department noted that many policies had 6-month pre-X clauses and adopted an amendment permitting only a 6-month waiting period before covering conditions treated 6 months before the policy's effective date.[111]

The department also raised its minimum "benchmark" loss ratio for medicare supplement policies to 55 percent, based on a finding that people over 65 properly constitute a separate class for the purpose of considering reasonable loss ratios, because many of them live on low fixed incomes. The department rejected the proposal that insurers be required to furnish loss experience data for California only, since some policies with small premium volumes in the state might have widely varying loss ratios from year to year.[112]

The amended regulations also require separate identification of medicare supplement policies in reporting loss experience.[113]

(b) HOSPITAL INDEMNITY POLICIES

The 1972 standards set general standards for hospital indemnity policies issued to people eligible for medicare, relating to pre-X clauses and waiting periods.[114] The 1978 amendments increased the minimum daily benefit from $10 to $15.[115]

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[103] Appendix G, Calif. Admin. Code, Title 10, Ch. 5, Art. 5, Secs. 2220.30 (b) and (c).
[104] Appendix G, Sec. 2220.30(f).
[105] Appendix G, Sec. 2220.30(a).
[106] Appendix G, Sec. 2220.30.
[107] Appendix J, exhibit, item 2, amended secs. 2220.30(a), (b) and (c).
[108] Appendix J at 6–7.
[109] Appendix J at 5.
[110] *Id.*
[111] Appendix J, exhibit, item 2, amended Sec. 2220.30(d).
[112] Appendix J at 8.
[113] Appendix J, Exhibit, item 4, amendment to Sec. 2222.12.
[114] Appendix G, Sec. 2220.29.
[115] Appendix J, Exhibit, item 1, amended Sec. 2220.29(a).

(c) DREAD DISEASE POLICIES

California's regulations set special minimum standards for dread disease insurance, although there are no requirements specially applicable to dread disease policies sold to the medicare-eligible. They establish a minimum benefit ceiling of $10,000 or alternative piecemeal minimum benefit ceilings for cancer only policies.[116]

2. Standardization through Labeling: Three Descriptive Categories

(a) THREE UNGRADED CLASSES

Although there was considerable public testimony at the hearings in favor of a grading system for supplemental policies, the California department explicitly rejected the Wisconsin model for two reasons. First, they felt that "there is such a vast range of possible supplemental benefits to medicare that it would be difficult to consider them all properly in a comprehensive grading system." [117] Furthermore, they believed that a provision of the California insurance code prohibiting the commissioner from prescribing policy forms presented a legal barrier to the creation of a grading system for different levels of coverage.[118]

The final 1978 rules set up three kinds of medicare supplement policies, each with its own special mandatory disclosure form. (See sec. II.C.3 below.) They are: (i) in-hospital expenses only; (ii) in-and-out-of-hospital expenses; and (iii) catastrophic medicare supplement coverage.[119] Apparently the department did not consider the possibility that permitting insurers to limit their coverage to treatment in a hospital (as they may do in category (i)) might not be desirable where the same treatment could be provided at a lower cost on an outpatient basis. There is no mention of this subject in the opinion accompanying the new regulations.

(b) CATASTROPHIC MEDICARE SUPPLEMENT COVERAGE

The department noted the great demand for a supplemental policy which would provide complete coverage, but rejected the idea as unworkable because premiums would be too high.[120] The department believed that in California, medicare beneficiaries bear a greater share of physicians' charges than elderly people in the rest of the country, because fees are higher and part B carriers' reasonable charge reductions are greater.[121] To address this problem, the 1978 regulations include guidelines for a new type of catastrophic medicare supplement coverage, to be administered like a major medical plan. Upon receiving a claim, the insurance company would reach its own reasonable charge determination using its own "UCR" data, just as it would for claims under any major medical plan. Then it would subtract any amounts paid to the insured by medicare and the amount of the "corridor" deductible, which could be up to $1,000. The minimum lifetime benefit ceiling would have to be at least $25,000.[122]

A catastrophic medicare supplement would only be required to cover those reasonable expenses incurred "in the treatment of conditions covered in whole or in part by medicare." [123] Such a policy would not have to pay any benefits for the kind of health care expenses medicare would never cover, such as out-of-hospital prescription drugs, eyeglasses or routine physicals.

As the department admits, it has no authority to require any insurer to offer catastrophic medicare supplement coverage. Nothing in the earlier version of the regulations would have prevented an insurer from offering such a policy if it had wished to do so. The department has expressed the hope that some companies will now begin to offer catastrophic medi-gap policies on an indi-

[116] Appendix G, sec. 2220.24. The recent revisions did not modify the minimum standards for dread disease policies.
[117] Appendix J at 5.
[118] Calif. Ins. Code Sec. 10291.5(g); see appendix J at 6.
[119] Appendix J, exhibit, item 8, amendments to sec. 2540.5(k).
[120] Appendix J at 6.
[121] Telephone interview with Deputy Insurance Commissioner Peter Groom, February 14, 1978.
[122] Appendix J at 6 and exhibit, item 2, amended sec. 2220.30(h).
[123] *Id.*

vidual basis, since apparently some group medicare supplement coverage is now written in a similar manner.[124]

At present policies which supplement medicare part B will pay the coinsurance percentage of the amount medicare determines to be reasonable. The fact that medicare (through its part B carriers) performs part of the claims adjustment process by making the determination of reasonableness first reduces claims adjustment expenses. Requiring duplication of part of the claims adjustment function by the catastrophic medicare supplement insurer might be inefficient.

A representative of the department has also recognized that even if insurers do offer catastrophic medicare supplements, it would be extremely difficult to enforce their obligation to make their own reasonableness determination instead of using medicare's reasonable charge determination.[125] Even if insurers did make an independent decision using their own UCR data, there is no guarantee that the result would differ from the present system or that policyholders would have to pay a small share of provider charges. Medicare part B carriers usually deny charges above the 75th percentile of the customary charge (of all physicians' charges in the area); private insurers generally allow claims up to the 90th percentile.[126] However, for procedures which are not commonly performed, insurers have little data about usual or customary charges and tend to reimburse the same amount that medicare would.

3. Disclosure

(a) PROTOTYPE STANDARD SUPPLEMENTAL DISCLOSURE FORMS

California's Health Insurance Disclosure Act of 1974 established mandatory one- or two-page diclosure forms for different types of disability insurance, included in appendix H. The state legislature declared that "[t]he availability of certain minimum information relative to the benefits, limitations and costs of health insurance coverages in a standard, readily comparable form would assist consumers in making the best choices among such insurance coverages commensurate with their respective incomes." [127]

The regulations promulgated established mandatory "prototype standard supplemental disclosure forms" for use with each kind of health or disability insurance policy.[128] Each disclosure form briefly describes the policy type, the specific benefits available, exceptions and limitations, conditions of renewability and premium.

The original 1974 regulations included disclosure forms for hospital indemnity policies and specified disease policies.[129] Amendments which became effective in February 1976 added mandatory disclosure forms for use with medicare supplement policies.[130] These forms had only been in use for less than a year when the first hearings on medicare supplement insurance were held. At the hearings several witnesses did state that the forms appeared to be working well.[131] The regulations were amended to provide separate disclosure forms for the three classes of medicare supplement coverage: in-hospital, in-and-out-of-hospital and catastrophic.[132] Each form must include the prescribed sentence about each medicare gap, whether or not the policy fills it. The 1978 versions include a section for disclosure of any skilled nursing facility copayment benefit, but it may be omitted entirely if the policy does not cover any SNF care at all.

(b) NEED FOR DIRECT COMMUNICATION BETWEEN INSURER AND INSUREDS

Last September, the California Insurance Department proposed requiring insurance companies to send their policyholders a "followup form" along with new policies. The followup questionnaire was intended to permit insurance

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[124] *Id.*
[125] Telephone conversation with Deputy Insurance Commissioner Peter Groom, *supra* note 121.
[126] See testimony of Michael Pertschuk, Chairman, Federal Trade Commission, Before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives 7, 8 (March 21, 1978) (discussing Blue Shield plans' choice of UCR as a payment mechanism and its effect on prices charged by physicians).
[127] Appendix H, title 10, Ch. 5, Sec. 2540.1.
[128] Appendix H, sec. 2540.3.
[129] Appendix H, secs. 2540.5(e) and (i).
[130] Appendix H, sec. 2540.5(k).
[131] Appendix J at 3.
[132] Appendix J. exhibit, item 8, amended sec. 2540.5(k).

companies to set up a direct line of communication with their policyholders and to monitor the selling activities of agents. Insurers would have been required to summarize the coverage provisions, to ask about replacement and the agent who sold the policy, and to extend an offer of rescission to dissatisfied buyers.[133]

The department eliminated the followup inquiry from the final 1978 amendments because of unfavorable testimony at the hearings. Industry representatives objected that the response rate of policyholders to written communications is always low (usually below 50 percent), that the followup form would overlap with their required disclosure form and confuse insureds, and that insurers were not given any guidance about what to do with the information they would collect.[134] The department therefore rejected the idea of a mandatory followup form, but recognized that purchasers of medicare supplement policies need to be able to bypass agents and contact their insurance companies directly. To that end the 1978 amendments require that the standard disclosure forms give the name, address and telephone number of the insurer's representative or general agent (other than the agent who sold the policy). The insurer must specify a toll-free 800 number unless its representative is located in California.

In addition, the new regulations impose the duty on insurers to set up affirmative procedures to ensure that the required disclosure forms are delivered. Acceptable procedures include attaching them to policies issued in the field, requiring return of copies signed by prospective purchasers or requiring return of separate signed acknowledgments of receipt in cases where the prospect sends the application directly to the insurer. Insurers are free to develop other reasonable procedures.[135]

(c) READABILITY

The department's general objective was to make the required disclosure forms complete yet short and readable. Complaints about complex and incomprehensible medi-gap policies were also a matter of concern. The opinion accompanying the 1978 regulations concluded: "Complicated design will always be a problem with medicare supplement policies because of the complexity of medicare, but it is obvious that insurers have made little effort to simplify the text of such policies." [136] Although the California commissioner lacks statutory authority to set readability standards for policies by rule, he does require that Flesch Readability Test scores accompany all new submissions of individual health policies and riders, in the hope that this requirement will at least call insurers' attention to the problem. One company has submitted for approval an easy-to-read in-and-out-of-hospital medicare supplement policy. According to Flesch test scoring, it would be understood by the 90 percent of the U.S. population who have attained a sixth grade reading level.

4. Scope

Unlike Wisconsin's Ins. 3.39, the California regulations apply to all individual health insurance policies issued to the elderly.[137] In addition to policies issued to individuals over 65, they govern conversion contracts by which some employees may convert their employment group coverage to individual policies when they retire. (Although the premiums are often much higher, conversion permits people to keep the same level of benefits and avoid exclusions or waiting periods for pre-existing conditions.)[138] However, the California department's disclosure requirements and minimum standards do not seem to apply to out-of-State mail order group health insurance policies. The department does not believe that it could make those regulations applicable to group mail order or other group insurers where the master policy is issued in another jurisdic-

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[133] Appendix I, proposed art. 8 (medicare supplement followup form), secs. 2192 and 2192.1-2192.5.

[134] Appendix J at 3.

[135] Appendix J at 9 and exhibit, item 8, amended sec. 2540.5(k).

[136] Appendix J at 10.

[137] Calif. Admin. Code, title 10, ch. 5, secs. 2219 and 2220.1. The requirement that Standard Supplemental Disclosure Forms be used applies to both individual and group policies, see appendix M, secs. 2540.1 and 2540.2(a), but not group policies not issued in the State of California. See note 139 *infra* and accompanying text.

[138] For the medicare-eligible, there is no duplication between a conversion contract and medicare. By the operation of coordination-of-benefits clauses, the conversion contract would function as a medi-gap policy, paying only those covered expenses which medicare did not cover.

tion. It views this legal constraint as a serious problem because of the inadequacy of some of the products sold by mail to California residents.[139]

A proposed amendment would have warned consumers on the disclosure forms that out-of-state group insurance plans might not be subject to California laws.[140] The department dropped this requirement after witnesses pointed out that it might lead Californians to report complaints about mail order policies to the insurance commissioner of the State where the master policy was delivered.[141] The California regulators apparently decided that their interest in receiving all complaints about insurers doing business in their State outweighed whatever beneficial effect the warning might have had in discouraging the purchase of policies by mail.

Different regulations apply to medi-gap, hospital indemnity and dread disease policies. Under the 1978 regulations, hospital indemnity policies may not be labelled or described as medicare supplements, "it being accepted that this type of policy is not a true medicare supplement coverage." [142] As in Wisconsin, the sale of indemnity and dread disease policies to the elderly may continue, though insurers must deliver the disclosure forms with those kinds of policies.

D. Illinois: Minimum Standards Only

The Illinois legislature has enacted a statute which briefly sets forth minimum standards for health insurance policies which "purport to supplement medicare," effective October 1, 1977.[143] The text of the statute is included as appendix K. All medicare supplement policies delivered in Illinois must cover: The initial part A deductible; the part A copayment for the 60th through 90th days of hospitalization; the part A copayment for 60 lifetime reserve days of hospitalization; the part A copayment for the 21st through 100th days of SNF care; 20 percent of the amount of physicians' charges medicare determines to be reasonable if the insured is a bed patient in a hospital (with a maximum deductible of $200 and a minimum benefit limit of $1,000).

The medicare supplement benefit structure mandated by the Illinois law leaves a great deal to be desired. Apparently the State legislature either failed to consider or rejected the view that it is undesirable to require expensive coverage of the initial part A deductible. In addition, requiring coverage of the 20 percent coinsurance under part B only for in-hospital care might be inappropriate. Third party reimbursement for inpatient services removes incentives to provide cheaper outpatient care for medicare beneficiaries. By its terms, the Illinois statute applies only to policies issued in that State,[144] so it would not cover the sale of policies to Illinois residents by mail order insurers not licensed to do business there. The statute has a loophole for *new* medicare supplement products. The insurance department may approve a policy for sale as a medicare supplement upon a determination that its benefits "when viewed as a whole, actuarially exceed the standards for this section." [145] Actuarial equivalence, of course, will not eliminate and may increase the confusion of older people faced with varying policy provisions. The Illinois department is currently reviewing each medicare supplement policy it already has on file in order to determine whether it conforms to the provisions of the new law.[146]

Illinois did not attempt to address the information problem by statute or regulation by requiring any special written disclosures in connection with the sale of medicare supplement insurance. Other statutory provisions prohibit

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[139] Telephone interview with Deputy Commissioner Peter Groom, note 121 *supra*. Deering's Calif. Ins. Code Ann. Sec. 41 states: "All insurance in this State is governed by the provisions of this code." The Department feels that the laws of the jurisdiction where a policy is issued are controlling. But see Deering's Calif. Ins. Code Ann. Secs. 1620.1 *et seq.* (Unauthorized Insurance False Advertising Process Act), which gives the commissioner and State courts jurisdiction over unauthorized insurers which advertise to State residents in a way which violates the Unfair Trade Practices Act, Deering's Calif. Ins. Code Ann. Secs. 790 *et seq.*

[140] Appendix I, item 6, proposed subch. 3, art. 12, sec. 2536.8(c).

[141] Appendix J at 8–9.

[142] Appendix J at 4.

[143] P.A. 80-435 (1977), new secs. 363 and 363a of the Illinois Ins. Code. (Smith-Hurd Ann. Ch. 73, secs. 975 and 975a).

[144] Appendix K, sec. 363.

[145] Appendix K, sec. 363(b).

[146] Illinois Department of Insurance, summary of regulatory initiatives, June 1977-June 1978 at 13 (paper distributed at the convention of the National Association of Insurance Commissioners, June 12-16, 1978).

certain representations by advertisements or agents in the sale of medicare supplements and "any other health insurance policy sold to individuals eligible for medicare because of age," which would presumably include indemnity and dread disease policies. For instance, they must make it clear that they are not connected with the medicare program and that they are soliciting the purchase of insurance.[147] However, the statute does not prescribe use of any specific language.

Apparently the Illinois department is now in the process of preparing a pamphlet describing the provisions of the new legislation, targeted for distribution to Illinois senior citizens some time during 1978.[148]

E. Oregon: Disclosure Requirement Only

Oregon has a disclosure rule applicable to the "sale of health insurance providing benefits that supplement Federal medicare insurance benefits," but does not prescribe any minimum standards or standardized categories for medicare supplement policies. The disclosure rule and prescribed disclosure forms are reproduced in appendix L. As of March 1, 1977 every agent or insurer must deliver a two-page disclosure form to the insured not later than delivery of a medi-gap policy, fill in the blanks and sign the form.[149]

(1) Two-Page Disclosure Forms

The first page of the form consists of a chart with three columns. The first column lists medicare benefits and the second tells what portion of each medicare will pay. In the third column, headed "Insurance Policy Pays," the insurer or agent is supposed to fill in blanks describing the policy's benefits.

The second page supplies general information about insurance to supplement medicare, including conditions of renewability. Among other things the second page warns prospects that they will still be obligated for the amounts of physicians' charges and other charges for medical services which exceed the level approved by medicare. It also states that if the policy application contains medical questions, it will cover pre-existing conditions from the date of issue, "generally speaking."

Apparently this sentence refers to the situation where the insurer does apply medical underwriting standards to applicants and may deny an application or issue a policy with specific exclusions (sometimes by rider) if it finds that the applicant has pre-existing health problems. This paragraph may be misleading since it creates the impression that an insurance company which asks medical questions will always consent to cover pre-existing conditions when it accepts an application. More often, such companies will have exclusions or waiting periods for pre-existing conditions in their medicare supplement coverage. This paragraph might lead consumers to neglect to question an agent or check the policy on receipt.

On the second page of disclosures, the Oregon Insurance Commissioner also recommends that buyers check with their social security office about benefits not described in the chart and that they buy only one health insurance policy instead of several limited ones. The second page also says that supplemental insurance is "not recommended" for the medicaid-eligible; many would think the wording of this warning should be much stronger.[150]

The form urges consumers to check to make sure that they have the coverage they thought they bought and if not, to return the policy directly to the company (not the agent) within 10 days for a full refund. This last warning is extremely important, though perhaps insufficient. Agents may, but are not required, to furnish the disclosure forms at the time of their initial contact with prospective buyers. It would be quite possible for an agent to induce a person to apply and pay for insurance by means of misrepresentation or fraud.

The disclosure forms would only arrive in the mail later with the insurance policy itself. In order for the buyer to take advantage of the "10-day free look" privilege, she would have to notice the warning buried at the end of two pages of disclosures, read the policy and discover that she had been the victim of a deceptive or misleading sales presentation.

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[147] Appendix K, secs. 363a(2), (3) and (4).
[148] See note 146 *supra*.
[149] Appendix L, Oregon Admin. Rules-Insurance Division, OAR 836-52-110.
[150] See note 51 *supra* and accompanying text.

(2) *Shortcomings*

Oregon's disclosure requirement could serve only (at best) "to adequately inform the prospective insured regarding the insurance transaction," [151] not to standardize or upgrade medicare supplement offerings. It may not even be effective in forcing the provision of sufficient information to prevent Oregon's senior citizens from wasting the money they spend in supplemental insurance premiums.

In May 1976, a coalition of senior citizens' groups and community organizers petitioned Oregon's Insurance Commissioner for rule-making in the medicare supplement area. At first the insurance department refused to hold a rule-making hearing, but changed its mind after the activists' coalition launched a successful drive for statewide publicity of their cause.[152] At the hearing held in September 1976, one insurance industry representative actually admitted that it seemed "inappropriate to attack any proposal which seeks to better inform prospective insureds about their coverage * * *." [153] However, several did attack the rule, and the final version failed to respond to several of the Oregon senior citizens' concerns.

(1) The rule as proposed in their original petition would have required agents selling or attempting to sell supplemental insurance to inquire whether the prospect was eligible for medicaid. If so, the agent would have had to give her a second form describing the benefits available under the medicaid program.[154] The department dropped this requirement. One insurer commented that the Social Security Administration, not insurance agents, should bear the responsibility for informing the elderly about the benefits available from medicare and medicaid.[155]

(2) The disclosure form does not provide any figures about the average length of stay in Oregon hospitals for people over 65. The petitioners had argued that this information was necessary for old people with low incomes to balance a policy's cost against the likelihood of any payoff.[156]

(3) The regulation does not require that the forms be printed in large type, as many witnesses had asked at the hearing.[157]

(4) The section of the chart on the first page which lists the gaps in medicare coverage of care in a skilled nursing facility is misleading. It tells readers to check whether a nursing home "qualifies for medicare," but does not inform them that medicare will never cover a stay in an intermediate care facility.[158]

(5) The insurance department rejected the petitioners' proposed enforcement provision, which would have granted insureds the remedy of rescission for failure to provide the required disclosure statement. The buyer could have opted for rescission of the policy at any time. Within 15 days of the notice of rescission, the company would have had to return all the premiums paid, whether or not it had paid out any benefits.[159]

(6) Enforcement of the disclosure requirement is all the more problematic because of the Oregon Insurance Department's attitude. The coalition has complained that the department has never published any buyers' guides, either before or after the disclosure rule, or publicized it in any way.[160]

(7) Apparently the rule applies both to group and to individual insurance, but it does not clearly state whether it governs the sale of policies by mail to Oregon residents.[161] Nor does it require the provision of any information along with indemnity, nursing home and dread disease policies sold to the elderly.

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[151] Appendix L, OAR 836-105(2).
[152] See generally Wyden, note 58, *supra,* and Wyden, Oregon Elderly Win Insurance Fight. *Aging* 13-15 (Nov.-Dec. 1977).
[153] Wyden, 9 *Conn. L. Rev.* at 456.
[154] *Id.* at 453.
[155] *Id.* at 457.
[156] *Id.* at 458-459.
[157] *Id.* at 458.
[158] *Id.* at 459-460.
[159] *Id.* at 459.
[160] *Id.* at 452, 460.
[161] *Id.* at 457. The Nationwide Mutual Insurance Company of Columbus, Ohio, assumed in its comments to the Oregon Insurance Commissioner that the disclosure regulation would apply to both individual and group, including conversion, policies. However, it appears that the rule might only govern only policies insured in Oregon, since the agent or insurer is not required to supply the prescribed forms at any time before the delivery of the policy. See appendix L, OAR 836-52-110. Hence it probably would not cover mail order sales to Oregon residents by insurers not licensed in Oregon.

F. New Mexico: Disclosure Requirement Only

New Mexico also requires delivery of a two-page disclosure form with medicare supplement policies. As Superintendent of Insurance Manuel A. Garcia has described, in late 1976 and in 1977, the New Mexico department began to receive a large number of complaints about over-selling and inadequate supplemental products.[102] On November 28, 1977, the department sent out the text of its regulation, which became effective on that date, and the prescribed disclosure form, to all insurance companies writing health and accident insurance in the State of New Mexico. In an accompanying letter, Kenneth P. Moore, then superintendent, warned that both companies and agents who engaged in selling over an individual's needs would be subjected to a hearing. This letter, the regulation and disclosure form appear in appendix M. In his statement Superintendent Garcia described other measures the Department was taking to curb abuses in the sale of medicare supplement insurance, such as warnings in the news media and settlement of individuals' complaints.[103]

The New Mexico disclosure forms are similar to those required in Oregon. The first page consists of a chart with either two or three columns. For inpatient hospital and skilled nursing facility benefits under part A of medicare, the first two columns are headed "Day of Confinement" and "Medicare Now Pays." For part B medical benefits, there is a single column headed "Medicare Now Pays." For both parts A and B the third column is headed "Policy Pays." It consists of blanks which the agent or insurer is supposed to complete.

The summary disclosure form must also contain a description of other benefits, exceptions, reductions and limitations contained in the policy, statements that the policy (not the summary) controls and that medicare benefits are subject to change, and the name and address of the insurer. The regulation does not specifically state that these disclosures are to appear on a second page, but there probably would not be room on the first page with the chart.

Like Oregon, New Mexico does not require any mention of the kinds of health care expenses medicare never covers or the expenses a person would still have to pay even if she bought the policy. Unlike Oregon's, the New Mexico form does not contain any warnings about the purchase of supplemental insurance by people eligible for medicaid or about pre-X clauses.

As in Oregon, agents and insurers are permitted to furnish the mandated disclosures at the time of delivery of the policy.[104] If a purchaser discovers that the policy mailed to her does not conform to the oral promises an agent made when he visited her, she has the burden of returning the policy within the ten day period permitted by law to obtain a refund.

The disclosure regulation applies only to individual medicare supplements, not group policies.[105] It does not affect in any way the sale of hospital indemnity or dread disease policies to people who are eligible for medicare. Since the rule provides that it is applicable only to policies delivered in the State of New Mexico,[106] it does not cover mail order sales to New Mexico residents by unlicensed out-of-State insurers. New Mexico does not have any standard-setting or standardization regulation for medicare supplement insurance.

G. Washington: Disclosure Requirement Only

Like Oregon and New Mexico, Washington requires the provision of certain disclosures to purchasers of medicare supplement policies, without making any attempt to set minimum standards or standardize policy offerings. The text of its medicare supplement disclosure regulation and the three-page disclosure form are included as appendix N. The regulation will go into effect on August 1, 1978, though the insurance commissioner encouraged all those subject to its terms to begin using it when he issued it on April 20, 1978.[107] The disclosure form has a chart with two columns like those in use in the other two

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[102] See memorandum to members of the Senate Special Committee on Aging, from Manual A. Garcia, Jr., superintendent of insurance for the State of New Mexico, Medi-Gap: Private Health Insurance Supplements to Medicare at 1 (June 29, 1978).

[103] *Id.* at 4-5.

[104] Appendix M, Department of Insurance Regulations Governing Accident and Health Insurance Medicare Supplements, art. 11, ch. 58, rule 4, sec. 11-4-4.

[105] *Id.*

[106] Appendix M, sec. 11-4-2.

[107] See Appendix N.

States. The first column shows what medicare pays and the second leaves blanks to show what the policy will pay. But Washington's approach has some significant new aspects. First, the insurance commissioner's suggestions precede the chart. He cautions people about renewability, waiting periods and exclusions for pre-existing conditions, in simple language; he states that "one policy that meets your needs is usually less expensive than several limited policies"; and he advises people not to buy medicare supplement insurance if they are eligible for medicaid. The disclosure form also suggests that people use the information on the form to compare a policy's benefits with any policies they already have. The list of suggestions ends with a reminder about the State's "10-day free look" law, which may be helpful, since Washington (like Oregon and New Mexico) does not require that a prospect see the disclosure form before delivery of the policy.[168]

Second, the chart has several innovations. The section on the medicare part A skilled nursing facility benefit makes it clear that medicare provides no benefits beyond the 100th day of a patient's stay and no benefits for custodial care. Custodial care is defined in simple language as "care which is primarily for the purpose of meeting personal needs which could be provided by a non-professional person."[169] Perhaps these additions will make the common inadequacies in private health insurance coverage more apparent to elderly people concerned about the possibility of having to go into a nursing home, although the disclosure regulation apparently would not apply to nursing home indemnity policies.[170] The disclosure chart also includes a section for "miscellaneous services or benefits," which lists some areas medicare never covers: private duty nursing, outpatient prescription drugs, routine eye and hearing examinations, the first three pints of blood per year. There is an additional question about whether a policy's coverage of deductibles and coinsurance will increase automatically as medicare changes its copayment requirements. Surprisingly, Washington's form is the only one which requires disclosure of the premium amount and whether it rises when the insured reaches a certain age.

The regulation does not impose any requirements on sellers of dread disease and hospital indemnity plans. Although the disclosure form does state that a single policy, presumably a true medicare supplement, may be cheaper than several limited policies, older consumers will not have any opportunity to see how limited indemnity-type coverage is through the use of uniform disclosure forms. Washington's disclosure requirement applies only to individual health insurance policies, not group plans. Thus group mail order insurers would not be governed by it.[171] However, in Washington health maintenance organizations and health care service contractors must supply the disclosure form to prospects who are eligible for medicare, with appropriate modifications in language.[172]

H. Colorado: Disclosure Requirement Only for Replacement or Addition

Colorado's disclosure regulation for medicare supplements has a different objective than those of the other three States with disclosure requirements only. It does not attempt to give consumers a graphic means of comparison of medicare benefits and what a policy will pay. Rather it seeks to warn elderly people on the verge of purchasing a new medicare supplement policy about the dangers of cancelling the coverage they have in force and to inform them about areas of overlapping coverage if they have more than one policy.

Colorado's regulation 76-6 became effective on July 1, 1977; its text appears as appendix O. It differs from other States' disclosure requirements in that it applies to the sale of hospital indemnity insurance to the medicare-eligible as well as policies specifically designed to supplement medicare.[173] It is silent about dread disease policies, however. It applies only to individual policies, not to group plans.[174] Unlike the disclosure requirements in Oregon, New Mexico and Washington, it is specifically applicable to mail order or "direct response" insurers.[175]

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[168] Appendix N, WAC 284-50-455(1).
[169] Appendix N, Disclosure Form, Item 9.
[170] Appendix N, WAC-284-50-450; see also the following paragraph in the text.
[171] Appendix N, WAC 284-50-455(1). It is not clear from the regulation itself whether it is applicable to insurers not licensed to do business in Washington who sell individual medi-gap policies to Washington residents by mail—if such a situation exists.
[172] Appendix N, WAC 284-50-450 and WAC 284-50-455(3).
[173] Appendix O, Colorado rules and regulations, regulation 76-6, sec. III.
[174] *Id.*
[175] Appendix O, sec. IV(c).

An insurer or agent must make the required disclosures upon becoming aware that the sale of a policy would involve replacement or addition; in other words, upon learning that a prospect already has one or more medi-gap or hospital indemnity policies.[176] Application forms must include a question designed to ascertain whether the policy to be issued would be a replacement or an addition.[177] If an agent is making the sale, he must furnish the disclosure notice to the applicant at the time he takes the application. A company soliciting direct response insurance must provide the required disclosures by mail *before* the policy is issued. In either case, a copy must be signed by the insured and the insurer must retain it for 2 years.[178]

These provisions are evidently intended to assure that a person has time to consider the message in the disclosures and to contact her present insurer if she wishes, before a new policy is issued. The requirement that a copy of the notice be signed by the insured and returned to the company is meant to ensure compliance by giving companies a means for monitoring agents' conduct and by creating a written record for enforcement purposes. However, in the case of sales by agents, it is difficult to enforce the requirement that the disclosures be given before the policy is issued. It would be fairly easy for an unscrupulous agent to obtain a prospect's signature on the disclosure notice, without giving her a chance to consider it carefully, at the time he took the application, either by minimizing its importance or presenting it as "just another paper to sign."

The prescribed disclosure notice warns applicants about possible exclusions or waiting periods for pre-existing conditions, less favorable conditions of renewability and the possibility that the cost of a new policy will be higher because of older age at the time of issue. One paragraph cautions applicants that if they do not answer all the questions in the application truthfully and completely, the policy may be void. Perhaps this provision is intended to help buyers assert themselves to prevent agents from "clean-sheeting" them. The form also suggests that it may be advantageous for people considering replacement or addition to contact their present insurer or agent. The last paragraph simply instructs the agent or insurer to compare the applicants' existing medicare and private insurance benefits with those which the new policy would afford and to show any duplication, overlap or deduction because of coordination of benefits.[179] Of course, enforcement of this last requirement would be very difficult. If an insurer or agent failed to give an accurate picture of the extent of duplicate coverage which would result from an additive sale, the insured might not discover it until she filed a claim.

III. POLICY QUESTIONS SURROUNDING REGULATION OF HEALTH INSURANCE FOR THE ELDERLY

A. Need for Federal Involvement

Tradition, and since 1945 the McCarran-Ferguson Act, have left regulation of the business of insurance largely to the States. Yet there are several reasons why it may be appropriate for the Federal Government to take on a major role in the formulation and even the implementation of public policy with respect to insurance to supplement medicare.

1. Problem Created by Federal Program

The Federal medicare program created the medicare supplement market. At least one State insurance commissioner and members of the public have expressed the view that the Federal Government should step in and regulate the medicare supplement market.[180]

2. Need for Uniformity

Consumers and insurance companies would benefit from a uniform nationwide approach to regulation of supplemental insurance. If each State used a different system for standardizing medicare supplement policies, buyers' confu-

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[176] For the definitions of the terms "replacement" and "addition", see appendix O, secs. IV(a) and (b).
[177] Appendix O, sec. V.
[178] Appendix O, sec. VI.
[179] Appendix O, sec. VII.
[180] See Testimony by Wisconsin Insurance Commissioner Harold R. Wilde. U.S. Senate Special Committee on Aging, Hearing on "Medi-Gap" Insurance at 11-12 (May 16, 1978).

sion would continue. Many people move from one State to another at the time they retire, or afterwards. A uniform approach to standardization would reduce opportunities for "twisting" and "stacking" by ensuring that these people would not have to confront a different way of categorizing medi-gap policies.

Some insurers now subject to conflicting State regulations might not object to uniform requirements. At present a company could not simultaneously comply with the disclosure regulations of Wisconsin, California, Oregon, New Mexico, Washington, and Colorado by using a single form. In some instances a company could not sell the same policy as a supplement to medicare in Wisconsin, California, and Illinois. Continuing variation in State standardization regulations would carry the danger that insurers might have to market different supplemental policies in every State, at obvious increased cost.

3. Prototype for National Health Insurance (NHI)

The medicare supplement market provides an opportunity to study and plan for the supplemental market which will develop under national health insurance. It now seems likely that any national health insurance plan to be adopted in the near future will involve some form of cost-sharing by patients. The private sector would then develop policies to fill various NHI gaps. Problems in that market would affect the entire population, not just people over 65.

The benefit structure of national health insurance could be planned to minimize the potential for the kinds of confusion and misinformation which have grown up in the medi-gap market. In addition, any regulatory initiatives which proved successful in solving the competition and consumer protection problems in the medicare supplement market could be adapted for use in the NHI supplement area.

4. Mail Order Group Supplemental Policies: A Possible Gap in State Regulation

A substantial number of medicare supplement and indemnity plans are sold to the elderly by mail. It is common for a direct response or mail order insurance company to be licensed in only one State and send its advertisements and solicitations to residents of other States. When an applicant responds, the company issues a policy in the State where it is licensed and sends it to the insured.

It now appears that State insurance departments are experiencing some difficulties in regulating the sale of group policies to supplement medicare by an unlicensed out-of-State mail order insurer.[181] Some medicare supplement

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[181] Whether or not the States could subject unauthorized mail order insurers to regulations specifically governing medicare supplement insurance is a complicated legal question beyond the scope of this report. The answer might well be different for each State, for each insurance company and for each situation. The point is that some companies do appear to be going unregulated because the States with medicare supplement regulations do not apply them to unlicensed group mail order insurers. At present, it seems that a State can generally enforce its unfair trade practices act, including the prohibition of false or misleading advertising, against an insurance company not licensed to do business there which advertises to its residents. See generally Hanson and Obenberger, Mail Order Insurers: A Case Study in the ability of the States to Regulate the Insurance Business, 50 *Marquette L. Rev.* 175 (1966). In *FTC* v. *Travelers Health Asso.*, 362 U.S. 293 (1960), an insurance company licensed only in Nebraska sent out allegedly deceptive advertisements to the residents of States where it had neither offices nor agents. The Supreme Court held that the FTC had jurisdiction over such false advertising practices, despite the McCarran Act, because Nebraska could not regulate the insurer's extraterritorial activities. In order for regulation to displace the FTC act, it must be "regulation by the State in which the deception is practiced and has its impact." 362 U.S. at 721. On remand, the Eighth Circuit found that the States whose residents received the advertising could not regulate the unfair practices effectively, because they could not constitutionally enforce a judgment against the mail order insurer which had no property within their boundaries. *Travelers Health Asso.* v. *FTC* 298 F. 2d 820 (8th Cir. 1962). After the *Travelers Health* decision, all States adopted the NAIC's model Unauthorized Insurers Process Act, which permits State commissioners to proceed against unauthorized mail order insurers for false advertising in violation of the State's unfair trade practices act. However, the FTC would still have jurisdiction, where the same constitutional infirmity of State regulation existed as in the *Travelers Health* case, or, logically, if the State where the advertising had its impact could not regulate effectively for some other reason. See Hanson and Obenberger, 50 *Marq. L. Rev.* at 200-211. Also, group insurance may be exempt from State jurisdiction where the master policy is lawfully issued and delivered in a State in which the insurer is authorized to do business. See, e.g. Md. Code Art. 48A, Sec. 203(b)(6). The above discussion of advertising says nothing about a State's ability to regulate an unauthorized mail order insurer's activity which does not violate the State's unfair practices act.

regulations govern only individual policies.[182] Some, by their terms, apply only to policies issued in the State, and thus exempt many individual as well as group policies sold by mail.[183] None of the States' standardization measures applies to unlicensed group mail order insurers. Policies can be a source of confusion for the elderly if they are not subject to their States' regulation.[184] Federal involvement could ensure that all policies sold to supplement medicare are subject to regulation.

B. Scope of Governmental Action

Should regulatory initiatives address true medicare supplement or medi-gap policies only, all health insurance policies sold to the elderly, or all individual health insurance policies?

On the basis of the following analysis, it seems best to consider all health insurance problems of the elderly as an integral unit, in order to attempt to eliminate the purchase of unnecessary duplicate coverage by people in that age group. It is important to note, though, that any remedy applicable only to medicare supplement insurance or even to all health insurance policies sold to the elderly would not address the fundamental problems experienced by older people in obtaining and paying for health care. Specifically, no such regulation would affect the situation of the near-poor and middle-income elderly who are ineligible for medicaid but cannot afford private insurance.

1. Alternative 1: Medigap Policies Only

It would be easier to devise a standardization/disclosure system for policies which supplement only the more obvious gaps in medicare (deductibles, coinsurance and perhaps some catastrophic expenses) than for all health insurance policies sold to the elderly. Some form of regulation could be implemented quickly and evaluation of its effectiveness would provide guidance in expanding it to other health insurance policies.

However, any initiative limited to medi-gap policies would exempt the dread disease, hospital indemnity, nursing home and other piecemeal policies commonly sold to people over 65. Agents could easily continue to sell overlapping coverage. Furthermore, such a limited approach would not address the problem of health care expenses, such as nursing home expenses, which neither medicare nor medicare supplement policies cover. It might even increase the potential for duplication in coverage, since dishonest agents could point to the narrow scope of regulated medi-gap policies as a reason for buying additional supplemental coverage.

2. Alternative 2: All health insurance sold to people over 65

Considering all health insurance policies sold to the elderly as a discrete problem area would permit regulators to address in a meaningful way the problems of duplicate coverage and lack of consumer information.

On the other hand, dread disease and hospital indemnity policies are sold to people of all ages. Their benefit structure is not designed around the medicare program. Minimum standards might have to be made applicable to all such policies in order to be sure of reaching all insurance sold to the elderly. In contrast, the applicability of disclosure regulations could be made to depend on a mandatory inquiry about the prospect's eligibility for medicare. For instance, agents might have to ask people about medicare eligibility, and companies might have to ascertain the ages of addressees of direct mail appeals.

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[182] Washington's medicare supplement disclosure regulation applies only to individual policies. See note 171 *supra* and accompanying text. Colorado's rule covers replacements of and additions to individual mail order policies, but not group. See note 175 and accompanying text. Wisconsin's standardization regulation, Ins. 3.39, applies only to coverage on an individual basis. See note 98 *supra* and accompanying text.

[183] The Illinois statute and the New Mexico disclosure regulation apply only to policies issued or delivered in those States. See notes 144 and 166 *supra* and accompanying text. In Oregon it is not clear whether the disclosure rule would apply to an unlicensed mail order medi-gap insurer. See note 161 and accompanying text. In California, the department of insurance cannot apply its standards, standardization or disclosure regulations of medicare supplement policies to unlicensed group insurers where the master policy is issued in another jurisdiction.

[184] Commissioner Wilde testified that confusion is already occurring in Wisconsin because AARP's group policies have not been subject to the medicare supplement rule. See testimony, note 180 *supra*, at 12.

3. Alternative 3: All individual health insurance policies

A uniform set of minimum standards and/or disclosure requirements for policies sold to people of all ages would be useful to all insurance purchasers. A system which would carry over after retirement would aid in pre-retirement planning.

However, it would take much longer to devise a regulatory scheme for all health insurance. Complications introduced by the medicare program might even make a uniform approach impossible. The accepted categories of health coverage such as basic hospital expenses, major medical, etc., lose their meaning when medicare's benefit structure is superimposed on them.

C. Important Policy Questions

1. Adequacy v. Simplicity of Information

The need to provide complete information about medicare and supplemental coverage may conflict with the need for simplicity and brevity in order to make sure that information is assimilated. At the point where it becomes inefficient (or even impossible) to give older people comprehensive information about coverage alternatives, efforts should be redirected to standardization to make the market's offerings understandable. It is important to evaluate the options in this area in terms of their effectiveness in getting information across to consumers.

2. Standardization v. Availability of Coverages

Insurance industry representatives insist that they should be left free to offer an unlimited variety of coverages to respond to different personal needs and income levels. But it may be undesirable to permit endless proliferation of products. Standardization or limitation of medicare supplement coverages may be necessary in order to further price competition between comparable policies.

3. "Good" v. "Bad" Medicare Supplement Coverage

Should regulation attempt to distinguish between the two?

(a) "dollar trading"

It is questionable whether medicare supplement policies should be required—or even permitted—to cover the initial deductibles. Consumers pay much more for coverage for the initial deductibles than for insurance covering catastrophic medical expenses which could mean financial disasters. The currently prevalent type of "shallow" health insurance which covers initial expenses but not very large medical bills has been criticized as affording only inadequate coverage while inducing substantial cost inflation.[185]

Since medicare beneficiaries have a very high chance of incurring the modest part A and part B initial deductibles, they may not be appropriate expenses for insurance coverage. Processing a high volume of small claims results in high claims expense ratios. The California Department of Insurance, among others, calls such coverage "dollar-trading," "since it amounts to the insured and the insurer merely exchanging dollars with one another to cover a type of loss which most insureds will incur with considerable regularity." The department estimates that in California annual premiums average about one third of the $144 part A deductible and one-half the $60 part B deductible.[186] On the other hand, first-dollar coverage seems to impart a sense of psychological security to which many people attribute great value. Some people may continue to use first-dollar coverage as a kind of prepayment mechanism for health care, as long as the premium does not exceed the deductible they would have to pay.[187] Informational issues are involved as well. People may not realize that not all medi-gap policies cover the initial deductibles. They may not understand the advantages of self-insurance for relatively small sums and for risks which are almost certain to occur.

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[185] See, e.g. Feldstein, A New Approach to National Health Insurance, 23 *The Public Interest* 93 (1971).

[186] Appendix J at 4-5.

[187] Deductibles may prevent some people from obtaining needed care; see note 190 *infra* and accompanying text.

(b) IMPACT ON HEALTH CARE COSTS

Is it appropriate to take action to promote or require medicare supplement coverage which may remove incentives to keep costs down? In general, requiring copayment clearly reduces utilization of physicians' services,[188] although the effects of deductibles and coinsurance differ.[189] This consideration alone might seem to argue against third-party reimbursement of initial health expenditures, but several factors may complicate the picture. It is possible that decreased utilization simply represents unmet demand for medical care by people with low (but not low enough to qualify for medicaid) incomes.[190] It is also possible that providers make the decisions about whether to provide care, especially the relatively low-cost services represented by the medicare deductibles, and that they deliver some services whether or not an individual patient can afford them.[191] People over 65 may also have less control over initial provider contact than other age groups if a higher percentage of their visits to physicians are due to serious illnesses.

Conversely, promoting competition on benefits among medicare supplement insurers could serve to decrease aggregate health care costs. At present there is often no third-party payment available for less costly health care alternatives.[192] Some policies which supplement part B cover only in-hospital medical services, not less costly outpatient charges, whereas it is possible that complete, first-dollar coverage for people over 65 could result in a shift from inpatient to outpatient care.

The trend is for supplemental insurance to cover hospitalization, perhaps some skilled nursing care, but not home health care. Neither medicare nor medicare supplements cover many routine diagnostic services which could reduce the catastrophic costs of serious but preventable conditions. Encouraging insurers to compete by offering to cover cheaper alternatives might result in beneficial alterations in the health care delivery system.

(c) LONG-TERM CARE

The problems of financing long-term care are far beyond the scope of this paper. The consequences of requiring policies to cover nursing home costs should be briefly noted, though. Mandating those benefits would transfer to insurers (and their policyholders) the long-term care expenses of those elderly who could afford the premiums and incurred nursing home expenses. Since the costs of long-term care are the most rapidly rising component of health care costs and since the phenomenon of adverse selection might well operate, those premiums could quickly become prohibitive.

IV. POLICY OBJECTIVES AND CRITERIA FOR ASSESSING OPTIONS

A. OBJECTIVE: PROMOTE COMPETITION IN THE MARKET FOR HEALTH INSURANCE FOR THE ELDERLY

There is a well-established relationship between availability of information about products and services and the competitiveness of an industry. Therefore any governmental initiative should:

1. Provide Complete Information

Any option should provide people over 65 with sufficient information to make a rational choice about purchasing health insurance in addition to medicare. Prospective purchasers should understand what medicare covers, what kinds of

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[188] Scitovsky and McCall, Coinsurance and the Demand for Physician Services: Four Years Later, *Social Security Bulletin* 19 (May 1977).

[189] See Phelps, Insurance Benefits and their Impact on Health Care Costs, Rand Corporation Paper P-5844 at 6-7 (April 1977). Phelps characterizes a uniform coinsurance rate such as medicare part B's 20 percent coinsurance as "neutral." In contrast, a fixed dollar deductible to be paid by the patient for each visit to a physician might discourage inappropriate recourse to physicians for nonserious conditions, but there would be no incentive not to choose the most expensive doctor, because once the patient has paid the initial deductible "luxurious" care costs her no more.

[190] See generally Hopkins, Roemer, et al., Cost-Sharing and Prior Authorization Effects on Medicaid Services in California, Part I. The Beneficiaries' Reactions, 13 *Medical Care* 582 (July 1975).

[191] *Catastrophic Health Insurance*, note 5 *supra*, at 34 (January 1977).

[192] Cf. Feldstein, note 185 *supra*, at 95. The same problem exists with medicare supplement coverages, as in Illinois, where coverage for in-hospital medical services is required by statute but coverage for the same services entered on an outpatient basis is not.

expenses medicare does not cover, the types of supplemental private insurance available and their cost. Each individual should be aware of factors affecting his or her insurance needs such as possible eligibility for medical assistance. Ideally people should also know about alternatives to the purchase of private insurance to supplement medicare, such as self-insurance and health maintenance organizations.

2. Provide Information in a Usable Form

It is difficult for people of any age to understand the complexities of medicare and supplemental insurance. Explanations must be simple enough so that they do not exceed consumers' capabilities for processing highly technical information. In addition, the information must be presented in a form adapted to the special needs of the elderly, who may have hearing or reading problems or live in isolation.

3. Ensure Access to Information

Because of medicare's complexity and the lack of standardization of supplemental policies, traditional methods, such as printed disclosure forms, may be ineffective in conveying the information necessary to a decision about appropriate coverage to supplement medicare. Search costs involved in obtaining information may be so great that senior citizens simply give up. Any governmental initiative should provide easy access to impartial and complete explanations.

4. Standardize Coverage

Standardization of available coverages may be necessary to make price competition possible, so that consumers can compare similar products. At the same time a regulatory system should permit a sufficient variety of coverages to meet differing individual needs.

5. Eliminate Duplicate Coverage

Any restructuring of the market should aim to reduce the potential for confusion which leads to the purchase of overlapping coverage. No one over 65 should have to pay more than once to supplement the same gap in medicare in an effort to obtain comprehensive coverage.

B. Objective: Correct Failures of the Market for Health Insurance for the Elderly

To improve market function in the areas where competition has broken down, an option should:

1. Assure Reasonable Return

Because consumers cannot obtain the information they need about supplemental insurance, competitive forces will not reward those insurers who provide their policyholders with the best return. All health insurance policies sold to the elderly should pay back a reasonable amount in benefits in relation to premium dollars. One way to assure better value may be to promote coverage only for appropriate insurable events, by discouraging or banning first dollar coverage, "dollar trading," and coverage for "risks" which are almost certain to occur.

2. Minimize Opportunity for Marketing Abuses

State insurance departments have primary responsibility for monitoring the conduct of individual agents. However, any program undertaken should be carefully designed to cut down opportunities for agent misrepresentation. Policy standardization and simplification could make it much more difficult to convince people that they need more or different policies. At the same time consumer education measures could give them the means to question agents more assertively and completely. Regulation should also facilitate, and perhaps require, insurance companies' policing of their agents' conduct.

3. Ensure Prompt and Fair Claims Handling

Policyholders who submit claims should not have to suffer long delays and arbitrary treatment. Decisions about claims should be reached in accordance with ascertainable standards and procedures. Better information will help here

too. If consumers understand what a policy does and does not cover at the time they purchase it, there will be less disputes about coverage at the time they submit claims. A larger problem is that insurance consumers cannot obtain reliable information about a company's claims handling practices before purchasing insurance.

4. Minimize Undesirable Side Effects

Regulation to remedy market failures should avoid undesirable distributional consequences and features which would contribute to the inflation of aggregate health care costs.

C. Objective: Implement Regulation Effectively and Efficiently

Priority should be accorded to alternatives which will be:

1. Politically Feasible

An option should raise relatively few questions about the proper role of government intervention.

2. Easily Enforceable and Inexpensive to Administer

3. Complementary With NHI

A regulatory initiative should be designed for easy adaptation while national health insurance is being phased in and afterwards.

V. PUBLIC POLICY ALTERNATIVES

Governmental action with respect to health insurance for the elderly could take three principal forms: (A) minimum standards, (B) a system of standardization combined with disclosures or labels, or (C) provision of information to consumers. In addition, several novel approaches are possible. The numbers in parenthesis refer to the criteria described in part IV.

A. Minimum Standards

1. Minimum Loss Ratios

Would require that at least a certain percentage of premium dollars be returned in benefits.

Advantages:

Would eliminate low-value policies from the market. (B.1)

Could help to improve quality coverage. (B.1, A.4)

Could induce companies to operate more efficiently. In particular, minimum loss ratios might bring about reform of commission structure and hence reduce agents' incentive to "roll over" their clientele. (B.2)

Relatively easy to implement. The studies and analysis which would be required to determine the appropriate level for an initial minimum loss ratio would not be as time-consuming as evaluating and implementing standardization measures. (C.1)

Disadvantages:

Would necessarily involve prohibiting the sale of some policies and thus some curtailment of choice. (C.1)

Could be expensive to police. Evaluation of anticipated loss ratios reported by companies could be expensive and time-consuming, since such figures may be subject to manipulation. (C.2)

2. Restriction on Exclusions of Preexisting (Pre-X) Conditions

Pre-X clauses could be banned or their provisions could be limited. For example, insurers could be permitted to exclude (i) only conditions which were treated or diagnosed 6 months or a year before the policy's effective date; and/or (ii) only for 6 months or a year after the policy's effective date. Insurers could be required to use a uniform definition of "pre-existing conditions" in policies and in handling claims.

Advantages:

Uniform pre-X clauses would:

Reduce buyers' confusion about coverage at the time of purchase. (A.2)

Help to prevent unjustified denials of coverage, especially by companies which accept all applicants regardless of their medical history ("post-claims underwriting"). (B.1, B.3)

Standardize one aspect of available policies. (A.4)

Provide guidance in planning for the NHI supplement market which is likely to develop with a less than comprehensive NHI system. Pre-X would continue to be a problem under NHI which, like medicare, would cover all previous conditions, whereas supplemental insurers would not wish to do so. (C.3)

Disadvantages:

Requiring coverage of pre-existing conditions could lead to adverse selection. People with health problems would purchase insurance, driving the premiums up. (B.4)

Policies with only very limited pre-X coverage may be the only protection available to high-risk elderly. Any restriction on availability raises political concerns. (C.1)

Detection and case-by-case adjudication of arbitrary denials of claims would be costly. (C.2)

3. Requirement That Medigap Policies Supplement Both Parts A and B

Advantages:

Would reduce confusion by increasing standardization. (A.2, A.4)

Would reduce potential for duplicate coverage and "loading up." Agents would not be able to persuade people they needed one policy to fill part A gaps, one for part B gaps, etc. (A.5, B.2)

Disadvantages:

If all medi-gap policies were required to cover both part A and part B initial deductibles, then increased dollar-trading might make coverage more expensive.[103]

Coverage of both deductibles might result in unnecessary health expenditures. (B.4)

4. Minimum Dollar Limits

Medi-gap policies would have to pay benefits to supplement medicare up to at least a certain amount. Wisconsin's rule is structured this way, e.g., a medicare supplement must pay at least $7,500 to supplement part B, or $22,500 to supplement both.

Hospital indemnity policies could be required to pay a minimum daily benefit which would represent a certain percentage of average daily hospital costs.

Advantages:

Setting high minimum limits for medi-gap policies increases coverage of catastrophic losses, which should result in only a small increase in premiums. (A.1)

Minimum benefits for hospital indemnity insurance would result in higher premiums and discourage its purchase by the medicare-eligible, who do not need it in order to meet medical expenses as they arise. (A.5)

Disadvantages:

Emphasis on limits does not give consumers any information about the need for catastrophic coverage or likelihood of incurring expenses above the dollar ceiling. (A.1)

A system for rating policies which relies on minimum dollar limits may not differentiate categories sufficiently to bring about standardization, since only a small percentage of claims involve high dollar amounts. (A.4)

The concept of a minimum maximum is inherently confusing. (A.2)

Hospital indemnity insurers would object that their policies are not meant to provide basic hospital coverage, but to supplement it. (C.1)

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[103] The requirement could be structured to eliminate mandatory coverage of the deductibles. However, many people would expect governmental intervention to assure "full" (i.e., first dollar) coverage.

5. Mandated Benefits

Any policy which covered a certain kind of care would also have to cover the same care rendered in a less expensive manner. For example, a policy which supplemented part B might have to reimburse outpatient as well as inpatient expenditures. Insurers could also be required to pay for the services of home health aides, nurse practitioners, etc.

Advantages:

Could help to reduce aggregate health care costs and reform health care delivery systems, to the extent that less costly services are substitutable for more expensive care. (B.4)

Might reduce consumer confusion about policies which "cover everything medicare doesn't." (A.1)

Disadvantages:

Open to criticism as unjustifiable interference with insurance industry decisions about risk and reimbursement and an attempt to accomplish aims which should be the object of a comprehensive government health policy. (C.1)

B. STANDARDIZATION/DISCLOSURE

1. Prohibition of references to indemnity, nursing home, dread disease and other limited policies as Medicare supplements

Advantages:

Would eliminate opportunities for misleading consumers in advertising and sales presentations. (A.1, B.2)

Noncontroversial; the idea that limited policies are not medicare supplements is widely accepted. (C.1)

Disadvantages:

Difficulty of policing oral representation by agents, whose presence can weaken the force of written statements or printed disclosures. (A.3, B.2)

Possibility that agents could use requirement to sell duplicate coverage. They could emphasize the difference between medi-gap and other kinds of policies to persuade individuals that they need more than one. (A.5)

2. Descriptive Categories (California Model)

Labels or captions on policies would reflect the nature or scope of the supplemental coverage without rating or comparing them. California provides for three categories: in-hospital only, in- and out-of hospital and catastrophic. Other possibilities are part A only and part B only.

Advantages:

Descriptive labels do not imply a governmental judgment that one policy is better than another. (C.1)

It would be easy to modify California's system to make clear the difference between true medicare supplement policies on one hand and indemnity or limited policies on the other, using additional capsule descriptions. (A.1, A.5)

Disadvantages:

Descriptive labels do not give specific information about which gaps in medicare are covered; they may be so vague as to be useless. (A.1)

They allow too much variation within each category, so prospective buyers cannot make meaningful price comparisons. (A.4)

They permit the sale of duplicate coverage to continue, unless the categories are carefully structured so that no one may include any element of another. (A.5)

Permitting in-hospital coverage only may cause distortion and increase health care costs. (B.4)

3. Benefit Levels (Wisconsin Model)

Wisconsin has established four benefit levels for medicare supplement policies, with mandated benefits and minimum dollar limits for each. Policies bear the numbers 1 through 4.

Advantages:

The labels "1" through "4" are easy to understand and use; they facilitate price comparisons within each category. (A.2)

The lowest level sets a floor for medi-gap coverage; policies which do not even meet the standards for the lowest category cannot represent themselves as medicare supplements. (The system could be modified to ban the sale of non-conforming policies if insurers proved able to circumvent such a provision.) Thus policies with very limited benefits can be eliminated from the market. (B.1)

Since the benefit levels are cumulative, they should reduce purchases of duplicate medicare coverage (A.5)

Disadvantages:

This model does not address the problem of indemnity and limited policies. (A.1) Even with knowledge of a policy's rating, a consumer could still purchase one of those policies which would overlap completely or partially with her medi-gap coverage. (A.5)

Different minimum limits may not differentiate categories enough to distinguish their value to the buyer. If not, then benefit levels are misleading. (A.4)

4. Unit Pricing

Supplemental insurers could be required to disclose, in a uniform format, the premium cost of filling each gap in medicare. Unit pricing could be combined with any other system of standardization or categorization.

Advantages:

Consumers would be able to see the high cost of insurance for the initial deductibles and the relatively low price of catastrophic coverage. (A.1)

By choosing more economical coverage packages, buyers could reduce their supplemental insurance expenditures. (B.1)

Fragmenting benefits could highlight possible areas of overlap and might reduce the likelihood that agents could "load up" buyers with policies. (A.5, B.2)

Disadvantages:

A unit pricing system could not take into account indemnity and dread disease policies, because it would be impossible to compare service and indemnity benefits in a uniform format. The problem of duplicate coverage would continue (A.5). Indemnity plans with lower premiums but limited benefits might appear to be better buys. (B.1)

Unit medi-gap pricing might well be too complicated for anyone to use. (A.2)

There would be no yardstick to allow consumers to compare the costs of different policies (unless unit pricing were combined with standardization regulation). (A.1)

5. New Method: Cost Index

It may be that neither the California nor the Wisconsin model is effective in bringing about sufficient standardization for price competition to take place. The States' experiences could be analyzed in order to pinpoint each regulations' shortcomings and to devise a new method to permit price comparison: a cost index.

Advantages:

The cost index would provide a more accurate measure of a policy's value than loss ratios, so that consumers could avoid policies with a low rate of return. (B.1)

The index could be comprehensive; it should reflect all factors which determine a policy's value to its holders. (A.1) At present little or no reliable information is available to consumers about:

An insurance company's claims service, especially time required for payment (B.3).

A company's record in handling complaints and denying claims without justification (B.3).

A company's underwriting standards and practices.

The policy's coverage of health care expenses the over-65 age group is most likely to incur.

Purchasers and persons planning for their insurance needs after retirement could use the cost index themselves, without interference from an agent or the need to seek advice from experts. (A.3)

The cost index system could be extended, with appropriate modifications, to insurance to supplement national health insurance. (C.3)

Disadvantages:

The cost index would be helpful only to a buyer who had the opportunity to compare policies. When alone with an individual prospect, an agent could still misrepresent a low index figure as "good" since it would be meaningless in absolute terms. (B.2)

Devising a complete cost index would be an extremely difficult and complex task. Companies have different standards for underwriting risks and settling claims. It might prove impossible to obtain information about some variables. For example, determining the number of unreasonable denials of claims presupposes an adjudication mechanism which does not now exist. (C.2)

It is now impossible to compare medi-gap policies which pay service benefits with indemnity and limited policies. Like term and whole life insurance, they have totally different purposes. If they are widely perceived as meeting different needs, then the opportunity to sell duplicate coverage still exists. (A.5, B.2)

Even among medicare supplement coverages, it might be impossible to estimate and compare the values of different combinations of health benefits, especially given individuals' varying needs. (A.1)

C. Provision of Information

1. Mandatory Written Disclosures

Insurers or agents could be required to present such disclosures as part of a sales talk, with a direct mail solicitation, or with delivery of the policy. Several variations are possible:

(a) Disclosure of loss ratios for medi-gap policies. A prerequisite would be separate reporting of loss experience for medicare supplement policies, which most States do not now require.

(b) Disclosure of loss ratios for all individual health insurance policies sold to the elderly including dread disease and indemnity contracts. They could be combined with a strongly worded warning that purchasing such insurance is like gambling.

(c) A one-page disclosure sheet with general information about benefits, renewability, etc. (California, Oregon's second page, New Mexico's second page, Washington's list of suggestions.)

(d) A one-page disclosure sheet in the form of a chart with columns for medicare benefits, medicare gaps and policy coverage (Oregon's first page, New Mexico's first page, Washington). The prospective purchaser could fill in the blanks in the last column herself, or with the assistance of an agent or an advocate.

(e) A cost index. (See B.4 above)

Advantages:

It is relatively easy to establish and enforce disclosure requirements. (C.2)

Disclosure and a strong cautionary statement are more politically acceptable than a ban on the sale of dread disease and similar policies. (C.1)

Disadvantages:

Written disclosures or warnings are not as forceful as an agent's oral statements. Face to face, an agent can gain a prospects's confidence and discount printed disclosures or persuade her to ignore them. (A.2, B.2)

Even on their own, people may not believe that disclosure statements have any importance for them; they seem to be especially indifferent to loss ratio figures. (A.2)

Brief disclosure messages are necessarily incomplete. They do not include some of the facts which would be necessary for a truly rational decision, such as risk information or disclosures about the "unfillable" gaps in both medicare and supplemental coverage. (A.1)

Loss ratios tell nothing about the particular benefits afforded by each policy and very little about a company's claims performance or underwriting practices. (See V.C. 2(b) below.)

If insurers are permitted to make mandatory disclosures at the time of delivery of the policy, the purchaser will have the burden of returning a policy for a refund within a short time (usually 10 days) if she discovers it does not cover what she thought it did. Perhaps some such errors could be prevented by requiring disclosures at an earlier point in time. (A.2, B.2)

2. Consumer Education Measures

Possible initiatives include:

(a) A buyer's guide with complete information about medicare and medicaid, supplemental coverage and the standardization/labeling system in use. Wisconsin's booklet *Health Insurance Advice for Senior Citizens* is an example.

(b) Providing, or requiring insurers to provide, information which is not now furnished. People cannot judge their need for an insurance product unless they have some perception of the risk involved. Some kinds of helpful information are:

Company ratings on the basis of complaints per premium dollar, percentage of claims denied, time for paying claims and complaint resolution record.

Risk information: hospital costs per day, length of stay, frequency of physician visits, etc., for the over 65 age group.

More education about medicare, especially expenses neither medicare nor private insurance will cover: physicians' excess charges, most stays in nursing homes which are not medicare-certified, custodial care.

Medical assistance benefits and eligibility requirements.

Provider information: whether a physician ever accepts assignment, physicians' average and median charges for certain procedures. (Medicare collects and must disclose customary charge data by provider name).

(c) Exploration of non-traditional avenues for increasing consumer awareness, such as the use of television and radio spots and videotapes for use in nutrition and other sites which receive government funds.

(d) One-in-one insurance counseling, integrated with pre-retirement financial counseling.

Each consumer education option has fairly obvious advantages and drawbacks. The first step in this area should be determining what information consumers use or would like to have before making a medicare supplement purchase decision. The next would be evaluation of each option's effectiveness in getting that information across to the people who need it and in narrowing the gap between the coverage they expect and the coverage they actually get. For example, individuals can study buyer's guides on their own, but their length may make them useless in the face of high-pressure sales tactics. Their success might depend on wide dissemination for reading before contacts with agents or advertising. Some initiatives would be very expensive. Placing on insurers the costs of collecting and communicating information about everything except policy coverage raises additional political questions.

Counseling in particular deserves more attention, although it would evidently require a sizeable commitment of resources to training, establishing and maintaining a network of counselors. Counseling may be the best way to assure that the information provided is actually used. It may be the only way to counter agents' oral presentations and provide an alternative to industry expertise.

D. Other Initiatives

There are a number of other approaches, some untried, to solving part or all of the medicare supplement insurance problem. This paper will list several of them but analyze only the last one, federally sponsored medicare supplement insurance.

1. Regulation of Advertising

State or Federal regulators could commence proceedings and increase enforcement of existing advertising standards. Advertising by mail order insurers would seem to warrant special scrutiny because it employs scare tactics and other misleading techniques and because, for the most part, it escapes regulation by State insurance departments.

2. Company-Customer Contact

Various suggestions have been made to establish direct contact between the insurance company and the insured, in order to permit the company to police the behavior of the agents who sell its policies. These include: A requirement that each company's promotional materials, advertisements and outlines of coverage give a toll-free number the customer can call for more information; a followup questionnaire about agent practices; a reaffirmation requirement which would effectively prevent sale of a policy on the first contact and give the buyer time to reflect. In order for a policy to become effective, the buyer

would have to reaffirm her wish to purchase it after a certain amount of time has elapsed.

3. Company Responsibility for Agent Conduct

State commissioners and others believe that insurance companies must take on a more active role in monitoring the activities of their agents to prevent abuses. Companies could set up procedures to detect overselling and twisting. They could also set up a reporting network among themselves, so that it would not be easy for an agent to find employment with another company after he had been terminated by one for misconduct.

4. Agents' Fiduciary Duty

Statute or common law could establish the principle that an agent has a fiduciary duty to sell only the insurance suited to each individual's needs. As a fiduciary an agent could not sell duplicate coverage or coverage inappropriate for the buyer's income level—which would necessitate some inquiries about a buyer's particular situation. Imposition of a fiduciary duty could be combined with a self-enforcing mechanism such as voidability at the buyer's option or a private right of action, perhaps coupled with provisions to facilitate access to legal services and promote its use, such as attorney's fees and treble or punitive damages.

5. Claims Handling Requirements

Insurance companies could be required to pay claims within a certain time limit or give a written statement of reasons for denials. Provisions for attorneys' fees and generous damages awards could be added to facilitate private enforcement and challenges to arbitrary refusals to pay claims. An alternative dispute resolution mechanism might be helpful.

6. Federal Government Sponsorship of Optional Medicare Supplement Insurance

Many elderly people now believe that medicare supplement insurance is approved or sold by the Federal Government, perhaps because of widespread fraudulent marketing practices. In any event, the proposal merits thorough evaluation of feasibility and costs for various design options.

One way to fill medi-gaps would be to extend medicare coverage, analysis of which is beyond the scope of this paper. The Federal Government's medicare supplement insurance would differ from mere expansion of the existing medicare program in that there would be less subsidization. Of course, it could be optional, like part B. The degree to which the government's medi-gap policy could be priced to risk would have to be the subject of intensive study. The extent to which it should be would of course be controversial. The underlying policy question is simply whether all of society should bear the costs of health care associated with aging.

Some possible advantages of a federal government medicare supplement insurance program are:

Ability to provide coverage only for the kinds of risks appropriate for insurance, such as the costs of major illnesses. There is no reason why private insurers could not offer such supplemental coverage, but few now do.

Ability to fill the gaps which neither medicare nor supplemental insurance now covers, such as prescription drugs, medical appliances and even excess provider charges, perhaps through partial subsidies. Such a policy would meet more of older people's expectations for complete coverage, but the objective obviously conflicts to some extent with the preceding one.

Cost advantages. Some medicare supplement insurers do not deny coverage to poor health risks. Although some have open enrollment periods and some do not do any medical underwriting at all, many of these companies have better loss ratios, perhaps because they usually have more policyholders. Similarly, the Federal Government could spread the risk over a very large group. Other economies are available to the government: use of the existing social security network of offices and employees with knowledge about medicare for sale of policies and handling claims, partial integration of claims processing with medicare, etc.

Better consumer information. Explanations of medicare and supplemental

insurance could be combined and given at the time or before a person becomes eligible for medicare, perhaps through retirement counseling.

Sale by social security employees would eliminate incentives for deceptive marketing and reduce opportunities for fraud by agents selling private insurance.

Opportunity to obtain valuable information for use in planning benefit structure and setting up the administration of national health insurance.

Possible disadvantages are:

Criticism by insurance industry and others who would object that the Federal Government has no business acting as an insurer.

Even if the program were voluntary, any move to curtail first dollar coverage or increase copayments would meet great resistance from the medicare-eligible and perhaps discourage many from participating in the program.

High cost, both in premiums and in inflation of health care costs, if the government's policy were to attempt to fill some of the gaps which are currently unfillable—especially long-term care. As noted above, this paper cannot attempt to answer the difficult policy questions involved in financing long stays in nursing homes.

VI. POLICY RECOMMENDATIONS

The recommendations which follow are of a general policy nature, based on the foregoing analysis of the market for private health insurance to supplement medicare. They represent only the opinions of the writers of this paper, not those of the Federal Trade Commission.

A. Impact Evaluation

An impact evaluation should be conducted to determine the effectiveness of existing State regulations of insurance sold to supplement medicare.

1. Purpose

The purpose of the impact evaluation would be to provide the information needed to prepare a recommendation for a uniform approach to the regulation of this supplemental market. Its end products would be a report for Congress, State regulators, and other policymakers, and the public.

2. Scope

The study should consider all health insurance policies sold to the elderly as a unit. In accordance with the analysis in section III., any initiatives should attempt to address problems arising from all the types of policies sold to the over-65 age groups, not only those which fill specific gaps in medicaid. Unnecessary duplication of coverage is often due to overlapping policies which are not true medicare supplements.

3. Objectives

The central inquiry of the impact evaluation should be to determine how elderly consumers can get the best coverage possible for each dollar they spend to supplement medicare—coverage which meets their needs and their expectations.

(a) initial groundwork

Considerable groundwork would be necessary in order to narrow the focus of the project. First, basic facts about the supplemental insurance industry, even total premium volume, are presently unavailable. More data should be gathered about this industry: a survey of the number and kinds of coverages available, premium and sales volume, benefits paid and loss experience. The project could also look into companies' complaint records and ascertain whether they make efforts to control or check on agents' activities to prevent overselling and other abuses.

Another initial stage could be a pilot consumer survey of elderly people who had recently purchased insurance to supplement medicare. Individual interviews could be conducted to determine the extent and nature of duplicate and overlapping coverage, whether the coverage they purchased met their expectations and whether those policies or others actually did serve to fill the gaps in medicare. Questions could also be asked about policyholders' experience with delay in settling claims, denial of claims which they felt were unjustified and

denials on the grounds of pre-existing conditions. Interviews could also include questions about how buyers obtained and used information before buying insurance and about marketing techniques they encountered.

Analysis of the results of two such preliminary projects would help to design a full-scale evaluation of the effectiveness of each State's regulatory approach. Careful design would be essential, in order for such a complex undertaking to be manageable.

(b) SUBJECTS OF INVESTIGATION

The impact evaluation should yield data about the ability of a standardization approach to bring down price competition among medicare supplement insurers. The impact evaluation should devote particular attention to determining the effectiveness of:

Minimum loss ratios (V.A.1.);

Uniform exclusions of pre-existing conditions (V.A.2.);

Various means of differentiating categories of coverage for consumers, such as minimum dollar limits (V.A.4. and V.B.3.);

The effectiveness of labels, numerical ratings or disclosure sheets in helping older people to compare policies (V.B.2., V.B.3 and V.C.1.).

The report resulting from the study should make recommendations about traditional forms of disclosure such as buyer's guides and mandatory disclosure sheets only if the impact evaluation shows that:

Consumers need kinds of information they cannot readily obtain now. (V.C.2(b)) If there are widespread misunderstandings about certain aspects of medicare, such a physicians' charges, the report could make recommendations as to how the Social Security Administration could help to correct them.

Consumers may not be able to use written information about this extraordinarily complex subject. If it is not possible to reach people with the printed word, then the report could consider alternatives, such as televised consumer education (V.C.2)

The final report could also include recommendations about consumer protection measures which seemed appropriate in light of the results of the study. These topics might include:

Arguments for banning or limiting the sale of dread disease and other indemnity policies;

Methods of curbing agent misconduct in selling policies;

The need for and costs of individualized health insurance counseling for the elderly; and

Possible imposition of claims handling requirements.

Demand for a possible optional medicare supplement insurance program sponsored by the federal government.

B. JOINT HEW/NAIC/FTC PROJECT

If possible, the impact evaluation should involve joint participation by HEW, the NAIC, and the FTC. On June 29, FTC Commissioner Dole testified to the Senate Special Committee on Aging that the FTC would welcome the opportunity to work with the NAIC and HEW in such an undertaking.

1. HEW

HEW staff could make a valuable contribution to the project because of their knowledge about medicare and its provisions. They could pinpoint areas of consumer misunderstanding and ignorance about Medicare, and therefore about supplemental coverage as well. The Department is taking an interest in supplemental insurance issues. Recently the Health Care Financing Administration published a request for proposals to study the purchase of supplemental insurance by medicaid recipients.[194]

[194] See 43 *Fed. Reg.* 15594 (April 13, 1978). One of the priority areas for health financing research and demonstration grants was "analysis of the extent of private health insurance coverage for medicaid eligibles." As a cost control measure, State agencies administering the medicaid program are required by law to try to recover payments from any third-party insurance held by medicaid recipients. Medicaid is supposed to be the payor of last resort, so medicaid agencies are directed to recover any third-party payments for medical expenses which a recipient receives or has the right to receive. These payments could be workers' compensation or family group coverage on another family member. Or they could be medicare supplement, indemnity and other policies sold to the elderly poor and disabled. State agencies would therefore collect information about policies held by medicaid recipients or applicants who are also eligible for medicare, but not about policies held by those elderly who are neither poor nor disabled.

Medicare supplement insurance also raises important policy questions about the supplemental insurance market which would be developed under any system of national health insurance with less than comprehensive coverage. HEW might wish to participate in and use the results of the medicare supplement impact evaluation to plan for NHI. Consumer confusion and the other market malfunctions observed in the medicare supplement area could affect a larger segment of the population under NHI, particularly if the benefit structure of any NHI system adopted is as complicated as medicare's. Moreover, the sale of insurance to cover deductibles and coinsurance might undermine the cost control purpose of copayment provisions (though it might allow beneficiaries to obtain needed care). Since cost-sharing is under serious consideration, planners might want to draw all the lessons they can from study of the medicare supplement experience.

2. The NAIC

On June 12, 1978, the Accident and Health Subcommittee of the NAIC voted to create a task force to investigate regulation of health insurance sold to the elderly and identification of other health insurance products "which do not fulfill the public's interest."[105] The NAIC would bring to the study State insurance commissioners' first-hand experience with insurance regulation and their access to relevant data. Barring new legal developments, the State commissioners will be primarily responsible for the regulation of medicare supplement insurance for some time to come. The NAIC's participation in a joint impact evaluation could provide a model for Federal-State cooperation and technical assistance to State regulators in the insurance area.

3. FTC

The need for a uniform approach to medicare supplement insurance and the widespread feeling that the Federal Government should cope with the problems the medicare program has caused point to an increased Federal role. FTC has an important contribution to make. The staff of the Bureaus of Economics and the Bureau of Consumer Protection have experience in evaluating the impact of proposed and present regulations, devising disclosure and standardization measures and determining the effectiveness of various means of conveying information to consumers. These are the skills necessary to address the complex issues raised by medicare supplement insurance.

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[105] Statement of the National Association of Insurance Commissioners, submitted to the Senate Special Committee on Aging at a hearing on Private Health Insurance Supplements to Medicare, by Joseph C. Mike, insurance commissioner of the State of Connecticut and chairman of the NAIC Accident and Health Insurance Subcommittee 1-2 (June 29, 1978).

Appendix 2

STATEMENT OF MILT SMEDSRUD, PRESIDENT, COMMUNICATING FOR AGRICULTURE, FERGUS FALLS, MINN.

Mr. chairman and members of the committee, on behalf of the members of Communicating for Agriculture, I thank you for the privilege and opportunity of presenting this written testimony before you. CA is a relatively young organization that was incorporated in 1972 under the Non-Profit Corporation Act in Minnesota. The organization, now active in 44 Midwestern, Southeastern, and Rocky Mountain States, consists of members roughly 40 percent of whom are farmers and 60 percent of whom are small town agri-business people, such as bankers, lawyers, independent implement dealers, grocers, etc.

Our purpose is to promote the health, well-being and advancement of people in agriculture and agri-business. This purpose has generated involvement in legislation to protect the family farm, overcome inequities in social security and reform estate tax laws. We also provide scholarships for young people who are interested in pursuing careers in agriculture and agri-business.

In the area of health care delivery, CA supports initiatives to encourage physicians to practice in rural areas and promotes better utilization of rural hospital bedspace. In order to assure that people get the quality health insurance they seek, CA has become involved in promoting comprehensive health insurance laws in Minnesota, Wisconsin, Georgia, South Dakota, Iowa, and Missouri. While I am presently devoting all of my time to responsibilities with CA, I have a background in health insurance that spans more than 20 years.

During the last 20 years, we have seen the cost of medical care increase dramatically, far outpacing the rate of inflation. In 1956, Americans were spending about 15 million dollars annually to cover their health care needs. At present, we are spending eight times that amount.[1] In the last decade, the average annual medical expense per family has risen from $830 per family to $2,200.[2] On the average, it is estimated an elderly person spends $1,360 per year or three times as much as the rest of the adult population.[3]

To help cover the increasing costs of vital health care services, Americans have by-in-large turned to private health insurance. It is estimated that 90 percent of the American people have health insurance of some kind. Insurance companies have attempted to meet a vital need, and by-in-large they have succeeded. Their success is most evident in the quality group insurance plans offered to employees of large corporations, public institutions, and Federal and State governments.

The farmer, people in small business, and the self-employed cannot be assured that the health insurance policies they hold are similarly comprehensive or of low cost. In short, that is why an agricultural organization has become involved in the issue of comprehensive health insurance. CA has advocated a systematic expansion of health insurance opportunities for people in need.

CA believes that a most prominent need rests in the inability of people with preexisting health conditions to obtain comprehensive coverage in the private sector. CA lobbied to help establish a "pool" in Minnesota, where people who had been previously uninsurable would have an opportunity to gain coverage. The pool, operated and funded by an association of insurers and self-insurers, experienced a minimal deficit during its first year of operation. A total of $261 for every $1 million of health insurance premiums was assessed associa-

[1] Expenditures in 1975 totaled $118.5 billion. Data is from the Office of Research and Statistics of the Social Security Administration.

[2] "Current History," July-August 1977, p. 17. K. Leffler, "National Health Insurance: A Social Placebo?"

[3] "Medi-gap: Private Health Insurance Supplements to Medicare," Federal Trade Commissioner Elizabeth Hanford Dole. June, 1978, p. 1.

tion members (Minnesota had $500 million of health insurance premium). An effective, yet relatively inexpensive means to provide health care coverage for people with preexisting medical conditions appears to have been accomplished without massive government intervention.

Soaring health care costs have also created a great deal of anxiety for senior citizens, especially those who live on fixed incomes. It is estimated that medicare pays for an average of 38 percent of the medical expenses of senior citizens. But $418 of an annual medical bill of $1,360 is not adequate for most. Large numbers of senior citizens have turned to private insurance companies to fill the gap. The result has been that 63 percent of senior citizens have purchased coverage for physician services.[4]

Some of the policies are very good and provide an effective supplement to medicare. The record of the insurance industry, however, has been tarnished by some companies which take an exorbitantly large portion of premium payments for commissions, and fail to instill in their agents an honest commitment to client service.

In some cases 60 to 75 percent of first-year premiums have been allocated for commissions. A mere 25 to 40 cents per dollar has been retained for client benefits.

In one case, 100 percent of the first-year premium was allocated for commission. How can it be done that a company can allocate so much of its premium income and leave so little for client benefits? Inordinate commissions have been made possible by the sale of policies which do not pay benefits in relationship to their high cost. At present, an individual has no way of knowing how much the company keeps to pay salesman, administrative costs, and profits. CA believes that the people should know so that the loss ratio on all insurance claims can be limited to at least 65 to 70 percent.

Differing medicare supplement policies have been designed to provide different ways to fill the gaps in medicare coverage. The advent of indemnity and dreaded disease plans, many of dubious quality, has added further confusion to the already unnecessarily complicated medicare benefit structure. The result has been that senior citizens are not able to evaluate the nature and completeness of the policies which they purchase.

When these elements of confusion are coupled with a salesman who is not committed to honest client service, the results are tragic. This committee has been provided testimony regarding a Wisconsin woman who was sold over 17 policies amounting to over $4,000 of annual premium payments, and of a California senior citizen who purchased health and life insurance policies with contractual obligations of $9,158.61, or roughly 68 percent of the individual's annual income.

These examples indicate the extreme to which abuse of medicare supplement insurance can be taken. The message is clear, we must provide help for senior citizens so they can understand the kinds of services which medicare covers and can be assured of the quality and completeness of medicare supplements. In order to provide this committee with first-person testimony from people with whom CA is involved, a hearing of senior citizens was conducted at a meeting in Elbow Lake, Minn.

CA was invited to attend a seven-county organizational meeting of the Minnesota Federation of Seniors. Approximately 90 senior citizens attended the meeting. In order to gain needed consumer input, CA asked a number of questions regarding individuals involvement with and understanding of medicare and medicare supplement insurance.

In total, 53 percent of the people surveyed indicated that they did not have a very clear understanding of the health care costs for which medicare will pay, while 35 percent indicated that they were somewhat clear. Only 12 percent of the people surveyed suggested that they had a clear understanding of the health care costs for which medicare will pay.

The lack of understanding about the benefits of medicare was reflected in the answers of people when asked "what percentage of your medical costs will medicare reimburse?" Over 70 percent of those responding estimated that medicare would pay between 62 percent and 75 percent of their health care costs. The remainder of the people surveyed did not know or did not answer.

While CA's survey results cannot be viewed as precise statistical indicators, these prominent trends are important in understanding the difficulties senior citizens have with medicare and supplement insurance.

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[4] "Medi-gap—Private Health Insurance Supplement to Medicare," Senator Lawton Chiles, May 1978.

Confusion and misunderstanding about the benefits of medicare is an important factor in the susceptibility of senior citizens to the purchase of medicare supplements of poor quality. Clarification of medicare benefits and education for senior citizens regarding those benefits is necessary. It is interesting to note the comment of one man who suggested that seeking information about medicare from the social security office was intimidating because of "aloof bureaucrats who act as if you are interrupting them from something more important."

When questioned about their understanding of the coverage provided under medicare supplement insurance policies, confusion and lack of understanding was equally evident. Consistent with national estimates, the survey indicated that slightly more than 63 percent of these senior citizens held private insurance policies to supplement medicare. Roughly 20 percent had purchased more than one policy, and they attributed it to dissatisfaction with the insurance company with which they had previously held policies.

There were no reports of insurance agents misrepresenting the policies which they offered by suggesting they were government sponsored or recommended by the insurance commissioner. Several individuals did indicate that insurance agents had told them a statement of one's medical history was not necessary when applying for medicare supplement insurance.

Despite the lack of apparent widespread fraud, people expressed a great deal of anxiety about medicare and supplement insurance. Roughly one-third of the people surveyed questioned why medicare could not pay more and if medicare could be simplified.

Considerable dissatisfaction with the supplement policies which individuals held at present was expressed. Complaints included: (1) The frequency of restrictive riders for preexisting medical conditions, (2) limitations on coverage after 160 days of hospitalization, (3) nursing home coverage limited to just a few approved nursing homes, (4) the high cost of supplement insurance.

A senior citizen from a small west central Minnesota community also complained about the refusal of medicare to pay for treatment of an ear problem which she was having. The doctor in her community did not believe he had the needed expertise, and referred her to a specialist about 60 miles away. Medicare, suggesting that a specialist was not required for treatment, refused to reimburse the expenses.

The rural doctor recognized his limitations and sought proper care. A more highly trained urban doctor may not have needed to make the referral. Because of this, an individual in need was penalized. The example illustrates an instance where guidelines and health planning did not recognize the legitimate differences between the practice of medicine in a rural setting and that of an urban area.

In general, the high cost of medical care was frequently cited by people with whom we spoke. Bruno Aijala, State president of the federation, suggested that young doctors have demonstrated a greater tendency to comply with medicare guidelines for "reasonable and necessary charges." With medical costs inflating and the price of supplements growing out of reach, a more general compliance with medicare cost guidelines needs to be encouraged.

In January 1977, the Minnesota Comprehensive Health Insurance Act was enacted (the plan will be discussed in some detail later). The law prescribes a qualified medicare supplement which must be outlined to all prospective clients by insurance agents. From the testimony of people with whom we spoke, it did not appear that the nature and implications of the law are being clearly explained by all agents.

One man, very well versed in insurance costs and coverage, indicated that an agent had not told him about the qualified medicare supplement saying, "Perhaps he thought I already knew about it." Clearly, a more aggressive advocacy in behalf of clients by the divisions of insurance in our State governments is needed. The client orientation which CA advocated is best represented by Wisconsin's insurance commissioner, Harold Wilde, who fined an agent who had not provided required informational material to a client. With aggressiveness of this kind, laws designed to protect people will not go unheeded.

The problems associated with medicare are not restricted to people over 65 years of age. A 55-year-old Georgia man recently contacted CA seeking advice. His persistent heart tremor had necessitated release from work. The termination of his employment also resulted in the cancellation of the group health insurance policy which had been offered by his employer. The conversion policy offered by the insurance company provided extremely limited coverage.

Medicare would be available after the 2-year waiting period. As the situation now stands, this man will not have an opportunity for health insurance coverage of any kind during the next 2 years. The example illustrates a medigap for which no supplement is available. Even after gaining medicare coverage, preexisting medical conditions are likely to prevent obtaining needed supplemental coverage.

An even greater difficulty confronts a disabled homemaker who has not paid into social security. If one's spouse, who was several years older than the homemaker, retired, a group health insurance policy which covered both would be terminated. While the spouse would be eligible for medicare, the more youthful homemaker would have to seek coverage in the private sector. Again, preexisting medical conditions and poor conversion policies would prevent obtaining the needed coverage.

The plight of a disabled homemaker could be longstanding. Because one had not paid into social security, eligibility for medicare would not be possible. Both of the examples illustrate a need for legislation which makes it necessary for insurers to provide conversion policies of comparable coverage to individuals who have been under group health care plans of that insurance company.

With the passage of the Comprehensive Health Insurance Act in Minnesota, a requirement of comparable conversion policies was made into law. CA believes that the tenets of the Minnesota Comprehensive Health Insurance Act provide the substance for change so that senior citizens and all Americans can be assured of quality health care coverage. The law requires that all companies selling health insurance or medicare supplement in Minnesota offer a qualified plan to residents.

To be qualified, a plan must provide $250,000 of major medical coverage, with a choice of three deductibles and a maximum loss of $3,000. Qualified medicare supplements must provide $100,000 of major medical coverage, 50 percent coinsurance on the original deductibles, and a maximum loss of $1,000. A qualified plan would include coverage for all doctor and hospital fees, outpatient drugs, nursing home care, routine physical examinations, durable medical equipment, and dental care.

People may elect to purchase a level of coverage which is less than the benefits of a qualified plan. That fact may make it necessary to outline minimum standards for policies on a number of levels, so that people are best able to purchase the amount of coverage they need and can afford. A plan similar to Wisconsin's supplement guidelines can help to assure people that the policies they purchase are worth the money, though the policy may not include first dollar coverage on all medi-gaps.

Other prominent features of the law include a requirement that insurance companies state the percentage of the premiums which will be paid out in claims and offer conversion policies of comparable coverage. As mentioned, an insurance pool where people with preexisting medical conditions can obtain coverage has been created. Qualified health insurance plans and medicare supplements are outlined. And, the law requires that hospital care cost reports be filed with the State for review by the health department and the commissioner of insurance.

CA believes that with steps of this kind and a stronger client orientation by the insurance divisions of our State governments, insurance companies will be forced to provide adequate coverage. The act is strong enough to protect the public from companies who issue extremely limited policies or use excessive portions of premium payments to cover administrative costs, yet fair enough that legitimate insurers will have no trouble operating within the confines of the law. I am enclosing a copy of the law for your review.

When seeking solutions for the problems of medicare and medicare supplement insurance, CA believes that it is important to bear in mind the original intent of the law. Allow me to quote the testimony which Federal Trade Commissioner Elizabeth Hanford Dole has cited. "The medicare program was never designed to provide complete coverage. Instead, it was meant to serve as a base on which people could build by means of private health insurance plans." [5]

CA believes that legislation enacted on the State level, similar to the Comprehensive Health Insurance Act of Minnesota, can serve to provide the as-

[5] Loc. cit., p. 1, footnote.

surances that senior citizens need when purchasing supplement insurance, without a massive government intervention. In developing our position on health insurance issues CA has been guided by a philosophy aptly stated by a Sioux Falls, S. Dak., retired elementary school principal whose wife could not qualify for insurance. "I do not believe that we should have socialized medicine, but I do believe that the government should legislate so every person is eligible for a private plan * * * any help you could give would be appreciated. I am not asking for free insurance for my wife, I am just asking for an opportunity to carry insurance on her."

CA advocates an expansion of health insurance opportunities, and laws which assure people that the insurance they purchase is sound. We believe that the emphasis of these initiatives should rest in state governments and the private sector.

By serving to gather and refine available information, and by providing technical expertise to State governments, the Federal Government can act as a valuable facilitator of needed change. If CA can be of continued assistance, please contact us. Thank you very much.

MEDI-GAP: PRIVATE HEALTH INSURANCE SUPPLEMENTS TO MEDICARE

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 1—WASHINGTON, D.C.

MAY 16, 1978

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Part 1. Washington, D.C., May 16, 1978.
Part 2. Washington, D.C., June 29, 1978.

CONTENTS

Page

Opening statement by Senator Lawton Chiles, presiding 1
Statement by Senator Pete V. Domenici 27
Statement by Senator John Glenn 28

CHRONOLOGICAL LIST OF WITNESSES

Lowry, Robert E., Raleigh, N.C. 30
Klowden, Jules L., volunteer insurance counselor, Senior Citizens Service Center, San Diego, Calif 46
Grubbs, William E., associate legal counsel and director of government relations, Bankers Life & Casualty Co., Chicago, Ill.; accompanied by Duane Chapman, administrative vice president; Russell Van Kampen, marketing vice president; and Michael Dressendorfer, associate 53
Wilde, Harold R., Madison, Wis., commissioner of insurance, State of Wisconsin 75
Cooper, W. W., Tallahassee, Fla., administrator, health insurance section, Office of Florida Insurance Commissioner 85

APPENDIXES

Appendix 1. Additional material submitted by Robert E. Lowry:
Item 1. Further comments of Robert E. Lowry 95
Item 2. Exchange of correspondence between Robert Lowry, the North Carolina commissioner of insurance, and Bankers Life & Casualty Co., Chicago, Ill 96
Appendix 2. Additional material submitted by Harold R. Wilde:
Item 1. Booklet entitled, "Health Insurance Advice for Senior Citizens," prepared by the Office of the Commissioner of Insurance, State of Wisconsin 110
Item 2. "Outline of Coverage" letters required and approved by the Wisconsin insurance commissioner 131
Item 3. Excerpts from public testimony at a hearing of new Wisconsin insurance rules governing sales of medicare supplements, April 20, 1976, before commissioner of insurance, State of Wisconsin 136
Item 4. Examples of misleading mailings and solicitations which misrepresent the relationship between private health insurance plans and the Federal Government; submitted by Office of Commissioner of Insurance, State of Wisconsin 137
Appendix 3. Additional material submitted by Bankers Life & Casualty Co. of Illinois:
Item 1. Letter from Michael J. Dressendorfer, government relations department, to Kathleen M. Deignan, Senate Special Committee on Aging, dated June 23, 1978 143
Item 2. Agent's contract form 144
Item 3. Career agent's health commission schedule 147
Item 4. Career agent's life commission schedule 149
Item 5. Career agent's group commission schedule 154
Item 6. Field office bulletin 155
Item 7. Medicare supplemental policy forms, outlines of coverage 158

Appendix 4. Statements and letters from individuals and organizations:
Page
Item 1. Statement of Mary M. Bach, staff attorney, Center for Public Representation, Madison, Wis---- 162
Item 2. Statement of Jo Pebworth, benefit specialist, Access for Senior Citizens Project, Center for Public Representation, Madison, Wis-- 162
Item 3. Letter to Richard Audetat, Grant County Commission on Aging, Lancaster, Wis., from Denise Hill, Platteville Municipal Nursing Home, Platteville, Wis., dated May 1, 1978---- 166
Appendix 5. "What You Should Know About Health Insurance When You Retire," publication of Health Insurance Institute, Washington, D.C. 167
Appendix 6. Decision by California Department of Insurance regarding amendments and additions to regulations relating to individual disability policies designed to supplement medicare, dated March 21, 1978-- 183
Appendix 7:
Item 1. "Public Regulation of Private Supplements to Medicare and Medicaid in Oregon," by Ron Wyden, excerpt from Connecticut Law Review, vol. 9, No. 3, Spring 1977---- 195
Item 2. Decision by Oregon Division of Insurance regarding information insurers must disclose to prospective purchasers of health insurance to supplement medicare and medicaid, dated December 21, 1976---- 207

MEDI-GAP: PRIVATE HEALTH INSURANCE SUPPLEMENTS TO MEDICARE

TUESDAY, MAY 16, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 357, Russell Senate Office Building, Hon. Lawton Chiles, presiding.

Present: Senators Chiles, Glenn, and Domenici.

Also present: William E. Oriol, staff director; Kathleen M. Deignan, professional staff member; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; Margaret S. Fayé, minority professional staff member; Alison Case, operations assistant; and Madonna S. Pettit, research assistant.

OPENING STATEMENT BY SENATOR LAWTON CHILES, PRESIDING

Senator CHILES. This hearing of the Senate Special Committee on Aging is a preliminary inquiry into the extent and patterns of purchase of private health insurance supplements to medicare by older Americans.

A number of questions have been raised about such insurance, including suggestions that many older Americans purchase policies of questionable value, multiple policies well in excess of probable need, and policies offering benefits inappropriate to need.

The committee wants to know how pervasive these problems are and what factors may contribute to unnecessary expenditures of precious retirement income.

There is very little information available now. The committee issued a report in 1974 [1] which estimated that older Americans spent over half a billion dollars annually on private health insurance to supplement medicare. We now believe this is a very conservative estimate.

The Social Security Administration reports that almost 63 percent of all Americans over age 65 had some private health insurance coverage for hospital care alone in 1975. Up to 55 percent of all older Americans had some form of private insurance coverage for physician's services. This is a lot of insurance, but only 5 percent of the health care bill for older Americans is paid for by private health coverage.

[1] "Private Health Insurance Supplementary to Medicare," a working paper prepared in December 1974 for the Senate Special Committee on Aging by Gladys Ellenbogen, Ph. D., consultant to the committee.

"Taking Advantage of Fear"

Clearly, older Americans fear health care costs well beyond what medicare will cover. Why else would there be such a large market for supplemental health insurance? And no wonder. When medicare cost-sharing amounts are deducted, medicare pays for only 38 percent of the total health care bill for older Americans.

One need only look at the advertising used in these two examples [1] here to see that this fear is taken advantage of in insurance policy sales to older Americans—whether by mail, through newspaper ads, or door to door by agents who sometimes sell policies from a number of different companies at the same time. These examples, by the way, are the first pages of advertising brochures stuffed in Florida Sunday newspapers.

There also appears to be a lot of confusion about what medicare will and will not pay for. We have heard allegations about individual insurance agents who take advantage of this confusion. Some have even represented themselves as Federal employees of medicare and suggest medicare will cover a lot less than is actually the case. At the same time, false claims may be made about benefits provided by the health insurance they have to sell—all in the interest of a large commission—without due regard for appropriate insurance protection for the elderly consumer.

Largest Gaps Left Uncovered

Ironically, most of the insurance sold to medicare beneficiaries does not cover the real gaps in medicare protection, such as prescription drugs, dental care, or custodial nursing home care. According to the Social Security Administration, only 22 percent of older Americans have private insurance coverage for out-of-hospital prescription drugs; less than 3 percent have any form of dental coverage; and less than 20 percent have any form of coverage for nursing home care. The insurance is sold more often simply to fill in the deductibles and coinsurance charges required in medicare hospitalization and outpatient service plans.

The situation the committee is concerned about is best illustrated, I think, by the following letter received by the Wisconsin Commissioner of Insurance, one of our witnesses this morning. Since an investigation is now in process, the names of the individuals and companies involved have been changed, but I would like to read that letter.

Dear Sir: My name is Jane Doe. I was born April 20, 1891. I seem to buy an awful lot of insurance lately. Since January 8, 1976, I purchased from Company, A, Agent No. 1, four policies for $320. Then on January 6, 1977, Agent No. 1 sold me replacement nursing home insurance with Company B for $330. I don't have the policy for that yet.

On March 17, 1976, Company C sold me nursing home insurance for $342. Then on July 17, 1976, Agent No. 2 sold me a hospital indemnity policy for $600 in Company D. Then Agent No. 2 came back and sold me, in October 1976, two Company B policies for $287.40, indemnity and cancer insurance. I found a receipt signed by Agent No. 2, dated July 26, 1976, for $390.25 from Company B, and I don't even know what that is for.

Then on October 7, 1976, Agent No. 3 was here and wrote me a life policy dated October 19, 1976, from Company E. That is for $1,500 of insurance and it cost me $538.76 a year, and I really don't care to have it.

---

[1] See pages 21–26.

Then on December 9, 1976, Agent No. 4 wrote me a nursing home policy with Company B, again for $140 a year. Then on January 5, 1977, Agent No. 5 wrote me two policies for hospital and nursing home that cost $192 with Company F.

Then on February 9, 1977, Agent No. 6 wrote me hospital and nursing home insurance with Company G for $364. Then the same fellow came back again on February 18, 1977, and wrote me two more policies for cancer and hospital for $222, and I don't have these policies.

I also have Company H and Company I cancer insurance.

There may be some other policies here, but I think I am afraid to look.

I have spent for insurance, since January 1976, about $3,675 (actually, $3,726.41), and I am appealing to you to help me recover as much of this as humanly possible. I really want all my money back and I want to be left alone by these insurance agents.

Most of them don't even tell me what they're selling me and half the time I don't get receipts and they keep coming back every so ofter for more money.

It is your duty to help a poor widow, as the help I'm receiving from other people does not have your authority.

JANE DOE.

P.S. I had someone write this as I have a little arthritis which impairs my handwriting.

In case you didn't catch that, this 87-year-old woman had been sold 19 separate policies from 9 different companies by 6 agents in just over 1 year. She was committed to payments of almost $4,000 a year in premiums for insurance, which, even from the sketchy information provided in this letter, has to be largely worthless to her because of the duplication and overlap in coverage. I also wonder how she became so well known to so many agents in such a short time.

A number of our witnesses today will, I believe, recount similar situations. We hope they will also offer suggestions for ways to prevent this from happening so often.

The committee is not alone in its concern. I would like to insert into the hearing record excerpts from a speech delivered to the Health Insurance Association of America, representing insurers who write 85 percent of the private health insurance in the country, by Mr. Robert A. Beck, chairman of the association and president of the Prudential Insurance Co. of America.

INDUSTRY SHORTCOMINGS

Mr. Beck said that "the few companies" selling medicare supplement policies to the elderly give a bad name to the whole industry. He suggested many medicare supplements have a ratio of benefits to premiums far too low to ever be expected to provide a reasonable return, and he charged the association to recognize certain industry shortcomings and face up to its responsibilities in correcting them.

[The speech referred to follows:]

EXCERPTS FROM A SPEECH BY ROBERT A. BECK, CHICAGO, ILL., MAY 1, 1978[1]

Good morning:

This past year has been a busy and productive one for the association and very rewarding to me personally.

But the pleasure I feel at addressing this 22nd annual group insurance forum is mixed. For today marks the end of my tenure as chairman of the board of the HIAA. It is traditional for the outgoing chairman to review the association's accomplishments over the past year. Let's do that—briefly.

[1] Full text retained in committee files.

At the State level, our actions have helped hold the line on State health insurance plans. At the beginning of 1977, there were four State plans in effect. Although more than a dozen State legislatures introduced bills proposing such plans last year, none was enacted. In another problem area—mandated coverage of maternity benefits—the private insurance industry is seeking to affirm an important decision in New York. Our position—that the legislature may not force amendments of those in-force contracts which cannot be terminated or nonrenewed by the insurer—was upheld on first appeal. We trust that the New York Court of Appeals will affirm this. The court of appeals has heard the arguments and we expect a decision soon. That's the good news. The bad news is that the diversity of mandated state benefits continues to plague us. Each new legislative session brings renewed efforts to impose additional State requirements.

More important, however, than the absence of new State health insurance plans, are the positive accomplishments that have been achieved. At the top of the list is the fact that people now realize that the private health insurance industry has viable and constructive alternatives to State health insurance plans. There is a portfolio of State activities and legislation we support. State prospective hospital budget review is one example—it's effective in five States already and being considered in several more. Peer review programs are another. Effective health planning at the local level is a third. Some 250 insurance industry people are now involved in the health planning agencies, the HSA's and the SHCC's.

In a similar vein, the model group health insurance continuation and conversion bill should be supported.

These measures promote cost containment, quality assurance, and adequacy of coverage, without setting up a State health insurance plan.

On the Federal level, relatively few adverse actions have been taken. The private health insurance industry is a key participant in both the cost containment and the national health insurance debates. Federal legislators and Federal agencies know that we have positive programs to meet society's needs—that we are not just against everything. Our support of a public-private partnership for NHI is embodied in our continuing advocacy of the Burleson-McIntyre National Health Care Act. In the present debate over what form national health insurance should take, we have made our views known in meetings with congressional, HEW and White House staff officials.

But this retrospective look at our recent successes: support of positive programs, effective advocacy of the insurance viewpoint, and increased public awareness of the problems of our business—must not blind us to the concerns we face.

The problems of the HIAA—or challenges, as I prefer to call them—are the results of the times we live in; challenges we experience by our very nature as a large association with diverse membership. They are crucial. If we are to overcome them, we must recognize certain industry shortcomings and face up to our responsibilities in correcting them.

"Some Plans Do Not Provide Good Value"

One of these problems is the sale of plans which do not provide good value—policies whose benefits are unreasonably small in relation to premium. Recently in New Jersey, the commissioner charged 71 companies with the sale of such policies. Unhappily, I have to tell you that Prudential was one of them.

We were cited because the loss ratio on one of the plans we currently sell was below the commissioner's 50 percent loss ratio standard. The plan is a daily hospital indemnity plan which we began selling in 1970. It represents only a very small fraction of our business. We have about 19,000 of these plans in force nationwide and last year the premiums were less than 1 percent of our total individual health care insurance business.

In our response to the commissioner, we explained that our loss ratio on this plan has been steadily increasing as the policies aged and this year we expect the cumulative loss ratio to exceed 59 percent. In retrospect, it is a pity that we did not give a more detailed explanation when we first replied to the commissioner's request for information. I think we could have avoided some criticism which I think was really unwarranted.

I believe that some of the other 71 companies which were criticized can give similar justification for their situations. There are some companies, however—particularly some selling medicare supplement policies to the elderly—where

the ratio of benefits to premiums is really far too low and can never be expected to reach a reasonable figure. These companies can be fairly criticized. Those few companies give a bad name to the whole industry, and I urge them to change their practices.

"INDUSTRY HAS BEEN LAX"

I submit that we have been lax, as an industry, in policing our fellow companies. We can't just sit back and do nothing for fear of antagonizing some of our members. When companies sell plans which are clearly inappropriate or overly expensive, we should criticize them—rather than wait for the public, the press, regulators or legislators to point out our deficiencies.

HIAA has more than 300 members. In an association like ours, we need companies of every size and every type: large and small, Eastern and Western, mutual and stock, because every company has essential talents to offer. The 20 largest companies represent over half of the HIAA dues assessments. On the other hand, the many smaller companies are located in every area of the country. They know local conditions and can keep on top of local situations. It's they who generate our grassroots political clout. We depend on them to tell the private sector story—to be our advocates before State and local governments.

The diversity of our membership sometimes makes it hard for us to unite. It should not. Our diversity—our mix of different companies—gives us strength, flexibility, and the ability to work simultaneously on many levels.

So far I've mentioned two main policy concerns: unfavorable industry publicity resulting from questionable marketing practices, and the association's need for active member companies of all sizes and types.

HIAA policy on State versus Federal regulation of our business is a third area where we need to constantly examine our position. Our stand on this difficult question is somewhat inconsistent. On the one hand, when we approach the question of State or Federal regulation in the abstract, we opt for State regulation. We fear the increasing encroachment of the Federal Government. State officials, we say, are better able to appraise and control affairs according to the uniquely varying local conditions that affect the citizens of their State.

Then too, it's often easier for a company to communicate with its State legislators, regulators, and insurance department officials than with far-off Washington leaders.

But the nonuniformity of the State-by-State approach can cause us serious problems and make us think pleasant thoughts of the virtues of a uniform Federal standard. We recognize that we're going to have Federal and State regulation. Our objective should be to reduce the duplication and make sure that regulation is in the best interest of the consumer.

Senator CHILES. Reporter Herb Jaffee, investigating medi-gap policy sales in New Jersey, has written a series of articles detailing many of the problems faced by the elderly as they purchase health insurance policies. He charges that some policies are designed to deceive and exploit unwary policyholders and that others are relatively useless. And elderly consumers have paid annual premiums ranging into several hundreds of dollars for these policies.

I would like to also enter these articles into the record.

[The articles referred to follow:]

[From the Newark, N.J., Star-Ledger, Feb. 26, 1978]

LAX REGULATION FAILS TO PROTECT BUYERS

(By Herb Jaffe)

More than half a billion dollars a year are paid by Jerseyans for health insurance policies that are neither regulated, carefully scrutinized by the State nor formally approved by the insurance commissioner.

In some cases these policies with their "fine print" and vague disclosures of benefits, sold by agents of commercial insurance companies, are designed to deceive and exploit unwary policyholders.

Instances of relatively useless health insurance policies, for which consumers have paid annual premiums ranging into several hundreds of dollars, have been discovered by the Star-Ledger.

"Realistically, some of these contracts could be covert misrepresentations and distortions of what policyholders were actually promised by their agents," a Federal Trade Commission official stated, concerned by the rise in complaints nationally from victimized consumers.

By deceiving the consumer into buying a more expensive health policy that is less suited to his needs, an unscrupulous agent is better able to enlarge his earnings through sales commissions.

In some cases, the company which employs the agent also is a victim of misrepresentation, having issued the policy on the agent's recommendation.

Information on the extent of such health insuance practices, while still generally scant in New Jersey and elsewhere across the Nation, is starting to reach Congress and the State insurance departments which have been entrusted by Congress with the regulation of insurance.

Studies have found that most insurers "appear to be operating in a reputable manner." However, the lack of State laws that would impose strict regulation by most insurance departments make it impossible to determine how wide the health insurance irregularities extend. With the exception of the nonprofit Blue Cross and Blue Shield plans, which in New Jersey are regulated even more stringently than the property and casualty insurers who sell auto and home-owners coverages, health insurers are almost free to operate at will.

"Health insurance is like the illegitimate child," State insurance department actuary William White commented. "The regulation of health insurance today is about where the regulation of property and casualty insurance was 20 years ago."

Twenty years ago the magnitude of the auto insurance problem was just beginning to become known, and closer State supervison of the regulatory system was unfolding.

But the newly emerging concerns over questionable health insurance practices cannot be attributed to the watchdog responsibilities of the Nation's State insurance departments. Rather, it is due to a growing number of complaints to State and Federal agencies which protect the interests of senior citizens.

"The elderly as a class are the greatest victims of health insurance ripoffs, which occasionally transcend the line into such criminal practices as fraud, forgery and embezzlement," explained Dr. Gladys Ellenbogen, former professor and chairman of the economics department at Montclair State College.

In 1974, Dr. Ellenbogen researched and wrote the most comprehensive report known on the victimization of the elderly in the sale of supplementary medicare insurance. She was commissioned by the U.S. Senate Special Committee on Aging, and in her report she supports a statement attributed to the Florida insurance commissioner:

"Senior citizens are probably the most duped of all the public as far as the accident and health insurance field."

With the establishment by the Federal Government of medicare in 1966 came an accompanying need for supplementary medicare insurance, also known as "medigap," which supplements the medicare deductibles and other areas of health care which medicare does not cover.

As a result, an entirely new element in the health insurance industry emerged, to prey on the fears of the elderly.

A number of smaller insurance companies in particular "have been engaging in some of the most unconscionable abuses imaginable," Wisconsin Insurance Commissioner Harold Wilde stated.

Wisconsin is one of only two States which have enacted strict regulations and harsh penalties aimed at curbing deceptive and fraudulent practices in the sale of medigap coverages.

"Before we began to crack down about 3 years ago, we found that some of these companies and their agents were at best misleading—and at worst criminal," Wilde said.

In New Mexico, where similar regulation will become effective next June 1 to protect the elderly from unscrupulous health insurance practices, Commissioner Kenneth Moore explained:

"People who qualify for medicare have a minimum resistance to a smooth sales talk. We had some bad cases show up of senior citizens who bought medicare supplemental policies on top of medicare supplemental policies—far above what they needed."

Symptomatic of the problem surrounding the lack of regulation in health insurance is the number of complaints registered by insurance departments.

In her report to the U.S. Senate Committee on Aging, Dr. Ellenbogen wrote:

"The major source of complaints from people of all ages, received by the departments of insurance in many of our States, concern health insurance policies.

"Of 17,697 complaints, for example, disposed of by the California Department of Insurance, as reported in its annual report for 1971, there were 8,305, or 47 percent, concerning health insurance policies.

"Some complaints, of course, are justified and some are not. A high proportion of the complaints come from the elderly."

Dr. Ellenbogen told The Star-Ledger she was unable to obtain any information on complaint from the New Jersey Insurance Department.

One reason for the State's inability to maintain accurate annual statistics on the number of complaints is the insurance department's lack of personnel, and particularly the need for a larger investigative staff.

Mrs. Helen Thompson, actuarial assistant to William White in the New Jersey department, explained that she is one of only two investigators for all health and life insurance complaints that are referred to the department.

"For about 6 months of the year we have a third investigator, and we do the best we can under the circumstances," Mrs. Thompson commented.

"We try to follow through with each complaint, but we just don't have the manpower to always do the job that has to be done," Mrs. Thompson added.

A far more serious problem is the fact that most consumers do not know they can lodge complaints with the State insurance department.

A Pennsylvania woman whose hospital and medical bills totaled almost $2,200 didn't realize that the insurance department might have been able to help her after the company refused to pay the claim in 1976.

"We still owe $710 on bills that they wouldn't pay," her husband said. "They said there was a pre-existing condition—but the pre-existing condition was mine, not my wife's," he added.

A pre-existing condition is an illness which the policyholder had before the policy was written. Such a clause in a health insurance policy means that the company has the right to refuse payment of any claim with a deductible time period for any illness arising from the pre-existing condition.

Dr. Ellenbogen explained that "a major source of complaints reported to insurance departments by the elderly is the refusal of their insurance company to pay a claim on the grounds it involves a pre-existing condition."

In her report to the Senate committee she gave a typical example of problems arising from pre-existing condition clauses in health insurance policies:

"Mr. X suffers from arthritis in his knee and has been suffering from arthritis for some time. After the effective date of his insurance policy, an intense arthritic pain in his knee causes him to lose his balance. He falls and breaks his leg.

"With an ironclad pre-existing condition clause, Mr. X's insurance policy would not pay for any hospital or medical costs incurred for his broken leg.

"Because persons 65 and over may have multiple health problems, a pre-existing condition clause, in the extreme form presented in the case of Mr. X, could provide no coverage at all to many aged persons.

"Therefore, the pre-existing condition clause has become a very critical issue in health policies for the elderly."

In the case of the Pennsylvania family, the husband said the company informed him it would not be responsible for her illness because of a pre-existing condition. "But the pre-existing condition pertained to me and not her. Furthermore, my pre-existing condition wasn't even the same as the illness that put her in the hospital.

"That agent of theirs did a hell of a sell job on me. He made me knock out a good policy which I had before," he added.

The man said the company refunded his premium for the policy of $792. "I guess that was a lot cheaper for them than paying the claim."

The practice of agents urging senior citizens to cancel good policies, on the pretext that they have better replacement policies, is one of the most serious abuses. The practice is intended primarily to foster the larger first-year sales commissions for agents, and insurance departments in other States have revoked the licenses of agents for such actions.

Dr. Ellenbogen said in her Senate report:

"Cancellation and sale of a new policy is an unfortunate tactic which has resulted in revocations of agents' licenses. For example, a policy is sold and some months later the insured elderly person is advised by the agent to cancel the policy and purchase a new one. The major advantage for the agent is the commission he receives on selling each policy."

Data filed with the State on the percentage of sales commissions paid out of each premium dollar indicates wide disparities between Intercontinental Life Insurance Co., which is the State's 13th leading health insurer, and the three leading private insurance companies.

According to the 1976 annual statements, which companies must file, Intercontinental collected $9.4 million in total health premiums in the 26 States where the company is licensed. It paid out 45.4 percent of this amount in claims, while 42 cents out of every premium dollar was used to pay sales commissions to agents. Statements for 1977 have not yet been submitted.

Correspondingly, of $1,696 million in premiums on health insurance written by Prudential across the country, 85 percent was used to pay claims and 3.6 percent paid agent commissions. Prudential is the State's largest private health insurer.

The claims percentages are still higher and the sales commissions lower for Travelers Insurance Co. and Aetna Life, the second and third largest private health insurers in New Jersey.

The percentage of claims paid is called the "loss ratio," and Dr. Ellenbogen's report explains:

"A very low loss ratio may indicate a company is disallowing many claims."

Ephraim Weiniger, chief executive officer of Intercontinental, explained the differentials:

"We're basically a young company. We put on new business without much renewal, and we pay a heavy cost to acquire this new business. Our incurred claims are inordinately lower. This relates to our volume of new business."

He attributed the disparities against the top three in commissions and claims percentages to the large volume of group insurance sold by the other companies. Group policies reduce sales commissions drastically, and Intercontinental writes almost no group insurance.

But according to the annual statements filed by all companies with the insurance department, Intercontinental sold $8.6 million in premiums in 1976 for individual health policies. It paid 45.8 percent of this total in claims and 38.9 percent for agent commissions.

By comparison, Prudential, with $232.5 million in individual health policies for 1976, paid 66.5 percent in claims and 12.8 percent in agent commissions. The gap between claims paid and commissions for Travelers and Aetna on individual health policies was even greater than that of Prudential to Intercontinental.

A detailed "Discussion Paper on Administration of National Health Insurance," issued last month by the U.S. Department of Health, Education, and Welfare, explains:

"Commissions for sale of new health insurance policies average about 1 percent of premiums for group business and 25 percent for individual policies."

Reports of agents' commissions found to actually exceed the amount of a policyholder's entire annual premium have come from insurance departments where there is strict regulation.

In Wisconsin, for example, Commissioner Harold Wilde said he found "one company paying commissions of 103 percent on a certain health policy.

"One of our regulations mandates comparisons of premiums to policy benefits. For example, we found Blue Cross was selling a policy for $211 a year. A private insurer was selling a policy that was less comprehensive than the Blue Cross policy for $400 a year.

"The big difference, of course, was the high sales commission the private insurer paid," Wilde explained.

William White, the New Jersey department's health insurance actuary, acknowledged, "Health insurance regulation in New Jersey has been something less than a priority. In fact, until now the chief concern in health premium rates has been Blue Cross and Blue Shield."

Commenting on private health insurance rates and regulations, he added, "The factor after that (concern over Blue Cross and Blue Shield) has been to let the health rates find their own way."

STATE RETAINS BARRIERS AGAINST CANCER POLICIES

(By Herb Jaffe)

New Jersey, which has one of the highest cancer mortality rates in the Nation, is one of only three States which prohibits the sale of insurance against cancer.

Since the late 1940's the State has not permitted the sale of "dread disease" insurance policies, although it will permit such coverage as a rider to basic health policies, State Insurance Department actuary William White explained.

Despite a declaration 2 years ago by the National Health Institute that New Jersey ranks highest in the Nation in bladder, colon and rectal cancers, and is one of the leading States in cancer mortality, the insurance department's position is that "cancer insurance is a scare tactic."

White said the insurance department has been "concerned with the total field of dread diseases insurance since the days when polio was a major dread disease, and our policy against licensing such insurance was formulated sometime in the late 1940's."

Only New York and Connecticut, aside from New Jersey, prohibit cancer insurance as a separate form of health insurance.

"Our department's present position, established in the late 1950's, is that dread disease coverages can be bought as a rider to a conventional health insurance policy," White added.

He explained that the reasoning for permitting the purchase of cancer insurance only as a rider, or an amendment, to a separate health policy "is to avoid the scare tactics."

White equated cancer insurance to a form of "gimmickery," and said "it's like a person with a life insurance policy who buys insurance at the airport every time he flies."

A survey of cancer insurance claimants conducted by Opinion Research Corp. of Princeton last year found that most were favorable to the concept.

[From the Newark, N.J., Star-Ledger, Feb. 27, 1978]

AGENTS TAKE BIG BITE IN COMPANY WHICH BYRNE HELPED FOUND

(By Herb Jaffe)

An insurance company that Gov. Brendan Byrne helped establish and in which he has long held a financial interest is deeply involved in the sale of health insurance. Some of the company's agents have been accused of deceiving policyholders and of misrepresentation in order to increase sales commissions.

The company, Intercontinental Life Insurance Co. of Newark, which State Sen. Martin L. Greenberg (D-Essex) also helped establish and in which he remains an active officer, pays sales commissions to its agents that are almost equal to the amount it pays to all health insurance claimants.

Intercontinental concentrates most of its volume on two types of health insurance markets—senior citizens and "groups."

In the company's dealings with senior citizens, files obtained by The Star-Ledger reveal allegations of signatures forged by agents of Intercontinental on health insurance applications.

Other documents show that company agents dwell heavily on the sale of "group" insurance policies.

But statements filed by the company with the New Jersey Insurance Department show Intercontinental has almost no income from the sale of actual "group" health insurance policies. The "group" policies which the company sells are basically the same policy any individual can buy, for the same price.

Much of the reason for unethnical practices by agents of the company is attributed to the lack of regulatory enforcement over all health insurers, coupled with the inability of the legislature to enact strict laws to administer this segment of the insurance industry.

Due to laxities in New Jersey's regulations of health insurance, Intercontinental has been successful in eliminating types of health insurance policies that might benefit policyholders for long periods.

It has also been permitted to remove health policies if they do not provide the degree of high profits the company requires in order to continue to pay sales commissions that in 1976 averaged 42 cents out of every premium dollar collected.

In the same year, the most recent for which annual statements are filed with the State insurance department, Intercontinental paid health claimants just over 45 cents out of every premium dollar collected.

Ephraim Weiniger, chairman and president of the company, explained in a shareholders report that was contained in the most recent annual report for Intercontinental:

"Intercontinental Life Insurance Co. has improved its profit potential by moving rapidly to reduce its exposure on long-term disability policies; terminating specific marginal policy forms; obtaining premium rate increases on other forms, and placing greater emphasis on the marketing and sale of health insurance policies having a limited exposure and a greater profit potential."

Weiniger does not believe any further restrictions on health insurance practices are needed. "We are quite heavily regulated. New Jersey is one of the toughest States," he said, even though there is no regulatory standard for profits in health insurance.

In the regulation of auto and homeowners insurance, New Jersey is in fact "one of the toughest States." But in health and life insurance, companies for all practical purposes need only file their policies and rates with the State insurance department, then sell their products.

Intercontinental was founded in 1964 by four individuals, including Byrne, who was then a practicing lawyer, and his two law partners at that time.

Byrne told The Star-Ledger that at the time he became Governor he owned "about 100,000 shares of Intercontinental," but that he remembers there was a stock consolidation some years ago.

"The stock is in a blind trust, and I really don't know how much Intercontinental stock I own. I'm not supposed to know. That's the purpose of a blind trust," Byrne said. The blind trust is administered by Byrne's personal attorney, who has the right to deal with these assets while Byrne is Governor.

Intercontinental stock is presently being marketed at $2.37 a share. In 1974, when Byrne became Governor, 100,000 shares represented almost 9 percent of Intercontinental's outstanding stock.

Byrne served as chairman of the board of Intercontinental from 1966 to 1970, during which medicare was established and the company became heavily involved in the sale of supplementary medicare health coverages to senior citizens.

Greenberg, a former law partner of Byrne and chairman of the Senate Judiciary Committee, is presently secretary of the company. Greenberg also is a substantial stockholder and a member of the company's four-member executive committee.

Harold R. Teltser, Byrne's other former law partner, also is a large stockholder and a member of the company's board of directors. He, too, is a cofounder. Lawrence E. Stern, onetime State insurance commissioner and the first president of Intercontinental, is the fourth co-founder.

One illustration of the company's practices involves a woman who insists that a policy she bought from Intercontinental was not the one delivered by her agent.

"I never signed that application. My name was forged," the woman asserted.

The woman explained she bought the health policy for her husband, who died since the incident. "We bought the policy with a 10-day right to return it if it was not what we expected it to be. The agent kept delaying an appointment to explain the policy.

"When he finally came, we told him we didn't want it because it had a $500 deductible, and we were led to believe we were buying a $100 deductible.

"By then our 3-month premium had expired, and he told us not to worry about it, that he would make the correction and apply our first 3-month premium to the second 3 months, since it was his mistake," the woman explained, adding:

"During the second 3 months I went to the hospital for a matter that was to have been covered by the policy. But the company informed me that there was no policy, that I had let it lapse because I didn't pay the premium."

The woman said she could not reach the agent so she contacted the State insurance department. "All they did was give me a run-around."

She explained that she eventually got her money back for the 3-months premiums with the assistance of another agent from another company.

"He told me what to do to get my money back," she said. The woman said of the policy, "I know the agent forged my name. Otherwise Intercontinental would never have issued the policy, and he would have lost his commission after spending so much time with me doing a selling job."

Another elderly couple did in fact have a premium of more than $400 refunded by Intercontinental after the matter was investigated by the insurance department.

In a letter to the insurance department, the woman explained how she bought the health policy. "He also said it would be advisable to drop my husband's policy and he would write my husband a policy which would take over after Blue Cross, Blue Shield and medicare." The letter continues:

"When I wanted to go upstairs and get my husband's signature, he (the agent) said it was unnecessary and I could sign for him, which I did.

"About 3 weeks later I received my husband's policy and noticed they paid only $5 per day for the first 60 days. I decided to wait till I got my policy before calling him about this.

"About a week after receiving my husband's policy I received mine, but also received an additional policy he had written for me that we had not even discussed and never thought of. It was to pay $75 per week while hospitalized.

"The address on my policy was incorrect, and I called him to tell him about that and ask why he had written a policy I had not even discussed with him. He said I needed it and could cancel after the first year if I didn't want it.

"About my husband's policy, he said not to concern myself because if the difference of a hospital stay between Blue Cross, Blue Shield and medicare was more than $5 a day, his company would absorb it even if it was $15 or $20 a day.

"After our telephone conversation I read my husband's policy as well as I could and found nothing to indicate they would pay any more other than $5 per day plus the extra allowance for nurses and first-day extras."

The woman explained she returned the policies and demanded her money back from the company. Following her demand for a refund, based on misrepresentations and other irregularities, the woman received a form letter from Intercontinental which said in part:

"We have received your request for cancellation of your policy with Intercontinental Life. As your policy does not contain a refund provision, the policy will lapse 31 days after the next due date, as there is a 31-day grace period in your contract."

In effect, the company was refusing to refund the $410 in premiums. The insurance department investigated the matter, then wrote to the company:

"Please provide the sworn statement of (agent) as to his solicitation, presentation and representations to (the woman). Since there appears to have been several irregularities in this transaction, including the possibility that some signatures were forged, we request that you rescind the enclosed policies and refund the premiums to (the woman)."

The premiums were refunded in full.

As for the sale of "group" health policies, agents of the company have used letters of endorsement from companies and associations to sell members of those organizations policies that are supposed to be less expensive "group" plans.

[From the Newark, N.J., Star-Ledger, Feb. 28, 1978]

AGENTS USE "SCARE TACTICS" WITH ELDERLY

INSURERS EXPLOIT DEFICIENCIES IN MEDICARE

(By Herb Jaffe)

Concern has been growing in Congress, Federal agencies and the private sector that medicare may be responsible for the "scare tactics" health insurance companies are using to "hard-sell" expensive but inadequate policies to senior citizens.

"Medicare is paying for a steadily decreasing share of the health costs," Dr. Gladys Ellenbogen, former chairman of the economics department at Montclair State College, reported to the U.S. Senate Special Committee on Aging.

"A large number of the elderly are living on low incomes. Some have assets in the form of savings accounts or savings bonds or other securities," Dr. Ellenbogen wrote in the report commissioned by the Senate committee, adding:

"Aware of the high cost of medical care and fearful of the risk of great depletion in their liquid resources, they purchase private health insurance protection."

Her report explains that medicare is paying for less each year, largely as a result of inflation and rising costs in hospital, medical and nursing home care.

The result is that more senior citizens are being forced to buy additional private health insurance. In fact, the Social Security Administration last August reported that medicare's responsibilities have shrunk to an average of less than 43 percent of all health costs for the elderly.

Commenting on the experiences of senior citizens in buying private health insurance, Dr. Ellenbogen said:

"As reported to us by consumer service bureaus of State insurance departments and by State and local offices on aging, many of the elderly are puzzled by the complexities of private health policies."

Her report adds that many senior citizens who never bought health insurance before, because of employer group coverages prior to their retirement years, are now experiencing "the hardsell, scare tactics of some of the insurance companies, particularly those companies offering them policies by 'mail order.'"

An example of the "scare tactics" is a mail order card that is being sent to senior citizens in New Jersey. The card advises the recipient of "Senior Care 3" which provides coverage for "hospitalization, surgery, doctors' fees, anesthesia, private nurse, transfusions and ambulance."

However, the card is an official-looking document, with the senior citizen's name and address typed in. Among other things, it says:

"Advance information for New Jersey senior citizens. Announcing Senior Care 3—the new health care plan designed to fill the gaps left by medicare."

Nowhere on the information side of the card is there any mention of an insurance company, agent or anything else to represent that the card came from the private health insurance sector.

On the mail side of the card, it is addressed only to I.L.I.C. information center, with a post office box number in Bridgewater.

Most senior citizens might not be expected to know that I.L.I.C. is Intercontinental Life Insurance Co., a private health insurer with its home office in Newark.

"The card looked a little suspicious to me, but it was in the shape of the social security card I get in the mail, so I sent it in anyway just to see what would happen," an 80-year-old man, who is a retired RCA engineer, explained.

"A couple of weeks later this young man came and made like he had something special for me. But when I began to ask him some questions, I couldn't get any sense out of him. Sure enough, he was trying to sell me insurance," the senior citizen explained.

"He wouldn't tell me how they got my name, all he kept saying was that I needed extra coverage. Well, I got Blue Shield, Blue Cross, Prudential, Colonial Penn and medicare. But he kept saying that wasn't enough," the man continued.

He said he was angered by what he considered "a colossal deception to sell me insurance."

Practices of this type of health insurance companies are of special concern to David Fox, an attorney for the Federal Trade Commission (FTC).

"The elderly are very ripe for abuses by health insurers, and this is an area in which I have a strong personal interest," Fox said. "The elderly are tremendously afraid of going to the hospital and not having enough insurance, so they often use their limited income to buy four or five policies that duplicate each other."

Fox said that while the FTC does not have jurisdiction, since insurance is regulated by the States, "we can at least keep an eye on the situation and alert States to what's happening in their midst."

Congress also is keeping an eye on how the elderly are being treated by insurers. While Senate hearings have been held almost annually since the early 1970's on the difficulties senior citizens face with health care, with the thrust of the Senate's concern on medicare, some senators have pointed to the inadequacies of private health insurance.

During one hearing before the Special Committee on Aging, Vice President Walter Mondale, then a senator from Minnesota, commented:

"I had a mother that went to a hospital with cancer, and they canceled her insurance. So I am not convinced that private insurance companies are the same as the United Fund."

During another hearing before the same committee, Dr. Joseph Ingber, a New York chiropractor, testified.

"Maybe you will be investigating 5 years from now what is being done in the private sector with the major medical insurance companies—what kind of fraud is going on in major medical insurance."

An American Bar Association (ABA) committee has been studying the problem for some time. San Francisco attorney Luther Avery, vice chairman of the

legal problems of the aging committee of the ABA's Family Law Section, said the committee is "analyzing cases of senior citizens who have been gypped and swindled by health insurance companies."

Avery said the committee's concern has been enhanced by evidence from the National Council of Senior Citizens in Washington and the National Senior Citizens Law Center in Los Angeles.

"We see this as a serious problem, and we may either report our findings to the ABA's house of delegates, or in the form of recommendations to some Federal agency, or even as a report that will be made available to senior citizens," Avery said.

One of the most common complaints by senior citizens centers around decisions by insurers that the policyholder is not eligible for benefits under his policy because of pre-existing conditions.

In a letter from Intercontinental to an 84-year-old man, the company said it would not honor his claim, explaining:

"We have reviewed the claim recently submitted, and medical information in our possession indicates the condition for which claim has been presented began prior to the effective date of your policy. Consequently, we are unable to be of service to you on this claim."

The language of the letter is "form" language, appearing on many others obtained by The Star-Ledger.

"Pre-existing condition my foot," the man said. "I paid them too soon. My premium for the year was around $500. I was operated for an aneurysm, and I never had any problem before. Their information is hooey.

"I succumbed to high pressure salesmanship," he said. The man added that medicare and his Blue Cross and Blue Shield coverage paid most of the cost.

"Do you know that company had the gall to try to sell me another policy about a year after they gave me all that trouble. This young agent came around and told me that the other agent was fired because of the way he was selling," the man stated.

Another senior citizen explained that he "dropped the policy because their agent misrepresented what he was selling me." The man contended that the Intercontinental agent sold the policy with a premium of about $180 on the basis that the policy would entitle him to coverage for visits to a doctor's office.

During the course of the year he held the policy, both he and his wife were denied claims by the company for doctor visits. In one letter a company examiner wrote:

"We sincerely regret we are unable to provide benefits in connection with this claim because the policy provides benefits for office visits, provided that these expenses are incurred following a hospital confinement. Since there was no indication of hospitalization, the charges submitted for office visits are not eligible for benefits."

"That's not the way the agent sold it to me," the man said. "He told me we could use it for any doctor visits."

Asked if he read the policy, the man said: "Who could understand that insurance language? I trusted the salesman."

Ephraim Weiniger, chief executive officer of Intercontinental, acknowledged that his company sells a large volume of health insurance to senior citizens.

Weiniger added that while many complaints come from senior citizens, "we can't pay a claim if it involves a condition that an elderly person didn't tell us about when we sold the policy.

In a "confidential memo" to his agents 3 years ago, Weiniger referred to "something to be desired in our marketing methods." He also emphasized "selling honestly" and mentioned "the administrative expense which comes with refunds and some other practices which will tend to hurt our company and put the man's insurance license in jeopardy."

The memo refers to another problem which concerned Weiniger. The problem dealt with agents so eager to earn a commission that they had little regard for the medical history of the persons they solicited and tended to ignore an applicant's true medical problems. Moreover, they had little concern for whether the policyholder had the financial means to keep up their premium payments. According to the memo:

"Men are selling us claims. For a $40-$50 commission we are buying a $1,000-$2,000 claim. The agen't concern is getting the first premium only and as much as he can get with little concern about whether or not the person can afford the renewal."

[From the Newark, N.J., Star-Ledger, Mar. 1, 1978]

HEALTH INSURANCE: STATE FAILS TO REVOKE LICENSES OF FLAGRANT AGENTS

(By Herb Jaffe)

The State insurance commissioner is empowered to lift the license of any agent who has committed insurance irregularities, but no one can remember the last time an agent selling health insurance in New Jersey lost his license.

By comparison, in Wisconsin, where special regulations were recently invoked to protect senior citizens in particular from being swindled in the sale of health insurance, Commissioner Harold Wilde says he won't hesitate to revoke or suspend the licenses of agents who commit indiscretions.

"When I came here 3 years ago, we were revoking two or three licenses a year. Now we're acting against 10 to 12 agents a month. Among them we're lifting a lot of licenses, and many of them were health agents. We're trying to guarantee as much as possible that no consumer will get swindled," Wilde said.

"We even suspended a health insurance company recently for a year and a half," he added.

Sidney K. Decker, chairman of the ethics committee of the New Jersey State Association of Life Underwriters, has been involved with the selling and upgrading of health and life insurance practices in New Jersey for more than 20 years.

"I don't recall any agent selling life or health insurance ever being revoked or suspended in this State, at least since I've been around," Decker said.

"As I understand it, one of the problems is that the insurance department does not have the funds for an investigative staff. The department is certainly empowered to lift licenses, but they have been very lenient.

"Some practices have been brought before our ethics committees where not only should the agent's license have been revoked, but there should have been criminal action taken," Decker said.

Asked why the insurance department refuses to lift licenses, especially in blatant cases of irregularity, Decker said, "I don't know. But I do know that some very serious ones have been recommended to them by our ethics committees.

"But then the department asks us, 'do you realize what it takes to lift an agent's license?' Our position is, what good is a license if there are no ethical standards to support it.

"There has to be sanctions. If not, then the agent who steals and only gets a slap on the wrist will do it again," Decker said.

He explained that in New York and other States there is a public record of agent license revocations. "There have been a few casualty agent licenses lifted in New Jersey over the years, but I don't recall ever hearing of a life or health agent losing a license," he added.

Decker explained that the Association of Life Underwriters—a nationally recognized professional body—maintains a code of ethics, adopted by its Washington-based national association. "We have 15 local associations with working ethics committees in New Jersey and a membership that includes about half the agents in the State who write health and life insurance," he said.

One of the association's most important functions, he said, is to maintain its peer review ethics committees which gather evidence and evaluate charges of unethical practices by agents.

"If we can't resolve a charge through the committee, or the agent's company, we will recommend it to the insurance department, in behalf of the insured making the charge. But that's as far as we're permitted to go. We have no subpena power," he explained.

Decker said that five or six agents a year are referred to the insurance department. "There are some good people in the insurance department, but they have no investigations staff," he commented.

Recommended legislation for model regulatory standards in the agent ethics area has been devised by the National Association of Insurance Commissioners (NAIC), and while New Jersey does not enforce a strict watch on health agent activities, many other states do.

In the NAIC's January 1977, reaffirmation of its model regulations on duties of insurers and agents, the text focuses on such problems in New Jersey as agents who misrepresent the contents of health policies to their applicants

According to this proposed regulation by the NAIC, which has been promulgated in other States:

"The insurer's agent has an obligation to be sure that all pertinent information revealed to him by the applicant is adequately set forth in the application.

"Failure to do so is a disservice to himself, his company and the applicant, because it may prevent accurate evaluation of the risk and may lead to cancellation or to defense of a claim based upon failure to disclose material information."

A Star-Ledger survey has found that failure to disclose material information on health insurance applications is a frequent occurrence with some agents, resulting in claims controversies between the policyholder and the company.

The most common indiscretion by some agents is the failure to disclose the applicant's complete medical history, especially where senior citizens are the applicants.

Medical examinations are not required in the purchase of such policies, and to avoid a denial of the application by their home office—resulting in lost sales commissions—agents in some instances will ignore pertinent details in the applicant's medical history.

In this respect, the NAIC's model guideline for regulation continues:

"An insurer will normally take disciplinary action, which may include discharge, against an agent who submits an application which is materially inaccurate or incomplete.

"In the event an insurer discharges such an agent, an insurance commissioner, charged with protection of the public interest, may terminate the agent's license, and the insurer should disclose appropriate information to the commissioner when it can do so without exposing itself to legal action.

"An agent who is unwilling to abide by the high standards required in the business of health insurance should make his living in another business which does not rest so strongly on a necessary assumption of good faith."

Federal Trade Commission attorney David Fix, concerned with potential violations of the unfair trade practices act, said that disclosure regulations by State insurance departments could help minimize the victimization of health insurance consumers by unscrupulous agents.

"For example, disclosure regulations should force companies to detail exactly what a policy does include in the simplest terms. Many of these policies are incomprehensible even for lawyers. So how can they expect the average layman to understand what is included?" Fix asked.

"I'm also concerned with the health policies that overlap. Too often high-pressured sales approaches will sell a consumer a coverage that he already has either through medicare or another supplementary medicare policy," he added.

New Mexico Insurance Commissioner Kenneth Moore said regulations that will protect senior citizens from high-pressure health insurance agents will become effective in June. "Our regulations are intended to stop agents from taking advantage of the elderly."

"Senior citizens are often lonely and anxious to talk to people. Some agents know that, and too often the senior citizen ends up getting fleeced into some policy that he or she doesn't really need," Moore stated.

The New Mexico regulations will be similar to those in Wisconsin, the first State to adopt such strict standards for agents in the sale of health insurance.

Wisconsin Commissioner Wilde called senior citizens the "most vulnerable market" for fraudulent selling practices. "I saw volumes of complaints in this area, largely because this class of victims has fewer defenses," Wilde added.

He said among the regulations is one that makes it an unfair trade practice to use the word "medicare" on any commercial health insurance literature, thus avoiding certain deceptive sales approaches.

"But we found that when you chop off one head, three new ones grow back," Wilde commented. "There are many elements involved in the sale of health insurance, and we're taking them on one by one."

He said that in addition to revoking agent licenses for unscrupulous practices, "we're also working with our State Association of Life Underwriters and chambers of commerce to set up senior citizen counseling services. This is intended to prevent such common abuses as finding people with 15 health policies—sold through scare tactics."

Wilde has invoked special regulations which mandate clearly explained minimum levels of benefits in easy-to-read policies, standardized health policies for all companies, and a withdrawal of all former policy forms.

"We also have prepared a booklet for senior citizens that tells all the do's and don'ts, and we mandated a rule that this book must be presented by agents with every solicitation.

"We have made it clear to every company that if they want to sell Medicare supplements they must abide by the regulations," he added.

Wilde said that all policies used in the State must be approved by him before they can be sold. New Jersey is a "prior approval" State in auto and homeowner insurance, but in health and life coverage the companies simply file their policies with the insurance department and use them.

"Our next stage will be to compare price differentials that exist. No one really knows what the profits are in health insurance. We attempt to judge this on the basis of loss ratios," he said. Loss ratios are the percentages of the premium dollar used to pay claims.

Wilde said one of his greatest concerns has been to crack down on agents who urge policyholders to cash-in an existing policy so they can sell the consumer a new one and earn a new first-year sales commission.

"First-year commissions are enormous. I think it's a disgrace to switch off a senior citizen, especially, from a perfectly good policy just so an agent can earn more commission. Meanwhile, the consumer is stuck with a new set of deductibles, which can often present a hardship," Wilde said.

[From the Newark, N.J., Star-Ledger, Mar. 2, 1978]

HEALTH INSURANCE: JERSEY SUBSTITUTES A "BOOKLET" FOR REGULATION

(By Herb Jaffe)

New Jersey's inadequate regulation of private health insurance is attributed by some to the effectiveness of the insurance lobby—plus considerable apathy in both the legislature and the State insurance department.

Typically, one insurance department official commented, "With the exception of Blue Cross and Blue Shield, health insurance regulation in New Jersey has never really been much of a priority."

The fact that the insurance department gathered 3,600 health insurance complaints from consumers in 1976 may have prompted the preparation by the department of a handbook for senior citizens. As a class, the elderly are the most common victims of abusive practices by private health insurance companies.

The newly prepared booklet alerts senior citizens to the potential pitfalls when buying health insurance. It offers "helpful hints" on how to shop for health insurance wisely.

The booklet, which includes a friendly opening letter from Gov. Brendan Byrne, was financed by a federal grant in an effort to better educate the elderly against "gimmickry."

According to one piece of advice in the booklet:

"Health insurance policies are very complicated. Reading and understanding policies as well as making price comparisons is not easy. Health insurance for senior citizens is one field in which the insurance industry has generally done a very poor job."

The booklet is similar to one distributed in Pennsylvania, Wisconsin and other States—where tighter regulations exist to protect senior citizens more than just advise them of "complicated" insurance policies with incomprehensible language.

As a regulatory agency, the insurance department is aware of the dangers in the merchandising of some private health insurance policies. But while New Jersey concentrates more on alerting senior citizens to potential dangers that the legislature can easily empower the insurance department to eliminate, other State insurance departments are acting in a more direct manner to remove such threats.

For example, legislation in 1973 empowered the New York Insurance Department to standardize basic health policies and eliminate many of the kinds of deceptive practices that exist in New Jersey.

"It took us 2 years before we could enact that legislation. Obviously, the insurance companies didn't like the idea because it put an end to policies and practices that many companies had become accustomed to," New York Deputy Superintendent of Health Insurance James Clyne said.

"New York was the first State to adopt such regulations. It resulted in a cleansing of the health insurance field. We eliminated a lot of policies from being sold in New York," Clyne explained, adding:

"Companies were required to examine their own portfolios, and that had the greatest effect on what could be sold in New York State. We were able to eliminate many of the dead-wood policies, as well as the questionable ones.

"I think this was a very worthwhile effort, because in the process we were able to review every policy being sold so that we could compare and determine what was needed to best protect the consumer. The legislature since then has adopted a series of additional laws mandating that certain health coverages be made available."

Clyne said that in his judgment, and from his experience, "health insurance really has to be watched closely and differently from other lines of insurance," referring to the ease with which sophisticated forms of abuse can be incorporated into policies by insurers.

"There was much objection to our standards from the carriers. It was an invasion into areas insurance companies did not want invaded," Clyne added. "Regulations of our type are very controversial, which is why they haven't spread into too many other States."

For one thing. Clyne emphasized that insurance companies in New York must now have the prior approval of the insurance department before they can market a policy, rescind existing policies or alter rates. The Department also has invoked strict disclosure requirements to avoid deceptive practices as much as possible.

"Many of the features and provisions in the NAIC's (National Association of Insurance Commissioners) model health insurance bill are patterned after our system," Clyne added.

Many health insurers in New Jersey include provisions in their policies that prohibit cancellation and imply automatic renewal. However, the provisions do not prohibit an insurer from deciding not to renew everyone insured under a certain policy—in effect, terminating the entire policy if the company decides it is not earning sufficient profits from the policy.

"That kind of thing is a problem. When a company decides to terminate a class of business, we become very conscious of it in terms of approving any replacement policy," Clyne explained.

"We want to include a provision in all health contracts that termination of the entire policy must be with the approval of the superintendent of the New York Insurance Department, and that the company must provide an adequate alternative policy for the same policyholders," he said.

Clyne also explained that his department maintains well-staffed consumer services bureaus in New York City and Albany. "We have investigators and examiners who check out all complaints."

He said there is also much concern in behalf of senior citizens "who tend to overbuy health insurance. I don't know if it's victimization or just some inherent fear elderly persons might have which makes them prone to purchase such policies as those that will pay them a lump sum a day if they're hospitalized.

"They tend to feel insecure, and they'll buy the lump-sum policies even though they have medicare and good medicare supplemental coverages. There are companies who deal heavily in hospital indemnity policies. The question is whether there is a real need for such policies, or whether those companies are using fear tactics on the elderly," Clyne commented.

The New York regulations were established only after a 2-year legislative battle. Sponsors of legislation that would impose stronger regulations over health insurers in New Jersey have never even reached the battle stage.

Many legislators have been repeatedly unsuccessful in getting their health insurance bills out of committee. There was a flurry of bills in the last legislature that would have begun to impose minimum regulatory standards, but they all died in committee when the Legislature expired last month.

A bill sponsored by Sen. Joseph J. Merlino (D-Mercer) would have established minimum standards that would have included "full and fair disclosure for the form, content and sale of health insurance."

While Merlino said the measure was particularly aimed at Blue Cross and Blue Shield—which already are heavily regulated—it would, nevertheless, have affected all private insurers. But the bill was stuck in a committee for 8 months.

However, Merlino said he intends to reintroduce the bill in the present legislature. The bill would include:

"Reasonable standardization and simplification of language and coverages to facilitate understanding and comparisons."

"Elimination of provisions which may be misleading or unreasonably confusing in connection with either the purchase of such insurance or the settlement of claims."

"Elimination of deceptive practices in connection with the sale of such insurance."

"Elimination of provisions which may be contrary to the health care needs of the public."

"Elimination of coverages which are so limited in scope as to be of no substantial economic value to the holders thereof."

"Elimination of unfair renewal practices which are contrary to the health care needs and economic wellbeing of the public."

Another bill, introduced by Sen. Garrett Hagedorn (R-Bergen) and co-sponsored by 11 other Republican and Democratic senators, was lodged in committee since it was submitted in September, 1976. The bill was specifically concerned with health insurance policies that are misleading.

It would have given the insurance commissioner powers to disapprove a policy if it "contains provisions which are unjust, unfair, inequitable, misleading or contrary to law or to the public policy of this State, or if it is sold in such a manner as to mislead the public."

Hagedorn already has resubmitted the bill in the new legislature. "Something has to be done to equalize regulation in this area and make what is good for Blue Cross good for every other health insurer in this State," Hagedorn said.

"Two other bills that would impose health insurance regulations were filed 2 years ago by retired Sen. Anne Martindell. Both remained in committee until the legislature expired.

The summary statement attached to one of the bills said:

"An insurance company may stipulate in a health insurance policy, other than group or blanket, that the policy can be canceled at any time by the company by written notice to the insured.

"When this option is taken by an insurance company, it can, and often does act to the severe detriment of policyholders, especially those who have paid premiums for years, then find their policies canceled after a difficult illness.

"This bill amends the relevant provisions of the law by repealing the option presently afforded insurance companies."

The statement attached to Martindell's other bill said:

"This bill provides that an insured would have an automatic option to renew a health insurance policy, other than group or blanket, without prejudicing the terms and conditions of the policy to be renewed.

"The insurer would be obligated to offer renewal of the policy between 30 and 60 days prior to the expiration thereof, and the insured would opt to renew by payment of the premiums during the grace period."

There were other bills in the last legislature which touched on health insurance regulation, in an effort to protect consumers from misrepresentations, distortions, and fraudulent selling practices. They all died in committees.

[From the Newark, N.J., Star-Ledger, Mar. 3, 1978]

NATIONAL INSURANCE: U.S. DISTURBED BY HEALTH COVERAGE "GAPS"

(By Herb Jaffe)

Insurers are fearful that revelations of inadequacies in the cost, benefits and State regulation of health insurance could trigger a new movement for national health insurance (NHI) that might have serious consequences for the private insurance industry.

An analysis prepared last month by the U.S. Department of Health, Education, and Welfare (HEW) delves into the regulation and administration of NHI even before the proposal of an actual national health plan.

The report analyzes two basic questions in any proposed administration of NHI:

"What should be the role of the Federal Government, of the States and localities, of the private insurance industry?"

"How should these sectors interact in an overall NHI organizational arrangement?"

In analyzing any role for the private industry, if in fact the private sector should be permitted to underwrite NHI, the HEW report says:

"Supporters of a private sector underwriting role in NHI argue that competition gives private insurers incentives to perform functions more cheaply in order to increase profit margins or to gain a larger share of the market.

"Critics contend that industry underwriting practices conflict with some goals of NHI and that competition leads to higher profits and marketing costs which could be better used to pay the provision of health insurance."

But then the report goes on to say:

"At present it is very difficult to determine how many people have adequate coverage for medical expenses. Private insurance policies range from comprehensive major medical coverage to plans providing a fixed per diem payment for hospitalization.

"Many persons purchase several policies as supplements to basic coverage but are still uncovered for major expenses. The Congressional Budget Office estimates that between 19 and 38 million people with insurance have less than adequate protection against catastrophic expenses."

Still another indicator of the Federal Government's growing concern over the nation's private health insurance system is a statement last June in the Social Security Administration's monthly bulletin:

"That the insured person cannot expect to receive truly comprehensive health care services in return for his premium payments is just one of the deficiencies in the private health insurance system."

The bulletin said that in 1975 consumers under age 65 paid $33.6 billion in private health premiums, but that this "resulted in the return of only $28.9 billion in benefits."

Pointing to the inadequacy of the insurance system, the social security report adds that this represented only 44 percent of the total personal health care expenditures of Americans under 65.

Other reports are equally critical of the private health insurance sector, its manner of operation and what many consider to be inadequate regulation that has resulted in confusion, complexity and needless expense for consumers.

An illustration of the confusion thrust on policyholders by private insurers, from inadequate regulation, is the following letter a claimant received from her health insurance company:

"We sincerely regret we are unable to provide benefits in connection with this claim because expenses incurred for normal childbirth, a caesarian section or a miscarriage are not covered. In cases of pregnancy, the policy provides only for expenses incurred as a result of complications thereof."

"What is that supposed to mean?" the woman asked, "funeral costs?"

Private health insurance is being marketed in such a blatant manner in some instances, stemming from the lack of regulation, that even "unlicensed insurance brokerages" can operate in New Jersey.

State Sen. James H. Wallwork (R-Essex) told of an agent who knocked on his door last month to sell a health policy.

"He had no business card, no promotional literature, nor anything else that could identify he was an insurance agent. But he did have a good sales pitch and an application form for me to sign, at a premium of $164.85 a year," Wallwork said.

Upon checking with the State insurance department's licensing division, Wallwork was first told that the man was a licensed agent, but that the insurance brokerage employing him was unlicensed, which is a serious offense.

However, several weeks later Wallwork received a letter from Arthur M. Keefe, chief investigator of the insurance department, after the senator formally filed a complaint with the department. Following a more thorough review, Keefe said records show the insurance brokerage is licensed.

"The incident covering the solicitation at your residence does leave something to be desired," Keefe wrote, advising Wallwork that if he wished the department would pursue the matter further.

In similar cases, the insurance department, which earns almost $40 million a year for the State in the form of insurance taxes and licenses fees, says it does not have sufficient investigative and examining personnel to protect the public adequately from unscrupulous practices by health insurance companies, agents or brokers.

The HEW report of last month referred to its concern over the true effectiveness of the private health insurance industry if it ever became properly regulated in order to serve a major role in NHI:

"It should be noted that extensive regulaiton and alteration of current industry practices might lead to fundamental change in the character and nature of the industry itself."

The report also expresses concern that lax regulation has made it almost impossible to understand the health insurance industry's true profit picture, which would be a major factor if a national health insurance program were forced to rely on administration from the private sector. According to the report:

"The true extent of insurance industry profits and marketing costs is difficult to determine from existing data."

It explains the underwriting and accounting principles vary among the different companies. As a result, "marketing costs are difficult to measure and categorize appropriately."

The report adds that "inclusion of commercial insurers as underwriters of NHI virtually implies an allowance for profit. Profits could be regulated, along the line of a public utility, if that were desired."

But based on the complexities of profit regulation by the States in other lines of insurance, the report says:

"The necessary regulation could become so extensive and complex that it might make more sense for the Federal Government to operate the program directly."

Extensive hearings in the last several years before the U.S. Senate Special Committee on Aging have raised questions concerning the effectiveness of the private industry just in its role as intermediary in the administration of federal medicare funds.

There is also testimony before the committee that has raised concern over practices by the private sector in providing supplemental medicare coverages.

The Special Committee on Aging is a fact-finding body, and Sen. Harrison A. Williams (D-N.J.) served as its chairman for 6 years, until 1970. Williams remained a ranking member of the committee until last year when he became chairman of the Senate Human Resources Committee—the committee that could sponsor legislation to correct any abuses found by the Special Committee on Aging.

"I know that in my years as chairman of the Senate Aging Committee we found that senior citizens indeed were often special targets for fraud in the area of health care," Williams stated.

"Certainly there are now serious questions being raised about certain aspects of the supplemental insurance fiield, and these are a matter of very grave concern to the Aging Committee," he added.

"I would expect that this will be a subject of special and particular interest to the committee, and I would hope that we could formulate a plan of action so that senior citizens can obtain the coverage they need without falling prey to any abusive or fradulent practices," Williams said.

Dr. Gladys Ellenbogen, former head of the economics department at Montclair State College and the Committee on Aging's nationally recognized authority on private health insurance, said that most consumers know very little about how to buy health insurance.

"Generally, people are totally inexperienced in buying health insurance because during most of their lifetime it is their employer's problem," Dr. Ellenbogen explained.

"At the age of 65 you're on your own. If you take an early retirement you are not yet eligible for medicare and you have to pray that you don't get sick. With homeowners and auto insurance the average person is experienced, because you're confronted with it all your life," she said, adding:

"When you buy car insurance there's unit pricing. You know what you're paying for collision, liability and comprehensive.

"But when you buy health insurance you can't pick and choose. It's very tough for the consumer to be selective in health insurance, partly because they have no experience in buying and partly because there is no unit pricing."

"The average person knows nothing about how to buy nursing home coverage. or a policy that would cover prescription drugs, or private duty nursing—even if there were policies just limited to those areas. But they give you a whole package, and there is no comparison shopping from company to company, which makes it so difficult, especially for the elderly.

"On top of everything else, State insurance departments have limited power over premium charges because most States have no legislation or very limited legislation concerning health cost containment."

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Dear Friend:

Government Medicare is a fine thing for Americans 65 and over. It means that every senior citizen can get the medical attention he or she needs. However, even from the start, Medicare was never intended to cover all of your hospital expenses. The Government has had to establish limits on the benefits you receive as a patient in a regular, general hospital.

This means that you must pay part of your hospital bill yourself. And the amounts you must pay have increased for each of the last 10 years. They had to. Skyrocketing costs have forced the Government to pay out more and more, and to increase the share you must pay, too.

(over, please)

Senator CHILES. The committee has more examples of exploitation of older Americans and concern on the part of State insurance regulators.

Subsequent to this hearing, we will make a thorough evaluation of the testimony presented and determine further steps to be taken by the committee.

Senator Domenici, we are delighted to have you here to participate in this hearing. Do you have an opening statement?

STATEMENT BY SENATOR PETE V. DOMENICI

Senator DOMENICI. Yes, Mr. Chairman. I commend you for your opening statement; I think it clearly defines the parameters of a very serious problem.

Adequate health insurance is a protection everyone needs, particularly in these days of ever-increasing hospital costs. The elderly, however, are most concerned about insurance coverage as they fear the prospect of a catastrophic illness or prolonged ill health, either of which may deplete their life savings. As a result, the elderly have become a new and expanding market, as well as an easy mark, so to speak, for insurance salesmen who sell expensive policies to the elderly, assuring them that the insurance will pay for what medicare does not cover. Unfortunately, this is not always the case. The insurance itself may not be faulty but the fine print regarding exclusions for coverage, such as "pre-existing conditions" can often make the insurance useless to the elderly who may have multiple health problems. For this reason, although an individual may hold various insurance policies, medical expenses may not be covered.

MEDICARE PAYS LESS AND LESS

The fact that medicare pays less and less proportionately of the total medical bill has led to the rise of the development of what are called medi-gap policies. Insurance agents sell insurance to fill the gap but often sell more than the individual needs or can afford. It has been documented that the elderly often have overlapping policies but sometimes are not able to receive the coverage expected from any one of them.

State insurance commissions are beginning to take note of this problem as you noted, Mr. Chairman. Wisconsin has adopted strict standards which we will hear more about today. I am pleased to note that my own State of New Mexico has adopted similar standards to be effective in June. The commissioner of insurance in our State, Kenneth Moore, said in a recent interview:

> Our regulations are intended to stop agents from taking advantage of the elderly. Senior citizens are often lonely and anxious to talk to people. Some agents know that, and too often the senior citizen ends up getting fleeced into some policy that he or she doesn't really need.

Most insurance salesmen are in the business to help people of all ages. Some, however, are overzealous, shall we say. The elderly are uninformed about the intricacies of the wording of insurance policies.

It would seem that there is a need for insurance counseling as a part of the legal services we are offering the elderly. It could also be designed in much the same way as we now offer assistance to the elderly in the preparation of income taxes.

I look forward to the testimony of the witnesses and hope that this issue may become widely recognized, that the elderly will be helped to become knowledgeable consumers, and that the insurance industry and State insurance commissions will set standards to avoid the problems associated with medi-gap insurance policies.

Thank you, Mr. Chairman.

Senator CHILES. Thank you, Senator Domenici, for your comprehensive statement.

Senator Glenn is also here today. Senator Glenn first brought to the attention of our committee the Lowry case. Mr. Lowry, son of Mrs. Lowry, is going to be a witness here today.

Senator Glenn, we are glad for your endeavor in bringing that case to our attention. That is certainly one of the prime reasons that we are focusing on this subject today and we would be delighted to hear from you.

STATEMENT BY SENATOR JOHN GLENN

Senator GLENN. Thank you vey much, Senator Chiles.

I think rather than thanking me we ought to thank Mr. Lowry who is with us here today and who will bring out some of the things we passed on to the committee. Mr. Lowry was instrumental in having these hearings held as early as they are being held after he contacted us. The committee staff was looking into some of these general problems that he brought to our attention.

I won't try and pre-empt Mr. Lowry's statement, which he will make here in a little while, by going into all of the details. I am sure he will put it forth eloquently, as he has in the past, to us and to the committee. It is a story that I think is all too typical of what is happening too many times these days.

I might add one other letter we received in mid-February of this year from a gentleman who is 79 years old. He is a farmer. He says, "My good wife is 77." He goes on talking about an operation he had and about paying for it. This is in Alvada, Ohio, and I won't use his name, but let me read the last couple paragraphs from his letter.

> Recently a young fellow, a fast talker, and an agent from this insurance company came, so he said, to help us process our papers. When he got his foot in the door he proceeded to tell us we did not have enough health insurance. In his fast talk he told us that medicare was in bad shape and that it would run out or be defunct in 1979. Well, I wrote him a check for $787.80, which I am going to try to recover.
>
> Now how about it, is medicare sound? I hope so. If it is, we had plenty of insurance before we took out more, and I will tell this young fellow to return our old policies and reimburse us for what we paid him.
>
> Yours truly.

[The full text of the letter follows:]

ALVADA, OHIO, *February 14, 1978.*

DEAR SENATOR GLENN: I am a farmer, 79 years old; my good wife is 77, and we are Democrats. We think you are doing a fine job as Senator and we don't think you will have any trouble being reelected.

Now, my reason for writing to you. Recently I had major surgery resulting from an aortic aneurysm. As you may know, the hospital and surgical bills were enormous. Medicare paid most of the hospital bill and all but 20 percent of the surgical bills, for which we were very grateful and fully satisfied.

We have hospital, surgical, and accident policies from a well-known insurance company. We have had these for 20 years, which helped pay the incidentals and the 20 percent surgical which medicare did not pay.

Recently, a young fellow—a fast talker—and an agent from this insurance company came, so he said, to help us process our papers. When he got his foot in the door, he proceeded to tell us we did not have enough health insurance. In his fast talk, he told us that medicare was in bad shape and that it would run out or be defunct in 1979. Well, I wrote him a check for $787.80, which I am going to try to recover.

Now, how about it—is medicare sound? I hope so. If it is, we had plenty of insurance before we took out more, and I will tell this young fellow to return our old policies and reimburse us for what we paid him.

Yours truly,

[Name withheld.]

Senator GLENN. I think that is all too typical of some of the things going on these days. Therefore, we obviously wish to explore here what the relationship is between the agent who is out doing this fast talking with his foot in the door and the companies that should be controlling those agents to a better extent than they do.

"A FLIM-FLAM SITUATION"

I think, as Mr. Lowry will point out, the volume of policies sold to his mother, and the other examples that we will have brought forth here today, are the result of scare tactics. Too often, there is no control exercised by the companies involved. How can we correct this? How can we get these people recompensed for their expenses and the excess policies they have already bought? More importantly, how can we control this better in the future, through whatever Government action, if that is required, or through action by the insurance companies and State insurance commissions controlling what has gotten to be a real flimflam, a real fraud situation?

Those are the things that we want to get into day. I, in particular, wish to compliment Mr. Lowry in his coming forth with the information he gave us and being willing to come up here and spend his own time in bringing this to the attention of the committee so we can hopefully get cooperative action out of the companies and agents and, if not, do something about it with Federal legislation.

Thank you, Mr. Chairman.

Senator CHILES. Thank you, Senator Glenn.

I think many times people ask, does it do any good to write a letter? I think sometimes it does do some good to write a letter, and today is an example of that in our hearing.

Our first panel of witnesses will be consumer representatives consisting of Robert Lowry of Raleigh, N.C., and Jules L. Klowden, counselor of the Senior Service Center, San Diego, Calif. If you will come to the witness table.

Mr. Lowry, we will allow you to lead off. We do appreciate your appearance here today and your effort.

STATEMENT OF ROBERT E. LOWRY, RALEIGH, N.C.

Mr. LOWRY. Thank you, Senator Chiles; thank you, Senator Glenn and Senator Domenici, for your comments.

I should like to express my appreciation for the invitation to appear before this committee and to congratulate the committee and its fine staff for the demonstrated determination to probe into the complexities, pitfalls, and problem areas encountered by the elderly as they seek adequate insurance protection. I think it is a tragic state of affairs, Senator Chiles, if the case history I am about to present can equal or top the story you told regarding the elderly Wisconsin woman. I suspect there are many similar, but untold stories of insurance exploitation throughout this country.

My name is Robert E. Lowry and I am a resident of Raleigh, N.C. My present involvement in this subject matter is accidental, but it has stimulated the creation of a personal commitment to assist in the exposure, correction, and prevention of unfair or abusive practices in the sale of insurance to the elderly. From the outset, I should make it clearly understood that I am not trained nor highly knowledgeable in matters of insurance. I am not an attorney, but have often wished I were, in view of the present circumstances. At the time of my initial involvement last August, I was in the terminal stages of a program of graduate work at North Carolina State University. Prior to that. I was with the U.S. Department of Justice here in Washington.

Today I represent, by proxy, my 76-year-old mother, Mrs. Lucille W. Lowry, a resident of the United Methodist-sponsored retirement community of Otterbein Home in Lebanon, Ohio. She wishes you well in your efforts and sincerely hopes that whatever mistakes, suffering, expenditures, and problems she has experienced in her serious over-involvement with insurance may serve a positive purpose in alerting others to the need for caution and access to sound, impartial advice. Both of us also hope to encourage the creation or improvement of effective and easily accessible avenues for correction or adjustment once a problem situation is discovered.

With the Senator's permission, I shall attempt to briefly describe the development of my mother's insurance problem, and equally important, the difficulties we encountered in attempting to resolve the situation. In July 1973, Mrs. Lowry moved from her home in California to a small apartment within the "independent living" complex at Otterbein Home. My mother is a very proud, independent, and private person, having adequately managed her business affairs and much of the family finances in the past. I respected these qualities and did not attempt to meddle in her affairs, although I had assured myself that her income from various sources was sufficient to meet the expenses of her new life at Otterbein Home. I might also mention that she had, in my estimation, a more than adequate insurance program at the time of her arrival in Ohio, both in life and in health coverages.

During the spring of 1977, I was puzzled by my mother mentioning, in several telephone conversations, that she was feeling financially strapped and was finding it necessary to defer certain planned expenses. I knew that her income averaged slightly over $1,000 per

month and that Otterbein Home expenses would not normally exceed half that amount.

In August, I drove my family to Ohio for a planned 1-week visit with my mother, but we remained for nearly a month when it was discovered that she was experiencing a major financial problem. I reviewed her record of expenditures and was startled to find a recent and extremely large outlay of funds to one insurance company. From her bank deposit box I obtained a variety of insurance policies and attempted to match these to the canceled checks which reflected her rapidly increasing involvement with additional insurance purchases since 1975.

Found a Number of Policies

Four health policies and three expensive life insurance policies issued by Bankers Life & Casualty Co. of Chicago were identified as representing Mrs. Lowry's major insurance expenses over the previous 2 years. However, I also encountered several canceled checks made out to the same company which, in the memo portion, made reference to policies or forms which were not in her possession. Two of these had my brother's and my initials. Automatic bank draft payments were also being made on policies which could not be located.

My mother was unable to recall what these policies represented and I then contacted one of the seven Bankers agents who had recently sold my mother insurance and requested an explanation of her entire program. He said that the two local Dayton, Ohio, offices did not attempt to maintain such information on its customers, but that he would contact the home office in Chicago. On August 25, the agent telephoned to inform me that several policies had been purchased in April 1977, among these an annuity policy on my life and one on the life of my brother, Kenneth. He further indicated that these policies had apparently never been "placed" or delivered to my mother and then, rather surprisingly, offered to have them canceled and refunded. Neither my brother nor I had previously known of the existence of these policies and I was aware that most States prohibit the creation of life insurance on a mature person without his knowledge, consent and signature. It was for these reasons that I postponed acceptance of the offer to cancel. I wished very much to see these highly questionable policies.

Over $13,000 Paid to One Company

With the concurrence of my mother, her attorney, and the administrator of Otterbein Home, a power of attorney was created in order that I might act in her behalf due to the precarious state of her finances and a condition of failing health and capacities. Alarmed that over $13,000 had been paid out in premiums to Bankers Life & Casualty during the previous 2 years for an extensive, and largely unnecessary, insurance program, and outraged at the discovery of a new and unwanted policy on my life, I contacted the Ohio attorney general's consumer protection section for guidance.

An investigator was immediately sent to Lebanon for a review of the materials I had accumulated, and interviews with my mother and

myself. Despite the attorney general staff's demonstrated concern and interest in the matter, it was later determined that the Ohio Consumer Fraud Act specifically prohibited their intervention in problems of insurance. The attorney general's office did provide me, however, with some information which was of considerable help and which enabled me to understand that my mother's over-involvement with insurance was neither a unique nor isolated situation.

I should like to submit these copies of press releases from the Pennsylvania Department of Insurance for the committee's review. These press releases relate to the years 1974 and 1975, but I found them of considerable relevance. Some striking similarities exist in the abuses cited in Pennsylvania and my mother's insurance problem.

I would like to read brief sections from several of the releases:

[PENNSYLVANIA] INSURANCE DEPARTMENT ANNOUNCES "CRACKDOWN" ON COMPANIES, AGENTS EXPLOITING ELDERLY

Those (agents) found to be engaged in fraud or forgery have been turned over to local authorities for criminal prosecution. As a result of these investigations, around 50 agents have lost their jobs and 10 have been indicted.

There are various methods employed by agents to exploit the elderly. Among these are:

—Recontacting longtime elderly insureds of the companies, getting them to lapse their policies and buy new ones.
—Passing the names of elderly, sometimes senile consumers from agent to agent and thus causing multiple sales of insurance policies.
—Forging signatures of applicants on the applications.
—Writing policies on sons, daughters, nephews, and nieces of elderly persons.

WHAT THE PUBLIC CAN DO

Elderly citizens throughout the State must be extremely careful they do not fall prey to these smooth talking charlatans. Younger people with parents of advanced age should check into their financial affairs to be quite sure victimization is not taking place. Here are some "warning signals" which may suggest you or a loved one is becoming a victim:

—An agent suggesting you replace an older health insurance policy with a new one.
—Several agents from the same insurance company calling on a regular basis to make new sales.
—An agent trying to get you to purchase insurance on a fully grown child, nephew or niece.
—A "helpful" agent who wants to complete all questions on the application for you.

Senators, in the course of my investigation of Mrs. Lowry's insurance problem, I became convinced that most of the tactics described had been utilized in the company's contacts with her. I also learned that Bankers Life & Casualty was one of the companies involved in the problem situation in Pennsylvania.

Senator CHILES. Without objection, those press releases will be made a part of the record.

Mr. LOWRY. Thank you, Senator.

[The press releases referred to follow:]

PRESS RELEASES FROM THE PENNSYLVANIA INSURANCE DEPARTMENT

SEPTEMBER 25, 1974.—Insurance Commissioner William J. Sheppard today announced an intense "crackdown" on insurance companies and their agents who have been engaged in a disgraceful exploitation of the senior citizens of our commonwealth through the sale of health insurance.

During the past several months, the department's bureau of policyholder services and enforcement has been investigating the activities of a number of health insurance companies and their agents, most of whom have been operating in Western Pennsylvania. Communities that have been major targets of these unscrupulous people include Pittsburgh, Greensburg. New Castle, Mount Lebanon, Erie, Altoona, Meadville, Sharon, Oil City, and Franklin. As a result of the department's efforts, nine agents have been arrested and seven of those indicted.

CHARACTERISTICS OF THE EXPLOITATION

The characteristics of this type of selling include:

Recontacting longtime elderly insureds of the companies, getting them to lapse their policies and buy new ones.

Passing the names of elderly, sometimes senile consumers from agent to agent and thus causing multiple sales of insurance policies

Taking premiums for annual policies and having them issued on a quarterly basis to get a larger commission.

Writing many policies under a variety of names to avoid detection of the multiple sales ("Mary Smith," "Mary A. Smith," "M. Ann Smith," etc.).

Forging signatures of applicants on the applications.

Writing policies on sons, daughters, nephews, and nieces of elderly persons.

Before delivery of policies, tearing out riders which exclude payment for various health conditions the insured may possess.

The worst case to come to our attention is that of an 80-year-old woman from Meadville who spent $50,574 in a recent 3-year period on 31 policies, all of which lapsed. We requested the presidents of the nine insurance companies involved to refund her money. So far, six have done so.

In still another case, an 87-year-old Greensburg woman bought 22 policies in 28 months from six different agents. Three policies were issued on nieces and a nephew.

Another lady in her seventies was spending $100 of her monthly $109 social security benefit on various insurance policies. She told our investigator she sold baked goods and dipped into her savings to make ends meet.

The Pennsylvania Insurance Department is presently contacting, via personal interview and questionnaire, several hundred elderly Westmoreland County and Blair County residents suspected of having been victimized.

CAUSES

There are several causes of the problem. First, the companies involved have been very lax in screening the type of agent they hire. We find many of these problem agents go from one such company to another, lapsing and rewriting their client's health insurance as they go. These companies only seem to care about placing new business on their books. Second, life-health insurance companies pay very little commission on renewals. Thus there is an incentive for the unscrupulous agent to rewrite policies. Additionally, some of these companies pay a higher commission for the shorter term policy. One insurance company recently informed us their commission scale (percentage of initial premium paid to the agent) was: Annual premiums, 50 percent; semiannual premiums, 65 percent; and quarterly premiums, 85 percent. Third, many of these insurance companies have chaotic records systems and do not notice multiple sales.

Finally, the companies in question do not send out investigators to randomly review sales their agents are making.

WHAT THE INSURANCE DEPARTMENT IS DOING

First, we are arranging for formal departmental legal action against those agents found breaking our laws. Those found to have engaged in fraud or forgery are being turned over to local authorities for prosecution. The Post Office Department is also looking into our findings for possible prosecution for mail fraud.

Second, thorough investigations of companies whose agents are engaged in such practices will be conducted. We are going to require refunds of premium, payment of denied claims and will take formal action under the Unfair Insurance Practices Act, which was signed into law by Governor Shapp on July 22, 1974.

Third, we are considering the requiring of all health insurance agents, when they replace a policy, to give the consumer a comparison of both the new and the old coverages.

Fourth, new guidelines covering the conduct of insurance agents have been completed and will be published shortly. These will go a long way toward removing such agents from the marketplace.

WHAT THE PUBLIC CAN DO

Elderly citizens throughout the State may be extremely careful they do not fall prey to these smooth talking charlatans. Younger people with parents of advanced age should check into their financial affairs to be quite sure victimization is not taking place.

Here are some "warning signals" which may suggest you or a loved one is becoming a victim:

An agent suggesting you replace an older health insurance policy with a new one;

Several agents calling from the same insurance company on a regular basis to make new sales;

Failure by the agent to give you a receipt for your premium on the new policy which indicates the name of the insurance company and the type of coverage;

An agent trying to get you to purchase insurance on a fully grown child, nephew, or niece;

Evidence that a new health insurance policy or life insurance policy delivered by your agent has been torn apart;

A statement by the agent that your policy is being billed on a quarterly or semi-annual basis when you thought the premium was for an entire year;

A "helpful" agent who wants to complete all questions on the application for you;

Failure of the insurance company to pay a claim due to a "pre-existing health condition" when you are under the impression you have carried coverage with them for many years.

If any resident believes he or she has been a victim of one of these ripoff artists, they should immediately contact the Pennsylvania Insurance Department at one of its four regional offices located in Pittsburgh, Harrisburg, Philadelphia, and Erie. We will immediately investigate the matter.

APRIL 8, 1975.—In September of 1974, the insurance department launched a crackdown on insurance companies and agents who specialize in ripping off the elderly. This was precipitated by our regional offices in Pittsburgh and Erie reporting cases of exploitation with regards to insuring senior citizens.

The worst case to come to our attention involved an 80-year-old woman from Meadville who spent over $50,000 on 31 policies over a 3-year period, all of which lapsed. The insurance department contacted the presidents of the nine companies and ordered them to refund her money. To date, she has received around $30,000.

To remedy this growing problem, Commissioner Sheppard has sent complaint teams into the smaller communities outside urban areas, because it is these smaller towns that have reported the most cases of elderly abuse. These complaint investigators listen to the problems and then initiate investigations into the agent and company involved.

The department has also filed formal departmental legal action against agents found violating the law. Those found to be engaged in fraud or forgery have been turned over to local authorities for criminal prosecution. As a result of these investigations, around 50 agents have lost their jobs and 10 have been indicted.

There are various methods employed by agents to exploit the elderly. Among these are:

Recontacting longtime elderly insureds of the companies, getting them to lapse their policies and buy new ones.

Passing the names of elderly, sometimes senile consumers from agent to agent and thus causing multiple sales of insurance policies.

Taking premiums for annual policies and having them issued on a quarterly basis to get a larger commission.

Writing many policies under a variety of names to avoid detection of the multiple sales ("Mary Smith," "Mary A. Smith," "M. Ann Smith," etc.)

Forging signatures of applicants on the applications.

Writing policies on sons, daughters, nephews, and nieces of elderly persons.

Before delivery of policies, tearing out riders which exclude payment for various health conditions the insured may possess.

There are several reasons the problem exists. First, the companies involved have been very lax in screening the type of agent they employ. Often, problem agents float from company to company, lapsing and rewriting their clients' health insurance as they go. Second, life-health insurance companies pay little commission on renewals. Because of this, there is a very great incentive for an unscrupulous agent to rewrite policies. Third, many insurance companies have chaotic records systems and do not notice multiple sales. Finally, many companies do not send out investigators to randomly review the sales their agents are making.

The insurance department has four branch offices, in Philadelphia, Harrisburg, Pittsburgh, and Erie, but it's the latter two which receive the most complaints concerning elderly insurance ripoffs.

In Pittsburgh, the number of cases involving alleged ripoffs has been dwindling, but one very recent case is noteworthy. It involved a very old woman who had paid premiums of about $42,000 on various policies. The agent who sold her the policies allegedly pocketed some of her premium checks and as a result, she was paying for coverage that she did not have. One of the Pittsburgh office's investigators, Ralph Hartford, learned of the case and began investigating. After many phone conversations with the insurance company president, the department was able to get back every penny of the woman's original outlay of $42,000. Meanwhile, the agent who allegedly forged her signature, cashed her checks, signed her up for policies she could never qualify for, and broke her savings, is now up before the insurance department for possible disciplinary action.

In Erie, our regional office serves a 14-county area and has a caseload of around 200, which keeps our two investigators, Jim Crawford and Bill Christ, quite busy, to say the least. The two of them are well known in the area for resolving complaints and consequently, many consumers experiencing problems with their insurance companies contact them for help. To date, the Erie office has gotten back over $60,000 for consumers who were taken advantage of by agents and companies. When those agents were reported, the Erie office informs us that so far nine have been arrested and charged in Western Pennsylvania. As shown by these figures, the Erie office has led the way in investigations and the removal of agents from the marketplace.

In addition to these programs designed to provide help for the elderly after the misdeed has been committed, the department has taken other steps to educate senior citizens so these abuses don't happen in the first place.

The department has maintained a systematic distribution to the elderly of the latest consumer guides, advising them on different lines of insurance and how they can avoid deception. Also, we are cooperating with Penn Dot in a new program which ensures that all Pennsylvania drivers over 65 will receive along with their drivers license renewal, computer cards stating where elderly insureds can go to resolve their insurance problems. One million cards are now being printed and they will be sent out starting in May.

Also, special circuit offices where investigators spend a day answering questions and complaints have been established all across the state.

In the past 6 months, the Pennsylvania Insurance Department has made great strides in eliminating the abuses inflicted on the elderly by unscrupulous agents and companies. Through the cooperation and dedication of our investigators throughout the State, the department has ferreted out these abuses, investigated them, pressured company executives for refunds to consumers, and hand delivered the refund checks to the senior citizens involved. These investigations take time and perseverence but the satisfaction involved in helping those who can't help themselves is well worth the time and effort spent.

Mr. LOWRY. I was referred to the insurance warden, the Ohio Department of Insurance. I filed a complaint and request for clarification of this matter. He, in turn, requested the company to provide copies

of missing documents and an accounting of all premium moneys received. A meeting with representatives of the company was scheduled for October 13. Shortly prior to this meeting I learned of the existence of four additional policies—one accident policy on Mrs. Lowry and three life policies on her grandchildren—bringing the total of policies in force with this company to 13. I also learned that a total of 17 sales had been accomplished but 4 policies were canceled and refunded, at least 3 of which were apparently duplications of coverage. With the exception of the original health coverage sold in November 1973, all sales took place within a 2-year time frame.

13 Sales by 5 Agents in 5 Months

Please refer to the sheet containing a list of policies sold to Mrs. Lowry. The list is submitted as an integral part of this presentation. You will note from the column of issue dates, or date sold, the rapidly increasing frequency of sale, similar to a snowball rolling ever more rapidly down hill and increasing its mass in premium dollars. In 1975, 1 major life policy; in 1976, 1 major life policy, 1 small life policy—refunded—and 2 health policies; and in 1977, 11 sales: 6 small life policies and 5 health policies—three refunded as duplicates—for a total of 16 sales. Within the 5-month period of December 1976 and April 1977, some 13 separate sales were accomplished by 5 agents. That averages out to approximately one sale every 11 or 12 days. I cannot avoid wondering how far the company representatives would have pursued this situation or just how large the "snowball" might have become had no one interceded. By June 1977, Mrs. Lowry's contractual obligations for premium payments amounted to $9,158.61 per year or approximately 68 percent of her annual income.

BANKERS LIFE & CASUALTY INSURANCE POLICIES

	Policy No.	Date sold	Coverage	Agent	Actual annual cost	Paid
1.	730-576-561	Nov. 9, 1973	Health, medical surgical, extended care	Carson	$109.64	Annual.
2.	5-248-470	June 3, 1975	Life, $17,145	Keller	3,090.00	$257.50 per month.
3.	760-175-115	April 19, 1976	Health, intensive care	Walsh	73.09	Annual.
4.	4-854-476	June 14, 1976	Life, $17,358	Keller	3,364.64	$841.16 quarterly.
5.	5-393-843	Dec. 15, 1976	Life, increasing to $2,480	Walsh	(272.73)	Refunded.
6.	760-392-452	Dec. 16, 1976	Health, hospital medicare supplement	do	76.91	Annual.
7.	R-831-018	Jan. 9, 1977	Health, intensive care (duplicate)	Walsh (?)	(109.64)	Refunded.
8.	770-052-917	do	Health, hospital indemnity	Walsh	284.72	Annual.
9.	5-413-376	Mar. 2, 1977	Life, increasing to $3,200	Grooms/Rainey	446.51	Do.
10.	770-150-792	April 2, 1977	Health, intensive care (duplicate)	Montgomery +A4544	(129.82)	Refunded.
11.	770-149-043	April 22, 1977	Health, accident, $10,000 to $50,000	LaBovick-Montgomery	27.82	Annual.
12.	5-432-306	do	Life annuity, $2,000 each	Montgomery	842.64	$70.22 per month.
13.	5-432-307		R. Lowry and K. Lowry		842.64	$140.44.
14.	R-844685	April 25, 1977	(?)	(?)	(109.64)	Refunded.
15.						
16.			3 life policies on grandchildren			$1,000.
17.						
	Total		5 life policies in force, annual premiums			$8,586.43.
			5 health policies in force, annual premiums			$572.18.

How did this happen? It is, perhaps, unnecessary to observe that my mother was a prime target for relatively easy sales. Her pride in, and love for, her two sons and their families is quickly apparent in any conversation, as is her continuing need to feel she can still do something nice for them. Certainly, in this, she is no different from millions of other senior citizen parents. She was, therefore, susceptible to sales arguments utilizing such terms as "estate expansion," "free of probate,' and "tax-free income for your loved ones."

"Trying to Cover the Medicare Gap"

Again, like millions of others, Mrs. Lowry was terribly concerned about the possibility of a long-term or chronic illness and the catastrophic effects that this could have on her savings and her small income producing investment program. Unfortunately, neither medicare nor private insurance carriers attempt to offer much protection against the long-term illness and she was persuaded to attempt to cover the medicare gap with a multitude of small specialized health policies.

She was also very trusting of the "professional guidance" so generously offered by the various insurance sales representatives and felt a genuine friendship and affection for some. When finally faced with the realities of what had grown to be an extremely heavy financial commitment to premium payments, the personal anguish she experienced was made doubly painful with the realization that none of her "friends" had bothered to warn her she was getting in too deeply.

During the course of my own efforts to unravel and understand this problem, I learned that seven or more separate agents, including branch managers, from Bankers Life & Casualty had dealt with and sold insurance to Mrs. Lowry. Six of these agents worked with her during the 2-year period of June 1975–May 1977. Both my mother and several of her neighbors at Otterbein Home recall that a large number of the agent's visits were in groups of two and sometimes three. This type of group visit was particularly distressing to me for I know how difficult it would be for my mother to reject their combined "guidance."

The October 13 meeting in the offices of the Ohio Department of Insurance was relatively unproductive and unpleasant. Present were Robert Katz, Ohio insurance warden; William Grubbs, director of government relations, and Mr. William Tobin, regional manager, representing Bankers Life & Casualty; Miss Warner, business manager, and Eugene Strawn, resident, both of Otterbein Home, and myself.

From the outset, the atmosphere was that of adversaries. Mr. Grubbs demanded to know why Miss Warner and Mr. Strawn were present and what interests they represented. He questioned the validity of my power of attorney and my personal motivations for involvement in my mother's business affairs, stating that the company's "first obligation" was to Mrs. Lowry. When issue was made about the frequency of sales visits to my mother by groups of agents, this was denied by Mr. Grubbs as impractical; it would not happen. Subsequent correspondence from Mr. Grubbs has made much of this denial with assertions that such group visits would occur only in the training program

and then only on rare occasions. I sincerely resent the fact that my mother's doorstep was apparently used as a training ground for new agents and the occasions were not rare.

Questionable Signatures

The two missing policies on my life and that of my brother were delivered, but were stamped "duplicate," an identification which I protested. The contract signatures were not in our handwriting and I indicated they might have been signed by my mother. However, the signatures had been witnessed or authenticated by the selling agent, Ronald Montgomery. Mr. Grubbs commented that the policies were not properly written. My mother's apparent participation in the creation of these questionable contracts was represented as a serious inconvenience to the company, but Mr. Grubbs said we would be permitted to choose whether to continue the policies in force or rescind them for a full refund of premiums.

During this meeting, it soon became apparent that the only "adjustment" the company was willing to make to Mrs. Lowry's 13-policy insurance program was in reference to the forged policies. Their recommendation was to lapse any other policy which we found burdensome. "No free rides" was the comment I recall hearing. In good conscience, and in my mother's best interest, I could not accept this as the only alternative.

A brief explanation was provided of the various life and health coverages and the meeting terminated with an agreement that the family would have a month in which to discuss and decide upon those policies which would be maintained and those for which a refund would be requested. Mr. Grubbs' parting comments referred to the meeting as a needless waste of time and included an estimate that the actions brought about by my "unfounded" complaint had cost the company nearly $4,000 thus far.

On November 3, a formal letter indicating the family's decisions was sent to both Mr. Grubbs and the Ohio insurance warden. Referring to the "unreasonable financial burden" which this recent and largely unnecessary 13-policy insurance program represented, the letter specifically requested rescission and refunds for the three expensive life policies on Mrs. Lowry and also for the recently "upgraded" hospital indemnity policy. These cancellations would have had the net effect of reducing her annual premium expenditures from $9,158.61 to $1,972.74, or approximately 15 percent of her annual income. It was clearly stated that the premiums would be paid on other health policies as they became due. The company was also duly informed that no decision had been reached as to the course of action we would take with regard to the highly questionable policies on my brother and myself.

My mother wrote her own letter to Mr. Grubbs to confirm the unity of the family decision and I would like to read just a portion of her letter. I feel it rather eloquently portrays the frustration and anguish she was experiencing. After requesting cancellation of the four policies, she says: "I trusted your salesmen to help me set up an insurance program. * * *" "Sincerely, L. Lowry." Both of these letters are submitted as part of this presentation.

Senator CHILES. Those letters will be admitted as part of the record. [The letters referred to follows:]

RALEIGH, N.C., *November 3, 1977.*

Re: Lucille W. Lowry.

Mr. WILLIAM GRUBBS,
General Counsel, Bankers Life and Casualty Co.,
Chicago, Ill.

GENTLEMEN: This letter will acknowledge receipt of the three missing policies purchased by Mrs. Lucille W. Lowry from Bankers Life and Casualty Co. on the lives of her three grandchildren. These three policies, as well as the life and annuity policies on Kenneth F. Lowry, Jr. and Robert E. Lowry, delivered on October 13, 1977, were erroneously stamped and identified as "duplicate policies." It is our contention that, in fact, these policies had never been previously delivered to Lucille Lowry.

The information derived from our meeting at the Ohio Department of Insurance on October 13 has been communicated to both my mother, Lucille W. Lowry, and my brother, Kenneth F. Lowry, Jr. Both of them have empowered me, in notarized documents, to act in their behalf. As was expressed at the meeting on October 13, our concern centers on the extensive variety of insurance policies sold to my mother between June 1975 and May 1977 (sixteen policies sold, of which four were cancelled and refunded as duplicate coverage). This insurance program represents considerable unnecessary coverage in view of her pre-existing insurance and now constitutes an unreasonable financial burden in monthly or annual premium payments amounting to approximately 68 percent of her present income. A proper financial analysis of Mrs. Lowry's needs and present situation as a resident of Otterbein Home would have revealed her permanent financial obligations to the home as well as other commitments. We therefore request the following:

(1) Rescission and refunds on the whole life policies No. 5,248,470, issued June 3, 1975; No. 4,854,476, issued June 14, 1976; and No. 5,413,376, issued March 2, 1977. These policies represent the heaviest financial drain on Lucille Lowry's resources and were unnecessary in view of the coverage which already existed in other life policies.

(2) Rescission and refund on the hospital indemnity policy No. 770,052,917.

(3) Compensation for the expenses incurred in attempting to investigate and resolve this matter. In their negotiations with Lucille W. Lowry, the actions and sales practices of the various agents representing Bankers Life and Casualty Co. raise serious questions regarding the lack of fiduciary responsibility, the resultant effect on her well-being, and her right to be compensated beyond the expenses mentioned above.

The premium will be paid on GR717 medical surgical policy No. 730,576,561, and on other health policies as they become due. At the present, no decision has been taken as to the course of action which will be followed in reference to the life and annuity policy No. 5,432,306 on Kenneth F. Lowry, Jr., and No. 5,432,307 on Robert E. Lowry. All refunds may be made payable to Mr. Lucille W. Lowry.

Sincerely,

ROBERT E. LOWRY.

LEBANON, OHIO, *November 10, 1977.*

Mr. WILLIAM GRUBBS,
General Counsel, Bankers Life and Casualty Co., Chicago, Ill.

Dear Mr. GRUBBS: Due to my physical condition, I was unable to attend the meeting my son, Robert, had with you at the offices of the department of insurance, State of Ohio, Columbus, Ohio, last month. Robert was acting in my behalf under my authorization. He explained to me the details of the meeting. He promised that I would make a decision as to my requirements on or before November 14, 1977. Therefore, my decision is as follows:

I wish to cancel the following listed policies and request refund of all premiums paid on these policies from the issued dates:

Life policies: 5248470, issued January 3, 1975; 4854476, issued June 14, 1976; 5413376, issued March 2, 1977. Health policy: 770052917.

I trusted your salesmen to help me set up an insurance program that would benefit my children. I did not realize that I would not be able to pay all these premiums until I found myself financially strapped and unable to meet my current obligations out of my monthly income. So instead of helping my children, I find that sooner or later I will lose all the money I have paid in and I am on a dead-end street, so to speak. An audit of my financial affairs indicates that 68 percent of my income is owed to Bankers Life and Casualty Co., and I will not be able to help my children as represented by your salesmen. My son, Kenneth, has been here from Michigan and agrees with all of the above decisions.

I sincerely hope you will make the above adjustment in order to rectify my predicament.

Sincerely yours,

LUCILLE W. LOWRY.

"AVENUES OF ASSISTANCE EXHAUSTED"

Mr. LOWRY. In the days following the meeting I did not know where else to turn for assistance in resolving this problem. The company's attitude in refusing to recognize that insurance oversale had apparently taken place and their minimal concessions gave little hope that our decisions and requests would provoke a positive response. I was also aware that the Ohio Department of Insurance appeared to feel that their immediate responsibility had been satisfied simply by bringing about the meeting. Due to the structure of Ohio laws it seemed that I had exhausted both the avenues and the remedies available to the complaining consumer in Ohio.

The problems of insurance exploitation and the offensive sales tactics described in the Pennsylvania press releases were so similar to my mother's situation that I began to wonder if the problem practices had crossed the State line and were now flourishing in Ohio and elsewhere. The probability that my mother's problem was not unique or isolated suggested the necessity of alerting the appropriate authorities and assisting in the exposure of the condemned sales practices.

The attorney general's staff was again helpful in referring me to a former staff member of your committee who is presently directing an Ohio agency program concerned with problems of the elderly.

She strongly suggested that I contact the Washington office of Senator Glenn and the Committee on Aging in order to call the problem to their attention. I did so. Senator Glenn and his staff became immediately involved. Letters were written to the Federal Trade Commission, the Ohio Department of Insurance, and the Ohio attorney general's office expressing a great concern for my mother's specific problem and requesting some review of the possibility that insurance exploitation of the elderly might be taking place in Ohio and elsewhere. Senator Metzenbaum also directed letters urging investigation of the problem to those same Ohio agencies. I contacted Senator Stevenson's office which reported the problem to the Illinois Department of Insurance and they, in turn, made inquiry of Bankers Life & Casualty. We are most sincerely grateful for the interest and support received from these concerned Senators.

I finally received a letter from Bankers Life & Casualty on December 10, and a copy of their reply to Senator Stevenson's inquiry. The letter contained a justification of the company's position, the propriety of the insurance program written on my mother and two refund

checks. To my complete surprise, the refund was a blanket cancellation of all 13 policies. Referring again to the letters my mother and I sent to the company, we specifically requested only four policies be rescinded and refunded, that is, the three life policies which constituted, by far, the major share—$6,901.15—of her annual insurance premiums and one health policy.

The company's action in this total program cancellation was inexplicable. There had been no intention on our part to leave my mother without some insurance protection. Three of the health policies were to be maintained, at least for the time being. The accident policy and the grandchildren's policies were relatively inexpensive and we had decided to retain them—despite our conviction that they represented basically unnecessary purchases in an already oversold program. The company's treatment, in this unrequested blanket refund and cancellation, was interpreted by us as a vindictive act. One further offense had been committed against this elderly client and we were unable to understand the reasons.

The Pennsylvania press releases make a strong recommendation, a plea, for family members to dare to involve themselves in their aging parents' affairs in order to help assure that overinsurance or exploitation does not occur. As I indicated earlier, my own involvement was accidental and very tardy. Once a problem of insurance oversale does exist and is discovered, the avenues available for pursuit of its correction or remedy are, I feel, unnecessarily difficult and time consuming. Responsible public agencies at the local or State level are not always responsive or tend to view their roles as referees who stand back and say, "Let you and him fight." Washington, D.C., is a long distance for most people to travel and it should not be necessary to come here in order to obtain an insurance program correction.

I sincerely hope that this difficulty of corrective actions might become one of the concerns of this committee. Also, there should be an awareness that there is considerable apprehension and reluctance to come forward, to admit publicly what my mother has mentioned to me. "I have loved too much, lived too long, or trusted too much."

Single Agent Selling Duplicate Policies

Senator Chiles. Thank you.

Mr. Lowry, looking at the listing here of the policies that she bought it appears that in one instance one agent was responsible for some of the sales of duplicate policies which were later refunded by the company on that basis. Is this your understanding?

Mr. Lowry. Yes. From the information I was able to gather, Mr. Walsh had sold the original health intensive care policy in April 1976 and 8 months later, he again sold her the same type of coverage which was subsequently refunded by the company as duplicative. This particular type of policy was very popular because other Bankers agents apparently sold it to her two more times in April 1977. I fail to understand this, but I do have the refund stubs. My mother is unable to recall the details of these transactions.

Senator Chiles. Do you know how these agents first contacted your mother? How did they become aware of her?

Mr. LOWRY. I do not know, Senator. If I might dare to conjecture, it may have been through a Sunday supplement coupon or a mailed out brochure which could have piqued her curiosity. She does have certain anxieties and concerns and I think it very likely that she would have responded to these advertisements.

Senator CHILES. Do you know if these same agents sold insurance to anyone else in the Otterbein Home?

Mr. LOWRY. I do.

Senator CHILES. They did?

Mr. LOWRY. Yes, sir. I know of at least one other Otterbein Home resident who purchased two life policies from the same agent who had sold my mother her two largest policies. She has apparently contacted some trusted person who has advised her against the program she purchased. She would like to obtain a refund and yet, when I look at the figures on her insurance, the cash surrender values are minimal—approximately one-third—in comparison to the amount of premiums paid in over 2 or 3 years time.

The company had made quite a point of saying to us that there would be no refund because the policies had been well sold, that there was a true "need" which existed for my mother. Therefore, nothing out of place had occurred. Yet, I believe, with the spotlight focused on them and receiving expressions of interest from various Senators here as to their actions, they did decide that a refund should be made. This was a full refund.

I would like to believe that the company would not consider my mother a very special exception. She did receive a full refund, and I would hope that perhaps other dissatisfied senior citizens might be able to obtain their program corrections.

Senator CHILES. Senator Glenn.

Senator GLENN. Thank you, Mr. Chairman.

This struck a particular chord with me because of a family experience we had, I guess. My dad worked as a plumber all his life, had a small plumbing shop, saved a very modest amount for retirement. My mother and dad owned their own home. About 2 years after my dad retired, he got cancer and was on about a 6-year downhill slide and all the savings went.

After my dad died, my mother then had a number of calls in the next few months regarding her own health insurance. I suppose they assumed that all the money had gone to pay for my dad's medical bills and she would be especially concerned about her own health problems. Fortunately, she called me and I was able to advise her in these matters. However, where there is not someone immediately available like that, and with the fright that the elderly have with regard to their health, it becomes an increasing problem.

"A FRIGHTENING, FRIGHTENING PROSPECT"

As people reach their senior years, health becomes the most important thing to them. When they have that concern, and when we know that medicare pays only about 38 percent of the medical costs of those over 65, you begin to see the extreme concern that people have of getting left stranded as paupers with nothing to take care of their

health needs. It is a frightening, frightening, prospect, and it places people like your mother, and others, in a situation where they are so very vulnerable to the pressures that can be exerted on them. That is something we absolutely have to take care of, either through the companies voluntarily or through law.

Let me add one other thing. I think those who have pushed for national health insurance with a comprehensive overall national health insurance have done a disservice in some respects. They have insisted on the whole national health package or nothing, and as a result we have got nothing. I think, a long time ago, we should have gone to the major area of concern—as I see it—that of covering the catastrophic illness. That is the one that just wipes people out overnight, wipes out family finances. It seems to me that we should get something in place that covers that most dangerous area, that of catastrophic illness, but we have not been able to split that off from comprehensive national health insurance. The proponents of national health insurance will not see anything except the full blown package, and as a result we have had nothing. I think we should be covering some of these areas of special concern.

Let me ask you specifically, in this area of false signatures, what was done on that? Now that is criminal. Was there any followup made on that?

Mr. LOWRY. The company had offered to refund those or honor the policies as we were to decide.

Senator GLENN. But I mean it is criminal for anything, not just with insurance. It is criminal to sign somebody else's name or falsify a signature. Did the attorney general or anyone follow up on that as to——

FALSE SIGNATURE NOT FOLLOWED UP

Mr. LOWRY. No, Senator. I appreciate your having raised this issue. I have been extremely disappointed at the lack of reaction in Ohio, to the maintenance of laws that I understood would exist for the protection of the citizens. Neither the attorney general's office found an avenue for acting in this area, nor the department of insurance. A local attorney I spoke to was unsure.

I had not requested, had not accepted the company's offer to refund these particular policies, because we were and still are considering possible legal action there in Ohio. This is an area about which I have felt a great deal of concern.

I might mention one other violation. In the blanket cancellation which the company accomplished of all of my mother's coverages, attached to every one of the health policies is a small rider called the Ohio statutory rider. I won't read the whole thing. It says, "Cancellation by the insured, noncancellation by the company." One of the sentences specifically says, "The company may not cancel this policy." Yet, the company did.

Now I plan to file a formal protest regarding this in Ohio. Even though the Lowry family feels that it wishes no further insurance involvement with Bankers Life & Casualty, we were willing to maintain these policies because we did not wish to leave my mother totally unprotected, but I protest the action of the company in violating yet one more Ohio statute.

Senator GLENN. Was one of the frauds that was also perpetrated—I guess it would be official fraud—that of using different names or using an applicant's initials one time, the first name another time, the first initial and middle name another time, so that perhaps they wouldn't show up on the computer runs that the company might make to follow up on individual agents? I don't think we are here today to castigate the whole insurance industry. That is far from my purpose here today because I think a lot of this comes from individual agents out there that need to be policed better by the companies. I don't fault everybody in all the companies, and I want to make that clear, but sometimes individual agents out there will use different names or sets of initials for the same person. Was that done in your mother's case? Was the name always the same?

Mr. LOWRY. This is one of the warning signals included in the Pennsylvania press releases, but I have not found that to be the case. Her name was spelled and misspelled with a passion, but this did not seem to result in a duplication.

Senator GLENN. Maybe this just was not a very bright agent in this case.

Mr. LOWRY. The company has made a great point in much of its correspondence to the North Carolina Department of Insurance in citing a number of rules which exist for the behavior of their agents. I found these extremely interesting due to the fact that they consistently managed to violate their own rules, so the recitation of such behavioral codes means very little to me. It may well be that these rules are a very recent creation and brought about through protests such as this.

Senator GLENN. Did you ever talk personally to the agents involved that sold these to your mother—Mr. Walsh, for instance—that sold five different policies in a reasonably short period of time, about 1½, 1¾ years?

Mr. LOWRY. No, Senator, I did not. I met with only one agent, Mr. Grooms, who came out to respond to some initial questions. He was also interested in insuring me during the visit. The subsequent contacts were all with Mr. Grubbs.

Senator GLENN. I know we do have other witnesses and our time is getting away, and we are going to have to move along, so I will curtail my questions. We might wish to send you questions that could be answered later on so the committee records will be complete. I would note though and want to make this comment to you, we are going to follow up on the record of today's hearings and your testimony. I have already asked my staff, Diane Lifsey on my personal staff, and I would ask the committee staff to go through this and make a copy of the day's hearings so that we can send it along with any comments on this from the staff here to the Ohio attorney general's office to see if there is any area of criminal prosecution that should be followed up.

The attorney general, Bill Brown, is a very good friend of mine. I know personally of his interest in following up where there has been fraud or where criminal activity would be involved against a particularly vulnerable group of people like this. I don't know at this point whether there is anything that can be done or not, but I know he would be interested in following through on it. We will make the

record available to him, along with staff analysis of where they think there might be particular areas that warrant criminal prosecution.

Mr. LOWRY. I sincerely feel that the Ohio attorney general's office did wish to become involved, but they found themselves blocked from such involvement by existing legislation and reluctantly referred me to the insurance department. I would hope that necessary changes could be made in the Ohio law and the Ohio Consumer Fraud Act.

Senator CHILES. Thank you. You have done a service not only for your mother but for a lot of elderly people, too.

Mr. LOWRY. Thank you.

Senator CHILES. Mr. Klowden, you are next. Your statement in full will be placed in the record and if you could summarize that for us a little bit it might help us because we have a number of other witnesses.

STATEMENT OF JULES L. KLOWDEN, VOLUNTEER INSURANCE COUNSELOR, SENIOR CITIZENS SERVICE CENTER, SAN DIEGO, CALIF.

Mr. KLOWDEN. I will try to be as brief as possible.

Senator CHILES. Thank you. We want to have time to ask you a few questions.

Mr. KLOWDEN. I am overwhelmed to be able to address these distinguished people.

My name is Jules Klowden, I am a volunteer insurance counselor with the city of San Diego Senior Citizens Service Center. My office is in the city administration building. A month after coming to live in the area, my services were enlisted as I came in to register to vote. The story given to me was that the seniors were being "ripped off" by insurance companies and since I was retired and formerly in the insurance field, would I help? Mrs. Evelyn Herrmann, chief of the senior citizen services, is in charge, and it was she who recruited me.

We analyze approximately 15 to 20 policies per week, or for that many people, I should say, and we have many telephone interviews as well. The city attorney has provided, in writing, permission for me to be able to recommend a number of insurance companies and our service is free of any charges to the public.

We find that people are inclined to buy more than one health policy for two reasons: (1) That medicare does not pay the entire bill and adheres to its famous phrase, "Reasonable fees and charges"; and (2) supplemental plans to medicare follow the same principle and offer to pay their share of what medicare allows as reasonable.

GAPS REMAIN

This leaves a big gap in medical costs for the patients to pay, despite the fact that they have medicare supplemental plans.

There is a great fear in the elderly, especially women, who worry about whether they have enough coverage should they wind up in a hospital or nursing home. This fear impels them to buy from glib-tongued salesmen and from well-flowered ads they see in newspapers.

An interesting case that I am concerned with is for a retired Navy chaplain who felt that he and his wife needed a benefit for a nursing home facility. The salesman, working for an insurance agency, came to the chaplain's home and after telling him about this great plan that he had, indicated that it could only be sold to members of his senior citizens association. The fee for that is $12 per year. The policy was purchased for $120 per year for each of them, plus a $10 policy "fee," a one-time payment, plus of course the $12 per year.

A statement in the policy says the company will pay according to plan selected, for a period not to exceed 180 days, after excluding the first 100 days of covered nursing home confinement. The benefit it provides is $10 per day. At no time does it offer to pay at least part of the medicare deductible since it does not pay anything until the medicare benefit ends. Is this value?

One month later, upon delivery of the policy, the salesman told of a great investment plan that he had for the chaplain. This was with a savings and loan association from Los Angeles which was planning to build an establishment in San Diego within 6 months.

The chaplain fell for the idea and his investment was to be $1,176 per year. After the second payment was made and no building was put up by the investment company, he tried to reach the salesman by phone and then with repeated visits to the office. The man was never in, always out to see his doctor, but never returned the calls.

Our chaplain now came to me for help and we found that the great investment for this 77-year-old man—now 79—was a life insurance policy. We filed charges of fraud with the district attorney as he was working on other cases against this sales agency. He, in turn, contacted the department of insurance. We are still waiting for the investigation to be completed.

The owner of this insurance agency has been arrested on another case since then with the trial coming up soon. Two other men from this agency are now in jail. Several others are being investigated for shenanigans in the field, one for continuing to sell insurance after his license was canceled by the department of insurance, and working a funeral cost racket with seniors for this same agency.

Another case with that group was of a lady who had made purchase of a medicare supplement policy but had not yet received it. Reading the newspaper story about the owner of the agency, she became frightened and wanted out. I advised her against it as the problem was not with the insurance company. She was insistent. We showed her how to do it.

A few days later, two men came in with a tape recorder and "held an inquisition," as she described it. She was hysterical. Her money was refunded.

Bombarded By Advertising

Another problem we have is selling medicare supplements with brochures that indicate benefits that are not provided by the policy.

We again have the problem of companies that advertise in the newspapers. Some of them have fair plans that could have some meaning to the elderly; however, they start a bombardment of mailings to add

riders or to sell additional coverages that bring them millions and empty the purses of the seniors. The extra plans they sell come under my description of "junk policies." Here is a case of a company who advertises in one of our local papers with a fairly good plan.

They supply this for only $1 for the first month. Not bad? Whether you continue with the plan or drop it, you are on the mailing list and ripe for their cancer policy. This was purchased by one of my ladies. The annual premium was $53.32 and was dated April 22, 1977. A rider was added for $23.44, dated October 22, 1977; then again another rider for $77, dated November 22, 1977. This makes a total of $153.76 per year.

Not too long ago, a cancer policy sold for $10 per year to cover an entire family and included many other dread diseases with it. These benefits are poor and the cost too high. It allows $60 per day for the first 12 days and $40 per day thereafter for a total of 90 days of coverage. It pays from $30 to $500 on a listed surgical benefit. This is for cancer. They allow up to $50 per day for intensive care, limited to 30 days. They allow up to $6 per day for drugs or medicines for the first 12 days and up to $4 per day thereafter until a total of $250 is paid.

We in San Diego are living in one of the highest medical cost areas in the world. People must not have such junk offered to them. The hospital nearest to my home charges $151 per day for general care—at least it was that last week. Our big problem is the bill presented by the doctors and most of the "junk policies" offer no benefits, just piddly ones that can bankrupt a family.

Reluctance To Pay Benefits

We have case after case of insurance companies who do not like to pay even the benefits that they provide in their policies.

One lady came to me with medical bills of over $8,000 and begged for help. A girl in the doctor's office filed the claim for her. Upon my inquiry, they said no claim had been made. This was about 10 or 8 months later. Upon filing the claim we got $1,400 for her.

The same company, on another claim that I made for a man, resulted in a payoff. He tried for 10 months to get help to make them pay. However, they shorted him $40. It took several months more and filing with the department of insurance to do it before they paid. It is a nationally known group and very well known.

We have the problem of an 80-year-old widow with seven policies who came to me last week to see if she had proper coverage to help with medicare benefits. She left the policies with me as I could not evaluate all of them immediately. The next day she wrote a letter which I brought with me. I would like this entered into the record, if possible.

Senator Chiles. Without objection, it will be entered into the record.

[The letter referred to follows:]

San Diego, Calif., *May 6, 1978.*

Dear Mr. Klowden: As you probably recall I left some insurance policies with you Friday, May 5, for you to please look over and give your opinion of which ones are the better and/or if they are practical for me to keep.

I know I have too many, perhaps covering the same thing—and if so could I collect from both?

When I took them out, I knew that medicare does not call "reasonable" nearly the amount the hospital, doctors, and convalescent or skilled nursing homes cost and some of the policies maybe say they only pay $15 or $20 a day in hospital—or for $18 to $10 per shift for home nursing, but I thought that amount would help pay for the "unreasonable" part that medicare doesn't cover? But on the other hand—would it be cheaper or more advisable for me to put my money in the savings and loan to draw interest? I'd have to pay or file income tax then if my income was high enough. I don't like the idea of paying interest on interest, neither throwing money away.

I've heard a number of people say one only needs one good supplement to medicare, but what ones are good?

Also different ones speak of having Blue Cross-Blue Shield, whatever they are, but said BC-BS was quite expensive. Does or can one have medicare and Blue Cross and Blue Shield at the same time? And what do they pay that medicare doesn't?

I've been thinking the past few months of dropping one or two or three of these anyway, and if I could get some one policy if there is such a one, that would cover and pay for what the ones I now have do. I would not want to let them go where I wouldn't be covered, until the waiting period of a new policy has elapsed, I mean if I have to wait 6 months before I can collect on a policy. I should want to keep one I have until I have had a new one that long.

At the present I have too many to keep track of when premiums are due.

I think I read something a while back in "Senior World" about AARP and Colonial Penn, but I don't remember what. Isn't Colonial Penn a reliable company, one that pays and pays promptly, or are their premiums too high?

I was thinking a while back before I thought of coming to (you) for help of maybe dropping Bankers "Over 65 Skilled Care" since it has raised to $133.82 a year now and maybe keeping AARP recommended Colonial Penn Skilled Nursing and Home Nursing Policy No. 1152372, but also was about of the opinion that medicare or Bankers or Colonial Penn would not cover the costs or even 50 percent of costs for the majority of people that go to these places, for stays here require 24 hours a day skilled service, have to have registered nurse and doctor 24 hours per day. So maybe would not be able to get anything from medicare or any insurance company.

What do you think? I had thought the individual accident part of 1152372 might be good if the company will pay what the policy says, but they have never raised the price since I took it out, but maybe they aren't reliable and wouldn't even pay what they said. (It is $4.75 per month.)

My sister had Bankers' in-hospital like mine and it paid off as policy stated while she was in the hospital. But nothing while she was in Hillcrest Rehabilitation and Convalescent Hospital. Medicare didn't either except the H.R.C. had her charged for 20 percent of therapy. Said that medicare had paid them but she didn't get any reduction on any of colostomy supplies, medication for or drugs for bladder trouble, heart or lungs, but charged her almost twice as much for some of same kind of medicine, etc., that she took when she was home. Therapy, even 20 percent, was plenty high, I don't know of any only rubbed her back and helped her walk a few times.

Thanks for giving your time in looking at my policies and trying to read this. I appreciate it very much.

Sincerely,

(SIGNED.)

P.S. Sunday—

Someone gave me a folder to look at today called Coronet Senior from Blue Shield. I looked it over some but am not sure I understand it all or not, but I think if one takes out the Coronet Senior they have to pay $100 a year hospital care, and prescription drugs and private duty registered nurse, these things while in a hospital. Is that correct? And any medical and outpatient hospital services are provided by Blue Shield without a deductible. (What is outpatient hospital services?)

Under "payments" of this folder, what does this line, "Benefits of this plan may not be assigned without the written consent of Blue Shield," mean? Under part B—"Medical and Outpatient Hospital Services," what does outpatient hospital services mean? Does that mean that if one has this policy, even if they haven't been in the hospital, but if a doctor or even the holder of the policy thought they needed an X-ray, or had a chest pain, or some ailment and they

wanted to find out what was the cause, and got relief, they could go to the hospital and ask for such help without first contacting a doctor even if I had been doctoring with one? And if one's doctor had sent patient to have X-rays and tests, that medicare pays 80 percent of what they call reasonable, and Blue Shield pays the other 20 percent of what medicare calls reasonable? (And then the patient still pays about 40 percent of the bill that isn't reasonable.)

Do you think I would be better off and as adequately covered if I took Coronet Senior if I could get it with Blue Shield at $67.50 a quarter or $270 a year, and drop two or three of the ones I have? Which ones? Which do you advise? I have felt I had too many for hospital, but not ones that cover doctors and medicines, etc., but I guess none of them pay for nonprescription medicines or for chiropractor treatments, or adjustments, and heat when one has a wrenched or strained back, do they?

If you can read this and give me your honest opinion I will appreciate it.

I am 80 plus, have social security and a little savings but not much, but enough so far to not need welfare, but have not enough that would last long in a hospital or convalescent or rest home, or even if I had to have help. So far, have lived in studio apartment for quite a number of years so get rent cheaper than would if I hadn't been here so many years. If have to pay rent like most, then my savings wouldn't last and I have been making a little working a few hours at housework, so cut down on expenses too. I have no one to help me or to depend on if I get so I can't care for myself. So far, I only have to take one prescription regularly.

I don't understand "reimbursement of benefits for injury" paragraph.

Sincerely,

(SIGNED.)

Mr. KLOWDEN. It tells the story of one poor soul of many millions with the same problem. One of the policies indicated it was for persons over 65 and they had the audacity to put a maternity benefit in it.

CALIFORNIA ACTIONS

California has become aware of the medi-gap problems and the department of insurance has taken a few more steps to help our seniors. We have established a loss ratio for medicare supplement policies at 55 percent. The commissioner will study the annual reports from insurance companies closely and see that they adhere to this regulation.

In order to be called a "medicare supplement policy" part A and part B will have to be included. However, the coverage could be limited to expenses incurred while hospital confined and may not need to include skilled nursing care services.

Preexisting conditions are now to contain a maximum of 6 months waiting period instead of 12 months for coverage of conditions treated during the 6 months prior to the effective date of a policy.

Policies designed to supplement medicare shall be indentified as such.

Readability is being stressed. All medicare policies are to be withdrawn as of December 31, 1978, and be replaced if they were issued prior to May 1, 1978. They are to be written in understandable English. Disclosure forms must be provided with each new policy delivered after January 1, describing the benefits and returned to the insurer to indicate understanding of the policy.

A catastrophic medicare supplement coverage will be permitted to be written starting in January. This could be designed to pay the difference between what medicare pays and the usual, customary, and reasonable expenses.

I am afraid, however, that if no control is placed on medical costs when this type of policy is issued, may God help us.

My most heartfelt thanks for listening.

Senator CHILES. Thank you, Mr. Klowden, for your comprehensive statement. You mention on page 2 of your statement that the insurance agency was selling insurance only to members of a senior citizens association and that they paid a $12 fee to belong to that association.

Mr. KLOWDEN. That is right.

Senator CHILES. Is that a local group?

Mr. KLOWDEN. Yes, sir, it is a local group. They did not actually seek out members and then sell them insurance. What they do is seek out most people to whom they sell their insurance and then tell them they must be members in order to get the insurance. In this way, they sell the membership also.

Senator CHILES. I see. The design was not just to sell insurance. You would be able to buy insurance if you were in that group but they were going to provide other services.

Mr. KLOWDEN. Yes.

Senator CHILES. What other services were there besides the prescription service?

Mr. KLOWDEN. They had meetings once a month. They had guest speakers. They did have some kind of travel setup to offer to the people but this——

Senator CHILES. This was looking like a nonprofit association designed to benefit the members by helping them with problems.

Mr. KLOWDEN. I would not say that it was nonprofit—$12 a year—I think they made themselves a good piece of change, because they didn't give anything for it—very little I would say.

Senator CHILES. Did they give counseling and advice to the seniors as well as help them with their prescriptions?

Mr. KLOWDEN. It is possible. It is possible.

Senator CHILES. How many members did they have, do you know?

Mr. KLOWDEN. I have no idea, sir. I never did check on that. I am sure that the district attorney has that information available to him.

Senator CHILES. Some of these people have been put in jail?

Mr. KLOWDEN. Yes, sir, that is right, and there are more going.

Senator CHILES. You indicate that the brochures advertising supplemental policies to be misleading. How much of that do you see in your position as counselor? Do people get a lot of these brochures through the mail?

Mr. KLOWDEN. Yes, sir, they do. In fact, I did bring a policy and a brochure that was used in which to sell it, although I have it downstairs in an office. It is in my briefcase.

Senator CHILES. We will keep the record open. We would like to see that.

LIMITATIONS NOT EXPLAINED IN ADVERTISING

Mr. KLOWDEN. We find that many companies offer in their brochures various benefits. Just to give you an example, say they claim that they will pay X-ray charges, they will pay laboratory fees, and it is assumed by the individual who then buys it that the full amount is going to be paid. However, when the policy is received and you read these various benefits, they indicate the same benefits but then a few words after that "up to $10." In other words, they have a tight limitation on it, but it is not indicated as such in the brochure.

Senator CHILES. The step that California has taken in providing that they must pay out 55 percent of their premiums, do you think that is a good step?

Mr. KLOWDEN. I believe so, only there is one problem that we might be involved in in the future in that. If the company has to pay that much out in benefits, it is going to cut down on the cost of commissions to their salesmen, and if that happens we may have more problems with vultures.

Senator CHILES. Senator Glenn.

Senator GLENN. Yes, a couple brief questions.

Mr. Klowden, you indicated in your statement you were formerly in the insurance field. In what capacity was that?

Mr. KLOWDEN. As an insurance salesman, and I was an assistant manager with my agency for a while.

Senator GLENN. Did you in your experience with the companies follow up to see or make a real substantial effort to see that these kinds of practices did not occur when you were active yourself?

Mr. KLOWDEN. We had very, very few problems of that kind at the time that I was in the business. I got out of the insurance business in 1961 and it has been a while. We had a few companies that were rather rough on people, some of the cases that have been brought up to date, but there were very few like that. Most of the companies were quite dependable.

Senator GLENN. When you were active this was before medicare and before some of the fast rising costs that we have had.

Mr. KLOWDEN. Yes, sir.

Senator GLENN. Do you think State insurance laws in general are adequate now in this area?

Mr. KLOWDEN. I am not familiar with any outside of my State, or that of which I operated before, but I think they should be tightened up even more, to be more watchful.

Senator GLENN. What kind of cooperation have you had since you have become an advisor in this area in San Diego? What kind of cooperation have you had from the companies when you point out the problems?

Mr. KLOWDEN. Oh, some of them were very reluctant. I have attempted to get specimen policies, for example, from many companies and usually they will send brochures trying to advertise rather than to send specimens, because I know that the payoff on any claim is based on the policy itself, and for this reason I refuse to evaluate information on a company other than on the policy itself.

Senator GLENN. One obvious improvement that could be made immediately, of course, is that people do take the time to know what they are doing, and in that case a lot of people who do not have the expertise that you can provide for them, it is difficult for them to analyze what is best in their situation unless they have someone like you.

Mr. KLOWDEN. True.

EXPERT ADVICE OFFERED

Senator GLENN. Has this been an expanding program in California and could you comment very briefly on the advice or role you have had

and whether you think it should be expanded? I personally think this is a great idea, having someone of your caliber and someone of your background who knows of the problems so they know somebody they can call so they have not a bipartisan but——

Mr. KLOWDEN. Unbiased.

Senator GLENN. An unbiased view of the people's real needs. Usually people don't have anyone to turn to, and so I think that your situation would be one we should try to foster in all States and arrange for people who do not have someone else to advise them.

Mr. KLOWDEN. Senator Glenn, I highly recommend it because as far as I know there is no one else in this country doing it as a volunteer. I don't get paid for it. It costs me money to do this but I am happy to do it. If any State or city in this country is willing to learn something about it, I will be very happy to train a staff for them, so long as they send them out to me for this help.

Senator GLENN. Well, you are to be commended for your activities and for taking this on and helping your colleagues out there who may not have your expertise. I commend you for it.

Thank you, Mr. Chairman.

Senator CHILES. Thank you, sir.

Thank you very much for your testimony, Mr. Klowden.

Mr. KLOWDEN. Thank you.

Senator CHILES. Our next witness will be William E. Grubbs, director of government relations, Bankers Life & Casualty Co., Chicago, Ill.

Mr. Grubbs, I understand you have a couple of people with you. You can bring them to the table with you if you like.

STATEMENT OF WILLIAM E. GRUBBS, ASSOCIATE LEGAL COUNSEL AND DIRECTOR OF GOVERNMENT RELATIONS, BANKERS LIFE & CASUALTY CO., CHICAGO, ILL.; ACCOMPANIED BY DUANE CHAPMAN, ADMINISTRATIVE VICE PRESIDENT; RUSSELL VAN KAMPEN, MARKETING VICE PRESIDENT; AND MICHAEL DRESSENDORFER, ASSOCIATE

Mr. GRUBBS. Mr. Chairman, I have with me Duane Chapman, an administrative vice president; Russell Van Kampen, a marketing vice president; and Michael Dressendorfer, an associate in my division.

We are pleased to be here and we appreciate the courtesy of this committee in inviting us. We have been asked to comment in two general areas. First, the range and extent of purchase of private insurance policies by medicare beneficiaries. This includes comments upon the underwriting limits and practices involved in the offering and issuance of life insurance and accident and health insurance to persons over 65 years of age. Second, the issuance of life and accident and health policies to insure Mrs. Lucille Lowry, three of her grandchildren, and her two sons.

We have presented the committee and staff our prepared statement covering in some detail our view of the range and extent of the private insurance held by medicare beneficiaries.

Senator CHILES. Mr. Grubbs, that statement,[1] in full, will be included in the record and if you can summarize that for us it will be helpful.

Mr. GRUBBS. Yes, sir. That is exactly what we intend to do, Mr. Chairman. We were asked by staff to try to restrict our comments to 10 minutes. I went through this once and I made it in 10 minutes and I hope to do it again.

Senator CHILES. We will give you a little leeway there but we would appreciate it.

Mr. GRUBBS. Thank you.

$120 MILLION IN HEALTH PREMIUMS FROM ELDERLY

Our insurance marketing is not limited to persons over 65. I will just take a moment here to issue for your information a little profile of our company business as of 1977 so that these matters can be put in the proper perspective.

In 1977, we had total premium income of $476 million roughly. We had individual and accident health insurance in force of $298,500,000. We had group accident and health insurance in force of $74 million. We had approximately $120 million or about 45 percent of our total accident and health in force on persons over 65.

Senator CHILES. I missed that figure.

Mr. GRUBBS. That is approximately $120 million out of the $476 million. The total premium income being $476 million, the income coming in from persons over 65 is $120 million.

Senator CHILES. Can you tell me the premium that you are collecting from people over 65?

Mr. GRUBBS. The $120 million is premium or 45 percent of the total accident and health roughly. That is between 40 and 45 percent somewhere.

Mr. Chairman, do you have those figures? We have individual life coverage in force of $62 million, annuity in force of $13,500,000, group life of $7,300,000, and group annuity of $800,000. I think that will perhaps help you keep this matter in its proper perspective.

In addition, our written report provides detail concerning the issuance of life and accident and health policies to insure Mr. Lowry, three of her grandchildren, and her two sons. I would like to comment at this time about the Lucille Lowry matter since it became the responsibility of my department to handle this matter after a complaint had been lodged with the Ohio Insurance Department on or about September 28, 1977, and subsequently with the Illinois, Virginia, and North Carolina Insurance Departments, to whom we were required to explain this matter.

I would like to add one additional factor here, and that is our company does not consider one over 65 to be prima facie an incompetent person. Our assumption is that a person over 65 is competent and able. As a matter of fact, in our hiring practices, from the very beginning, we have never had a mandatory retirement age for this reason. One of my leading secretaries happens to be 74 and is most competent and able. Consequently, just because an individual is over 65, we don't treat him any differently than we would a younger individual.

[1] See page 56.

My original review of the policyholder files indicated to me the health insurance in force upon Mrs. Lowry fell within reasonable parameters and also within our company rules limiting the maximum of premium to $50 a month. We have been informed——

"DON'T OVERSELL"

Senator CHILES. Excuse me just a minute but I am going back to your full statement where you talk about medicare coverage.

With few exceptions, everyone over age 65 has the benefit of medicare, both parts A and B. If for some reason they didn't apply for part B, advise them to do so. This in itself is excellent protection.

Then you go to a "Don't oversell, don't place a burden on the policyholder that he or she cannot afford."

Mr. GRUBBS. That is correct.

Senator CHILES. Then going on, I notice on page 5 that you say, "By putting the above actions into every presentation to people in the over-65 age market, you will not only help them but in the long run the company and yourself."

You were referring there to in-force coverage. "Regardless of how substantial the benefits of our policies are, very seldom is there an advantage to the policyholder to lapse one individual policy in favor of another. Usually, it is an injustice with a resultant misunderstanding on claims." So it looks like you have in your manual recognized the over-65 and you have put in certain kinds of conditions in regard to sales to that over-65.

Mr. GRUBBS. That is absolutely correct.

Senator CHILES. Why don't you recognize them as being incompetent? Under your own manual it seems that you are trying to instruct your agents as to something in sales restraint.

Mr. GRUBBS. That is correct.

Senator CHILES. Excuse me for interrupting.

Mr. GRUBBS. We have been informed. Mr. Lowry questioned whether his mother had received sufficient life or accident and health coverage to account for the amount of premium she had paid. It was my understanding Mr. Lowry felt his mother had more life insurance than she could pay for, as related to her income, and Mr. Lowry indicated neither he nor his brother had signed the applications for two life policies insuring their lives for which his mother was paying.

On October 13, 1977, Mr. Lowry and two persons to assist him, two representatives of the Ohio Insurance Department, the company's regional manager and I, met for an informal hearing in the Ohio Department. Since Mr. Lowry had indicated to us neither he nor his brother had signed the life applications, I requested a check be drawn from the company to Mrs. Lowry refunding the entire premium of these two policies in the event Mr. Lowry indicated his mother wished to have the policies rescinded.

At the hearing, the following occurred: First, I felt a satisfactory accounting of the crediting of premium paid to the company by Mrs. Lowry was provided. The accounting was later presented to Mr. Lowry in a written form by the company.

Second, we offered to either rescind or keep in force the two life policies with the challenged signatures upon the applications at the

discretion of Mr. Lowry and his brother. Mr. Lowry asked for an additional 30 days to think it over and we agreed to this request. We did previously give him an additional 30 days before this occurred from the time we were notified of the question by the Ohio department.

Third, at that time I felt that the two life policies on Mrs. Lowry's life had been in force for more than a year and since we had been on the risk for over $30,000 face coverage during that period it was my view at that time we could only return the nonforfeiture values, if any, which may have accrued. Although I had some concern about the amount of premium which Mrs. Lowry was paying, it was my misimpression at that time that Mrs. Lowry had a greater regular income and considerable estate for which life insurance would be an appropriate vehicle to provide liquidity in her estate upon her death. At the Ohio hearing, Mr. Lowry did not apparently know, or at least didn't mention, the existence of an approximately $60,000 face amount of life insurance Mrs. Lowry apparently had with New York Life Insurance Co. We had no knowledge of that either.

Fourth, it was my impression when the meeting adjourned in the Ohio department, their understanding concerning this case was the same as mine. Approximately 2 weeks after the hearing in the Ohio department, I received a copy of a letter written by Robert Lowry, which for the first time disclosed to me the existence of the New York Life policies. Since in my mind this placed the matter of the amount of premium being paid and the amount of coverage Mrs. Lowry possessed in a different light, consequently I asked that a complete refund of all premiums received from Mrs. Lowry be made and the company made the refund to Mrs. Lowry on December 13, 1977.

Apology Offered

As to our company's position in the matter, we wish we had caught the excessive premium in its relationship to income at the time the applications came to us. Further, we would hope that our agents would have uncovered accurate information so that they would not have taken these life applications in the first place. The submission of forged applications is intolerable to us. We are embarrassed and we apologize to Mr. Lowry and his mother.

We will be happy to try to answer any questions you care to ask us. Since we were first notified about this hearing approximately 1 week ago, it is possible we might not have been anticipating some of your questions or be able to prepare some of the information you want. We will, of course, be happy to accumulate and submit to you any material which you want which we have not brought with us.

[The prepared statement of Mr. Grubbs follows:]

Prepared Statement of William E. Grubbs

Mr. Chairman and members of the committee, I am William E. Grubbs, associate legal counsel and director of government relations of Bankers Life & Casualty Co. With me is Duane Chapman and Russell Van Kampen, both of whom are vice presidents of the company. Mr. Chapman is an administrative vice president, Mr. Van Kampen is a marketing vice president.

We are pleased to be here and we appreciate the courtesy of this committee in inviting us. We have been asked to comment in two general areas. First, the range and extent of purchase of private insurance policies by medicare bene-

ficiaries. This includes comments upon the underwriting limits and practices involved in the offering and issuance of life insurance and accident and health insurance to persons over 65 years of age. Second, the issuance of life and accident and health policies to insure Mrs. Lucille Lowry, three of her grandchildren, and her two sons.

The insurance products marketed by Bankers Life & Casualty Co. to persons over 65, who have medicare coverage fall into four general areas:

A. Medicare part A wraparound products.—These are insurance policies which are designed to pay the entire deductible and coinsurance features not covered by part A of medicare and to provide catastrophic hospital benefits when medicare stops paying.

B. Policies which pay medical-surgical and out-of-hospital expenses.—These are intended to provide reimbursement for doctor calls, surgery, miscellaneous expenses such as X-ray, laboratory and anesthetist fees.

C. Hospital confinement indemnity.—These policies pay at a fixed-guaranteed rate for each day of hospitalization, thus providing financial help to cover hospital, doctor or personal expenses.

D. Extended care facility policies.—These policies pay the coinsurance amounts of medicare in the first 100 days. In addition, they pay benefits for the next 300 days.

The committee may be interested in the underwriting rules which pertain to the sale of these products. The following is a section taken from our agents manual providing instructions pertaining to the offering of our products to the elderly:

C. COUNSELING OVER-AGE RISKS

When selling health insurance to prospects in the over 65 age market, the company and its agents incur legal, social, and moral responsibilities to help these people in identifying their proper insurance needs, and preventing situations that would constitute overinsurance or undue financial hardships.

Because of their age, their normal anxiety relating to the increased possibility of illness, and ever-increasing hospital and medical costs, this market is quite susceptible to being taken advantage of by some agents. This must be prevented if you as an agent and the company are to remain reputable. To assist you in counseling and delivering a proper sales presentation, keep the following points in mind:

1. Finances.—Generally speaking, most over-age prospects are no longer employed full-time. As a result, their income is derived from such things as pension and retirement benefits, social security benefits, and perhaps some investment income. It is unwise to judge an applicant's ability to pay by how much he has in the bank. Their ability to pay should be judged upon the actual income they have.

2. Medicare coverage.—With few exceptions, everyone over age 65 has the benefit of medicare, both parts A and B. If for some reason they didn't apply for part B, advise them to do so. This in itself is excellent protection. Maybe the premium for part B is all they can afford. Don't over-sell. Don't place a burden on the policyholder he or she cannot afford.

3. Wraparound or supplemental coverage.—The prime need for coverage supplementing medicare is a wraparound policy providing supplemental benefits for hospital expenses not covered by the Federal medicare program. No individual should be sold more than one of each type of policy, either hospital or medical, because the result is overinsurance, duplication of coverage and unnecessary and excessive costs to the policyholder.

4. Hospital confinement indemnity.—Hospital confinement indemnity provides excellent coverage but should be sold only where the policyholder can afford the premium, desires a private room and other special services, or realizes that he will incur additional extra expenses due to an extended hospital confinement.

5. In-force coverage.—Regardless of how substantial the benefits of our policies are, very seldom is there an advantage to the policyholder to lapse one individual policy in favor of another. Usually it's an injustice with resultant misunderstandings on claims and a real disservice to the policyholder. If someone has good coverage in force with another reputable company, suggest that he keep the coverage, ask for referrals, and all concerned will benefit in the long run. But putting the above actions into every presentation to people in the over-65 age market, you will not only help them, but in the long run, the company, and yourself.

In order to reinforce some of the rules regarding applications on persons age 65 and over, we are calling your attention to the rules listed below which must be followed:

1. Only one of the policy forms in each group listed below can be sold to an individual (this applies to policies in all companies, including the MacArthur Insurance Companies, except as noted):

(*a*) Medicare wraparound coverage such as the GR–730B, GR–764A, 1696 Rider, etc.

(*b*) Medical surgical policies such as the GR–716, GR–717, and GR–75J.

(*c*) Extended care facility policies such as the GR–747, GR–748, and GR–74B.

(*d*) Hospital confinement indemnity policies such as the GR–700, GR–780, and GR–74J.

Only $30 per day hospital confinement indemnity coverage is allowed per individual.

It is essentially important in dealing with senior citizens to assure that the policy sold does not duplicate other coverage and that the amount of premium is affordable based on the senior citizen's current income.

In addition to these instructions, we practice the following underwriting rules:

1. For individuals 65 or over, the maximum allowable premium including substandard charges for all accident and health policies for all companies insuring the individual is $50 monthly. To enforce this rule, we have established systems involving a computer alphabetized check of all accident and health in-force business when a new application is received.

2. A policy which has been lapsed less than 12 months must be reinstated, upgraded, or exchanged in order to inhibit "rolling" of a policyholder from one policy to another. An upgrade or exchange is limited to one in a 12-month period.

3. We will not allow any improper switching of an over-65 policy to another policy.

We have also been asked to comment on the range and extent of purchase of private insurance policies by medicare beneficiaries. We have obtained some information from the research division of the Health Insurance Association of America whom we would recommend as being a good source for further statistical data about the industry practices and the extent of coverage in this market.

We have attached their information as Appendix "A".[1]

You will note that there are about 23 million senior citizens. Of this group, Bankers Life & Casualty Co. provides coverage for about 750,000 people or about 3.5 percent of this population.

We would like to address the case brought to this committee by Mr. Robert Lowry. Mrs. Lucille Lowry applied for and was issued the following coverage:

(a) Life insurance coverage on her own life with annualized premiums of $6,651. These policies were issued between 6–3–75 and 3–12–77 and in the aggregate provided ultimate death benefits of $37,700.

(b) Accident and health insurance issued to Lucille Lowry amounted to annualized premium of $565.

(c) Life insurance policies covering Lucille Lowry's grandchildren were issued for an annual premium of $65 each (for a total of $195 to provide coverage for each of them to age 23 and with guaranteed insurability options.

(d) Life insurance policies with a rider to provide annuity benefits for each of her two sons costing a total annual premium of $1,636.

For details of the above policies, see Appendix "B".[2]

As to the life insurance policies with annuity riders which Mrs. Lowry took out for the benefits of her sons, Robert and Kenneth, with the understanding that the signatures had been forged and they did not complete the applications, we rescinded these policies and refunded all premium. The agent involved left the company prior to our discovering the facts about this situation. His records with the company and with the Ohio Insurance Department have been marked to show he was "terminated for cause". There was no way for the company to know about these forgeries until Mr. Robert Lowry uncovered it and told us about it.

The life insurance policies issued to cover Mrs. Lowry's three grandchildren are not unusual purchases for grandparents. These are policies requiring a one-time premium payment of $65 to provide $1,000 of insurance to age 23. At age

[1] See page 60.
[2] See page 61.

23, the amount of insurance is $5,000 and premiums commence. In addition, they have guaranteed insurability options which allow the child upon reaching 23 and until age 31 to purchase insurance in $5,000 increments up to a total of $30,000 of life insurance without evidence of insurability. These premiums were refunded.

The health insurance policies (not life) written to cover Mrs. Lowry are within the limits of the annual premium allowed by the company. These were refunded as we understood Mr. Lowry wished them refunded because of the total premium being paid by his mother was excessive for her income. We also understand from subsequent correspondence on which we received copies, that Mr. Lowry objected to our refunding these premiums. If Mr. Lowry would like to continue any of the policies uninterrupted, we will be pleased to do so. It was not our intention to vindictively rescind and refund these policies as he suggested.

Subsequent to the hearing in the Ohio Insurance Department, we learned from copies of Mr. Lowry's correspondence to others on which we received copies that Mrs. Lowry had in excess of $50,000 of life insurance in force with the New York Life Insurance Co. This information is not reflected in any of our files or underwriting investigations. It apparently wasn't known by Mr. Lowry at the time of the hearing in the Ohio Insurance Department as it was not discussed at that time. Had we known of this insurance, the life policies which had been issued to Mrs. Lowry would not have been issued. In view of this fact and Mr. Lowry's request, the policies were rescinded and all premium was returned to Mrs. Lowry.

In view of the foregoing, you are no doubt interested in our position on the Lowry case. Frankly, we are embarrassed—we apologize to Mr. Robert Lowry and his mother, Mrs. Lucille Lowry. We wish we had caught the excessive premium and its relationship to her income at the time the applications came to us. Further, we would hope that our agents would have uncovered accurate information so that they would not have taken these life applications. Also, the agent's submission of the two forged applications on Mrs. Lowry's sons is intolerable. We wish we hadn't made an underwriting error in issuing the second Life policy (4,854,476) in June 1976.

We wish our impression of Mrs. Lowry's financial position had been more accurate at the time we visited with Mr. Lowry in the Ohio Insurance Department. The premium Mrs. Lowry was paying in relation to her income admittedly exceeded our own underwriting standards.

The medicare wraparound market came upon us rather rapidly in 1966. No one of us in the individual accident and health insurance business knew what the market would be—we barely knew what medicare was and we certainly didn't know what the insuring needs of the over-65 age group were or what they wanted, if anything. We did our best to provide riders to our existing policyholders to fill the gaps in medicare as we perceived them and to offer new policies to the insuring public over age 65. As we became more informed of their needs and desires, we developed updated coverages which were more comprehensive. It was in the process of providing broader and additional coverages that we created the products which were used by relatively few agents to take advantage of older individuals through twisting and rolling of previously issued policies. It should be noted that these agents were at the same time taking advantage not only of the insuring public but of the companies which contracted with them.

Each time abuses have been noted, they have led to new rules and new controls, both by our company and regulatory agencies. There have been areas where the abuses have been deemed serious by the company which resulted in stringent remedial action.

Mr. Lowry in several of his letters has referred to the situation which was investigated during the last part of 1974 in Pennsylvania by the Pennsylvania Insurance Department. We invite this committee to have its staff obtain the facts of the situation and the action taken from the deputy in charge of the investigation. Please contact Mr. Kimber A. Wald, deputy commissioner of the Pennsylvania Insurance Department, Harrisburg, Pa. We feel the situation has been remedied. The effectiveness of the remedial efforts of the company have been successful. See copies of letters from Mr. Wald—Appendix "C".[3]

Incidentally, market conduct surveillance examinations conducted by the State insurance departments cover all areas of an insurance company's operations;

[3] See page 62.

sales, advertising, underwriting, policy issue, claims, correspondence servicing, and complaint handling. The examiners either cover total activities in each area examined or when large volumes of work are analyzed they select significant samples based on statistically valid techniques.

To say there is no problem or there are not problems worthy of our attention is not correct. The principal area that continues to cause problems for our company and for the insurance industry lies in the area of how to identify the individual who is no longer capable of carrying on his or her own business transactions.

It is possible that even one policy consisting of a $10 or $20 monthly premium could be an excessive burden on an individual. From a company viewpoint, there is no absolute or practical way to know this. Also, for any of us who have dealt with older individuals, there are situations where the individual's incapacity is not immediately apparent to an outsider.

These individuals are not easily recognizable. They are prey to any one of the unscrupulous or unprincipled individuals in our society whether they are selling insurance or any other product. It could be noted here that there are people under 65 who because of their lack of sophistication are also susceptible to being taken advantage of.

Remedies for excess insurance and excess premium in relation to income are hard to find. It is difficult to obtain a statement of income and insurance from this group. However, the very people we're trying to protect will normally be easily led into giving an incorrect statement.

Is it possible that this market should not be sold any individual life or accident and health policies? It is inequitable to deprive the large majority of this population the same privileges when they are fully capable of handling their own business affairs.

We think the protection of those individuals is properly a concern of all. We have provided training, rules and controls to prevent and to uncover problems. but, while reduced, they continue to occur. We continue to look for new ways but we think this committee will find out it is very difficult to completely protect the incapacitated individuals in this group without removing some of the freedoms from the capable members of this group.

To what degree can we as a business, or we as a Nation, through our various governmental agencies, prevent abuse of these individuals? It is our observation that we cannot prevent all wrongful actions from taking place. We can provide inspections and controls and systems to uncover them. We also can provide remedial action to reverse improper transactions and identify those individuals involved in such activity and either help remove their licenses to transact business, fine them or prosecute them.

If we can provide any other information or answer any questions for the committee, it will be our privilege to do so.

APPENDIX "A"

The Health Insurance Association of America, as of its last published survey covering reporting year 1976, indicates the following facts about senior citizens who are covered by private insurance:

(A) The U.S. Bureau of Census reported age 65+ population as of July 1, 1976, to be 22,934,000.

(B) The number of senior citizens covered by private insurance for hospital expenses was 12,554,000 (55 percent). Hospital expense insurance would be generally defined as one form or another of a "wraparound" or medicare supplement insurance. Primarily, it would be covering the deductible and coinsurance amounts of the in-hospital portion of medicare part A.

(C) The number of senior citizens covered by private insurance for surgical expenses by including Blue Cross/Blue Shield was 10,580,000 (46 percent). Surgical expense coverage would refer to the physician expenses involved with a surgical procedure.

(D) The number of senior citizens covered by private insurance for regular medical expense was 10,227,000 (45 percent). The regular medical expense insurance would include all other physician care, such as office visits, etc.

(E) The number of senior citizens covered by private insurance for catastrophic or major medical expenses was 1,913,000 (8.5 percent). The major medical and catastrophic insurance would include the providing for high limit coverage (in excess of $10,000) for hospital expense when medicare benefits are exhausted.

APPENDIX "B"

Life Insurance Policies Issued Insuring Lucille Lowry

Policy Number	Date of Issue	Annual Premium	Form
5,248,470	6-3-75	$ 3,000	L-129
4,854,476	6-14-76	$ 3,204	L-129
5,413,376	3-2-77	$ 447	L-29A
	Total	$ 6,651	

Accident and Health Insurance Issued Insuring Lucille Lowry

Policy Number	Date of Issue	Annual Premium	Form
730,576,561	11-9-73	$ 221	GR-780 GR-747 GR-717
760,175,115	4-19-76	$ 73	GR-774
760,392,452	12-16-76	$ 77	GR-764
770,052,917	1-9-77 ($285) Upgrade benefits of GR-780 above - net increase in premium	$ 166	GR-74J
770,149,043	4-22-77	$ 28	79L
	Total	$ 565	

Life Insurance Policies Insuring Lucille Lowry's Grandchildren -- Form L623

Policy Number	Name	Annual Premium	Amount of Coverage
5,423,863	Alisa Lowry	Single One Time $65 Premium	$1000 to age 23
5,423,861	Robert Mark Lowry		$1000 to age 23
5,423,862	Cynthia Lynn Lowry		$1000 to age 23

Life Insurance Policies with Annuity Riders Issued To Cover Lucille Lowry's Sons -- Form 165 Rider 1401

Policy Number	Name	Annual Premium	Issue Date
5,432,307	Robert Lowry	$ 818	4-22-77
5,432,306	Kenneth Lowry	818	4-22-77
	Total	$ 1,636	

APPENDIX "C"
EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG
17120

January 18, 1977

Duane Chapman, Vice President
Bankers Life & Casualty Company
4444 Lawrence Avenue
Chicago, Illinois 60630

Dear Duane:

I am attaching the MacArthur Group complaint printout for 1976. You will note a further decline to 161. Previous years are:

1975	204
1974	261
1973	263

It should be noted this was in the face of a 51.3 percent increase in our work load. A statistical analysis of our work is also enclosed.

Obviously, the reforms you sparked in 1974 are paying off in better consumer service.

Very truly yours,

Kimber A. Wald
Deputy Commissioner

KAW:mf
Attachments

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG
17120

APPENDIX "C"
EXHIBIT 2

September 8, 1977

Duane Chapman, Vice President
Bankers Life and Casualty Company
4444 Lawrence Avenue
Chicago, Illinois 60630

Dear Duane:

Confirming our discussion of today, I am attaching two copies of the MacArthur Group complaint printout for the first half of 1977. The record continues to improve.

Very truly yours,

Kimber A. Wald
Deputy Commissioner

KAW:mf
Attachment

APPENDIX "C"
EXHIBIT 3

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG
17120

March 22, 1978

Rec'd 3/24/78

Duane Chapman, Vice President
Bankers Life and Casualty Insurance Company
4444 Lawrence Avenue
Chicago, Ill. 60630

Dear Duane:

I am attaching a copy of the 1977 MacArthur Group complaint printout. Once again you have had a sharp decline in the face of a rising complaints volume here. I continue to maintain this is due to the reforms you instituted in 1974, when your total was nearly double the 1977 figure.

I am also enclosing a comparison of all complaints by coverage and problem which may be of interest.

Very truly yours,

Kimber A. Wald
Deputy Commissioner

KAW:cb
Attachments

Senator CHILES. I note and I appreciate very much your digest of the statement for me. That is very helpful to us.

I note that you do say in your full statement on page 8:

> The health insurance policies (not life) written to cover Mrs. Lowry are within the limits of the annual premium allowed by the company. These were refunded as we understood Mr. Lowry wished them refunded because of the total premium being paid by his mother was excessive for her income. We also understand from subsequent correspondence on which we received copies that Mr. Lowry objected to our refunding these premiums. If Mr. Lowry would like to continue any of the policies uninterrupted, we will be pleased to do so. It was not our intention to vindictively rescind and refund these policies as he suggested.

Mr. GRUBBS. That is correct, Mr. Chairman.

Senator CHILES. I just wanted to make sure Mr. Lowry understood that because he had said from his statement today that he would like to have some of those policies or he felt that it might be helpful to his mother to have some of those policies in force. So it would be the company's position if he wanted to continue some of these policies noninterrupted you would do so.

Mr. GRUBBS. That is correct, Mr. Chairman.

COMPANY POLICIES TO DETECT DUPLICATE SALES

Senator CHILES. Now, I am interested in reading your full statement to see that the company does have a policy. Part of these policies that were returned, as I understand they were returned because your computer picked them up as being duplicate, is that correct?

Mr. GRUBBS. That is correct, Mr. Chairman.

Senator CHILES. So this is a check that the company tries to have to send back a duplicate policy.

Mr. GRUBBS. Yes, sir.

Senator CHILES. When you do that, when you send that policy back or in this instance, can you tell me, do you contact the agent? Do you try to find out why a duplicate policy was written? We have at least one agent writing several duplicate policies.

Mr. GRUBBS. Perhaps Mr. Chapman can explain the operation of the computer as it relates——

Senator CHILES. We are trying to get at this here and other instances. I am delighted to see what you have in your policy handbook that you give your agents, but if it is just a policy and a handbook and it never gets translated out into the field other than being there, then it is nice for the company to say, "We have got this policy." But we see that your agents didn't exactly follow that policy in the Lowry case. They certainly sold her insurance beyond what she could pay for and that is against your policy. They gave her duplicate policies and that is against your policy. There are two or three other instances that they covered that are against the policy. I want to know, how does the policy get interpreted into the field?

Mr. GRUBBS. Mr. Chapman can answer that.

Mr. CHAPMAN. I will answer the part about the home office, Senator. The policy rules, as we have outlined them here, deal with the accident and health portion of our controls, and I think they are outlined there. The computer checks are people checks, too. You know, the computer is no smarter than the people who run it and input it and read the alphabets.

The total premium problem came about, as I reconstructed it when I first looked at it last week, was due to the excess life insurance. If you will notice the total premium that Mrs. Lowry was paying—better than $6,000 of that premium was for two life insurance policies. The first one was issued for approximately $3,000. At that time our underwriters passed that case because of the total amount of investments and income that they understood and our subsequent checks revealed that Mrs. Lowry had. Our files show that the statement made by Mrs. Lowry indicated an estate of somewhere over $100,000. The underwriter thought the policy should be issued.

The second policy which was issued 1 year later added up to $3,200 additional premium. So when we talk about 68 percent of her premium, some $6,200——

Senator CHILES. You mean 68 percent of her income?

Mr. CHAPMAN. Yes. Some $6,200 was represented in two life insurance policies. The second life insurance policy was taken—I cannot justify its being taken. When it came into the home office, it would not go through our A. & H. control because we have a different——

Senator CHILES. A. & H. is accident and health?

Mr. CHAPMAN. Yes. I am sorry, sir. Accident and health. I am used to using these terms.

The life insurance has not been recognized by us as needing to come under this premium control and the reason it has not is that these are reviewed by underwriters who should be reviewing the total income and the necessity for this insurance because there is a company problem here, too, and that is being overexposed on a risk just as a matter of self-interest, if you will. We don't want to be on a risk for more than we should be. How much insurance should you sell without any need for insurance to someone in this age group 75, 76 years old?

Senator CHILES. That is the prime link your underwriter is looking at.

Mr. CHAPMAN. Oh, absolutely. I am merely pointing out that we did not have a control on life insurance to protect Mrs. Lowry or someone like Mrs. Lowry. In our own self-interest we should be protecting ourselves and incidentally not collecting the additional premium. There was a mistake made. The basic underwriter approved it and it went through the system without a second supervisory underwriter's signature. It should not have been issued.

I would like to back up just a moment and make a few comments. I have heard what has been said here this morning.

ENFORCEMENT OF POLICY

Senator CHILES. Just a minute now. I will be glad to give you that time. No one has told me yet how this transfer translates down to the agents. Specifically, in this case, when you sent back three policies as being duplicates, at least two of which were done by the same agent, it looks like maybe three were done by the same agent, does anybody ever say to that agent:

You are not following the policy of this company because it is no good to have a policy and to come up and say we have a policy to protect people in this regard if no one is going to follow up on that.

Mr. CHAPMAN. We have a procedure which obviously in this case did not work and this is one of the problems. Frankly, we are embarrassed by this particular case, and there have been a few others. The procedure is that the underwriter recognizing the duplicate policies have been written does have a procedure to write out a complaint form against those agents. The complaint form is sent to the manager of the agent and asks him to answer the complaint, to interview the agent and file the answer. This goes back to our agency secretary and it is reviewed for completeness, for adequacy, and it becomes a part of his agent's file.

Senator CHILES. Can you tell me whether this was done in this case?

Mr. CHAPMAN. Yes, it was done in this case.

Senator CHILES. When? Do you know when?

Mr. CHAPMAN. I don't have the file with me, sir. I know the case of agent Montgomery's name was brought up this morning. I know that agent Montgomery terminated from the company prior to this case coming to our attention. I know that subsequent to our uncovering this and making refunds, that agent Montgomery's records were marked "terminate for cause" and the Ohio Department was notified of this.

Senator GLENN. Would the chairman yield?

Senator CHILES. Yes.

Senator GLENN. Is he still in the insurance business?

Mr. CHAPMAN. I do not have any personal knowledge. I would defer to Mr. Van Kampen, perhaps he knows. I would have no way to check that, Senator.

Mr. VAN KAMPEN. Senator, I am not sure whether he is in the insurance business. He will never be allowed to return to our company.

Senator GLENN. One of the problems is floating agents from company to company to company sometimes who may be violating every rule.

Mr. VAN KAMPEN. Senator, if I might add, when that happens where an agent is terminated for cause, as Mr. Chapman said, we do notify the insurance department that it is a termination for cause, giving all those facts, and hopefully that will prevent this agent from going on to work with other companies.

Senator CHILES. I interrupted you. You had some other thought.

COMPANY CANNOT ALWAYS CATCH UNSCRUPULOUS AGENTS

Mr. CHAPMAN. I had just a general comment, having heard what we have heard this morning. Certainly there are people, and I don't want anyone to misunderstand me, in the older age group who cannot take care of their own affairs. They are victimized by agents. The company cannot always catch them.

Mr. Lowry referred in his testimony this morning to the news releases from Pennsylvania. He referred to the fact that we were one of the companies that was involved in sales to people over 65. Yes, that is true. Yes, there were a lot of the rules that you see in our testimony that were installed since that time. A number of people in the over-65 market need insurance, they want insurance. There is a proper market there. There is definitely a problem in trying to control the unscrupulous agent and there is a need on the part of home office

administration, I think, to get a little smarter and a little more sophisticated in doing so.

Senator CHILES. Can you tell me what percentage of the premium income, $120 million that your premium covers over 65—what part of that are you paying out in claims?

Mr. GRUBBS. Well, that gets into a loss ratio, Mr. Chairman, and what we are currently paying out overall. The company's overall loss ratio for both individual and group accident and health for 1977 was sixty-six sixty-sevenths percent as indicated on our annual statements.

Senator CHILES. Maybe I am asking you some questions that you don't have an answer for today.

Mr. GRUBBS. That is right.

Senator CHILES. Would you speak to that computer of yours and ask it if it can tell me what you would be paying out of that $120 million in the way of claims?

Mr. GRUBBS. We will be glad to do that and provide you with the information.[1]

Senator CHILES. Give me that for a couple of years if you will—1975, 1976, 1977.

Mr. GRUBBS. All right.

If I could add this, Mr. Chairman.

Senator CHILES. Yes, sir.

Mr. GRUBBS. Loss ratio figures should not be promiscuously used in that they are products of actuarial science.

Senator CHILES. I don't intend to be promiscuous about those figures, I cannot speak for Senator Glenn.

Senator GLENN. I will follow my chairman's leadership.

Mr. GRUBBS. I will be happy to provide you with those figures.

Senator CHILES. All right, sir. If you want to show me some other breakdowns in addition to the questions I will ask you, that will be satisfactory, too.

Mr. GRUBBS. What are the other——

Senator CHILES. I said if you have some other way you want to show it, in addition to the question I have asked, that will be satisfactory, too.

Mr. GRUBBS. Thank you.

LIFE INSURANCE PREMIUMS EXCEED UNDERWRITING STANDARDS?

Senator CHILES. You said that the premium Mrs. Lowry was paying for life insurance in relation to her income exceeded your underwriting standards. Can you tell me what that standard would be? I note she was paying life premiums of $8,586 with an income of $13,508.

Mr. GRUBBS. Mr. Chapman would be most knowledgeable about the underwriting area I believe.

Senator CHILES. Yes, sir.

Mr. CHAPMAN. The total amount of insurance that could have been written according to our rules on Mrs. Lowry would have been in the neighborhood of that first policy, $17,000 to $18,000 face amount.

Senator CHILES. What kind of commission does your company pay its agents on the sale of full life policies such as those purchased

[1] See page 70.

by Mrs. Lowry? Is that one and a half or what would be your commission?

Mr. GRUBBS. Mr. Van Kampen should be qualified to answer that.

Senator CHILES. I might note while he is looking for that, I used to have something to do with starting a little debit company at one time in the life insurance business and we had a great ratio. We paid out about 125 percent. [Laughter.] We don't have that company any longer.

AGENT'S COMMISSION: 25 TO 65 PERCENT OF 1-YEAR PREMIUM

Mr. VAN KAMPEN. Senator, each policy would vary in commission, but on our life policies we go all the way from approximately 25 to 65 percent of the first year's premium which would be the commission to our agent.

Senator CHILES. On the whole life policy, like what we are talking about here?

Mr. VAN KAMPEN. On the son's policies—in the neighborhood of 55 percent to 65 percent.

Senator CHILES. That is on your first-year premium.

Mr. VAN KAMPEN. Yes.

Senator CHILES. Then your retention is what after that?

Mr. VAN KAMPEN. Well, it would be based on the premium that stays in force with the second year, approximately 25 percent renewal on the Lowry boys' policies and then graded from the third to the tenth year at 20 percent. We will be glad to submit for the committee each of the policy forms [1] and the actual commission rates.

Senator CHILES. I think that might be helpful to us.

What kind of commission do you pay the agents who sell the health insurance policies?

Mr. VAN KAMPEN. That is more of a front commission and there again it would depend on the type of policy but generally speaking it is a premium or commission equal to possibly 300 percent of 1 month's premium over the first 6 months of the first year's premium.

Senator CHILES. Three hundred percent of one month for the first 6 months.

Mr. VAN KAMPEN. It would be spread over that period.

Senator CHILES. Oh, spread over that period.

Mr. VAN KAMPEN. Yes. If the policy was written and didn't renew and persisted for the entire year and it was a $10 monthly premium—we would collect 12 months at $10 premium per month, equalling $120. Our agent would receive 100 percent of the first month and then 40 percent of the next 5 months—which totals $30 that our agent would receive, which is 25 percent of the annual premium of $120. Now that again is a general basis and we would be glad to furnish you with the commission schedule for all of our health policies.

Senator CHILES. Would you also when you speak to the computer give us the loss ratios for each of the four medicare supplements that you listed on page 2 of your statement?

Mr. GRUBBS. Yes, sir, we will.

Senator CHILES. And then for all four combined.

Mr. GRUBBS. We will.

[1] Retained in committee files.

[Subsequent to the hearing, Mr. Grubbs supplied the following information:]

POLICY LOSS RATIOS

To illustrate the proportion of health insurance premiums paid in claims, State insurance departments require insurance companies to publish in their annual statements loss ratios for the calendar year preceding the date of the statement. Loss ratios are calculated by dividing incurred claims by premiums earned. For the year 1977, the loss ratio for Bankers Life & Casualty Co. policies sold to policyholders above age 65 was 55 percent. Loss ratios for senior citizens policies for 1976 and 1975 were 55 percent and 51 percent, respectively.

The better measure of fair return of premium in claim payments is the ultimate loss ratio, rather than the loss ratio for a particular calendar year. For various reasons, loss ratios tend to increase as a block of business ages. Thus, the appropriateness of using calendar year loss ratios to determine whether policyholders have received a fair return is highly dependent on the average age of the business for which the loss ratios are determined. The loss ratio for a very young block of business will be much lower than the average over the lifetime of that group of policies. The loss ratio for a very old block of business is generally somewhat higher than the average over its lifetime.

Loss ratios for calendar years 1975, 1976, and 1977 which were requested for each of the four categories of senior citizens business referred to on page 2 of our statement to the committee are for in-hospital benefits supplementing medicare part A which constitute 30 percent of our total senior citizens business, 66 percent, 75 percent, 69 percent respectively; for medical-surgical benefits, which constitute 22 percent of our total senior citizen business, 60 percent, 61 percent, 65 percent respectively; for daily hospital confinement indemnity benefits, which constitute 31 percent of our total senior citizens business, 41 percent 43 percent, 48 percent respectively; for extended care (skilled nursing) facility benefits, which constitute 14 percent of our total senior citizens business, 40 percent, 45 percent, 30 percent respectively. Policies for in-hospital benefits supplementing medicare part A and medical-surgical benefits were introduced when medicare became effective. Policies with daily hospital confinement benefits designed for senior citizens were first sold in 1967. Policies with extended care facility benefits were not sold until 1972.

We believe that the loss ratios stated above understate the ultimate percentage of premiums returned to policyholders in benefits. This ultimate percentage for all categories combined should be close to 60 percent. The premiums we developed for our current generation of senior citizens health products for the categories listed above are all calculated on anticipated loss ratios in excess of 60 percent.

"NAME SWITCHING"

Senator GLENN. You mention a computer alphabetized check when a new application is received. We have had letters and other suggestions that salesmen sometimes get around this by writing the policies in different forms of the name, using the initials on one policy and a full name on another policy, to avoid computer detection. Is that something that you all are aware of is happening, and what kinds of checks do you have on that?

Mr. CHAPMAN. Yes, Senator. That has been in the past a very common practice by an agent who wants to defeat an internal process. You will also find where there is a husband and wife, some policies are in the wife's name and some in the husband's name. We have installed an address check and hope to overcome this and we have found that it results in a considerable improvement over what we were able to uncover in the past.

Senator CHILES. I note that in the two life policies on Mr. Lowry's life and his brother's life that they were improperly executed. When were the forgeries discovered by the company?

Mr. GRUBBS. Our first information that they were not signed by Mr. Lowry came from Mr. Lowry in our October 13 meeting in 1977, at which time he said his brother did not sign his application either, so it was at that time we got firsthand knowledge. Earlier the general counsel for the Ohio Department of Insurance had called me on the phone and told me that Mr. Lowry had said that. Consequently, I was prepared, when I arrived there, to either give the money back, rescind the policies, or allow them to remain in force although it has been contrary to our interest, of course, to do so, because we had no representations as to their condition of health or anything else.

Senator CHILES. These were the policies that were written by the agent that was terminated for fraud?

Mr. GRUBBS. That is correct.

Senator CHILES. Senator Glenn.

Senator GLENN. I would like to followup on this signature thing for just a moment, Mr. Chairman.

This type of policy, is it not the law that you have to have the permission of the person being insured?

Mr. GRUBBS. There is such a thing as a signature not by the person being insured under some instances. It is our usual company rule that the signature of the insured must appear upon the policy application.

Senator GLENN. If this is illegal and if the signing was illegal, have steps been taken to internally prosecute those who did this?

Mr. GRUBBS. Senator, I think if you will examine the signature, we did not report Mrs. Lowry for signing her sons' names. I would not think that her sons would wish us to do this. Certainly we did not report that she had signed her sons' names.

Senator GLENN. Let me make a comment on your statement, pages 2 through 5. That is an excellent statement of your policies and what you expect your agents to live up to, and that is fine. I am sure that every insurance company in the business has a similar statement of policy that is excellent and sets the standard that you hope your agents try to adhere to. However, I would take some exception with your comment on page 11 that

> The principal area that continues to cause problems for our company and for the insurance industry lies in the area of how to identify the individual who is no longer capable of carrying on his or her own business transactions.

It seems to me that that is almost an impossible task. We cannot set a certain age deadline, nor would we try to, where people are beyond the use of their normal faculties. Some people are absolutely brilliant at age 100 and others phase out at my age—and maybe I already did, I don't know. Anyway you cannot set an age limit, so I don't think you can identify the individual who is no longer capable. I think that sets an impossible goal.

"WEED OUT THE BAD APPLES"

I think there is a possible goal here, though, and that is sensitizing your own agents in this area and following up on what kind of policies they are writing and weeding these bad apples out. It may be a matter of business for the company, but where an individual is involved on the recipient end of this, it is absolutely a personal tragedy. I don't know what kind of followup you can do.

I am very much concerned about what you are doing to weed out the unscrupulous agent who is not including all of this information and is not doing the right job of analyzing and is just business as usual, take advantage of the elderly, write every policy you can, pass the name on to another agent who is a buddy in a different company who then comes back, and economically, at least, rapes this individual all over again. We wind up with a whole pattern here. There has to be some way of following this up in the industry or we will have stringent legislation on the industry.

I hope that you gentlemen in your expertise can come up with some method of self-policing here. I am not trying to lecture you, but I think you ought to come up with some method of self-policing so that we won't find Federal legislation necessary to, in turn, force State insurance commissions to in turn force you into methods of self-policing when you could have done this voluntarily to begin with. I would welcome a comment on this from any of you.

Mr. GRUBBS. Senator, to begin with, if the policyholder is taken advantage of because he is oversold insurance and if he is, to use your words, economically raped, so is the company at that time, may I remind you, sir.

Senator GLENN. I agree, and I am not trying to castigate any of the insurance companies here necessarily. You provide a vital function and it is great and I am glad you do the job you do, but we are trying to prevent abuses. You gentlemen are in the middle of it, you give us the advice.

Mr. GRUBBS. Well, we are, of course, entering new endeavors all the time in order to protect, frankly, our own economic interest, because when the policyholder is not treated properly it is a direct damage to the company when they are oversold. The policies lapse and that is expensive to the company when they are oversold life insurance and there is no insurable interest. The casebooks are filled with tragic things which occur.

Senator GLENN. Let me get to a specific here. On page 10, in the middle of the testimony, it says:

> It was in the process of providing broader and additional coverages that we created the products which were used by relatively few agents to take advantage of older individuals through twisting and rolling of previously issued policies. It should be noted that these agents were at the same time taking advantage not only of the insuring public but of the companies which contracted with them.
>
> Each time abuses have been noted, they have led to new rules and new controls, both by our company and regulatory agencies. There have been areas where the abuses have been deemed serious by the company which resulted in stringent remedial action.

Could you list some of those remedial actions you have taken on past abuses?

22 AGENTS TERMINATED IN PENNSYLVANIA

Mr. CHAPMAN. A previous case, Senator, that has come up here is the Pennsylvania situation. I believe that we terminated 1 regional manager, 2 or 3 district managers, and about 22 agents in that area. In addition, we put in some of the controls we have referred to previously. What can we do? I think we have got to do more of what we have started to do. Certainly the matter of policing agents on sales to

people over 65 has got to have more attention and more money put into it. When we think that we are going along with improvements, seeing the complaint ratios improving, we believe we are doing a pretty good job until we see a Lowry case. Frankly, that kind of case is shocking, it tells us that we have got to do something with the life insurance premium and look at the total premium by individual.

Senator GLENN. Do you require adequate financial status information on each individual to properly analyze it, as in the Lowry case?

Mr. CHAPMAN. We do on life insurance, Senator, because that is part of our underwriting. We have to know what the need for that insurance is. When we get over certain amounts, our self-interest and that of the individual. So we do ask for financial information. I don't think the Lowry case is typical. We missed the impact of that financial information and we did not have anything that totaled up all those policies until Mr. Lowry started looking into his mother's affairs.

Senator GLENN. With health insurance you can't require any general financial statement.

Mr. CHAPMAN. No, sir, we do not.

Senator GLENN. Do you think that is an area that should be included so you have a picture of whether they are getting overextended or not?

Mr. CHAPMAN. That is a possibility that we have considered. I personally have trouble with it because if you have an agent leading someone, they can lead them to sign this financial disclosure statement.

"SELF-POLICING HAS GOT TO BE THE ANSWER"

Senator GLENN. I have trouble with the whole field because I don't want to determine the rights of people to determine their own lives, No. 1, and I don't want to limit people because of age, No. 2, and I don't want to limit the insurance, No. 3. I think you must put on a level of supervision that is far more stringent and far more definitive, as you have said. I make this as an industrywide statement, not just to your particular company. I think self-policing has got to be the answer. You gentlemen in the industry will know that something will be done when abuses are increasing and as people become more concerned about their health problems and their old age.

This is what we are faced with now, so it seems that your unscrupulous agents are going to have more of an opportunity to take advantage of people who perhaps are not as able to take care of their own affairs. So it means there is going to have to be more self-policing in this industry or we are going to have some kind of legislation to take care of it. I think it is that important.

If you need a new level of subdistrict manager, one for every five agents or whatever, there has to be some sort of policing mechanism that prevents cases like that. I am sure the committee and the staff would be most happy to work on this, and my office will certainly be happy to work with you in any way on ideas that you may have. I hope we don't have to come through with some big package of legislation and try to run the insurance business in this area, like we run too many things from Washington. If there is a need here and people are being taken and nothing is being done by the industry, then that is certainly what is going to happen. I am just stating the facts.

Concern About Lists Being Passed Around

Senator Chiles. How do you think it did happen that you have all these different agents from Bankers Life & Casualty calling on Mrs. Lowry? How does that practice happen? We are concerned about lists being passed around and sometimes an agent leaves one company and carries his list with him. How would that many people get to see her to do the check?

Mr. Van Kampen. Senator, I am not sure how this one happened, but the way it could happen, and I am sure this was part of this situation, first of all you have the manager who is assigned to a certain number of agents in his office. Occasionally, when a manager will be training a new agent, the two people would call—both the manager and the agent in training.

From time to time, our agents are promoted to management in another area of the country and those in-force policyholders, the listings are then turned over to the office or to a new agent who goes out to either service or sell additional coverage, if the need warrants it, and this would mean that now a different agent would come by. Very possibly the manager has been promoted and the manager and the new agent in training would be out servicing a policyholder and would find out that there was some coverage that was missing or a policy that we had come out with filled still another gap. It would be offered if it did not exceed the maximum amount of $50 per month premium to be paid by any one insured who is 65 or over. In this way several agents could have called on her.

Hopefully, our agents are not passing on the names of these overage people to other people in the industry. We would react to that for both reasons, certainly the overager being taken advantage of and handing over our contracts to the competitor. So we would have a dual interest there.

Senator Chiles. Well, then it is part of your policy as such for your managers to try and get the agents to call routinely, or to make calls, on people that your company has already sold policies to.

Mr. Van Kampen. Yes, for several reasons. One would be service, another would be a copy of every claim that is paid by the company is sent to our local office and it is the responsibility of our local office to call on each one of these to make sure that the claim is properly handled, that all benefits were received, that all bills were submitted to make sure that they have received the full claim payment.

Less Control Over Independent Contractors

Mr. Grubbs. Senator, if I may, I should point out that our agents happen to be independent contractors. This is not true with all companies in the industry, but ours are independent contractors. Consequently, although we can provide rules and terminate their contract and notify the insurance department, we don't have the extent of control over them that perhaps if they were employees we would.

Senator Chiles. These independent contractors, will they be writing with other companies?

Mr. Grubbs. In most cases not with this company. In most cases not, but they are still allowed to be.

Mr. VAN KAMPEN. Hopefully not, sir.

Senator GLENN. Do you have a termination of pages 2 through 6 here, or 2 through 5? If any of those things are violated, do you have——

Mr. GRUBBS. Yes. If they violate company rules, we can terminate them. Yes.

Mr. VAN KAMPEN. We terminate their contract because they are an independent contractor.

Senator CHILES. We thank you for your testimony and look forward to the submissions that you are going to provide us.

Mr. GRUBBS. Thank you, Senator.

Mr. VAN KAMPEN. On that, Senator, before we finish, you seemed a bit surprised when I mentioned the commission schedule and I mentioned 300 percent of 1 month. Maybe we better explain this. Because of the 6 months, I saw a quizzical look on your face. If the policy was written and did renew and persisted for the entire year and it was a $10 monthly premium—we would collect 12 months at $10 premium per month equaling $120. Our agent would receive 100 percent of the first month and then 40 percent of the next 5 months—which totals $30 that our agent would receive, which is 25 percent of the annual premium of $120.

Senator CHILES. I understand that.

Mr. VAN KAMPEN. All right.

Senator CHILES. Our next panel will be Harold R. Wilde, the commissioner of insurance for the State of Wisconsin; and W. W. Cooper, the administrator for health insurance, Florida State Insurance Department.

Mr. Wilde, we are going to call on you first to give us your statement. I understand you are going to talk about medicare and that you have done considerable work in this area. We are delighted to have your appearance here today.

Your statement in full will be included in the record and if you care to summarize in any way, that will be helpful.

STATEMENT OF HAROLD R. WILDE, MADISON, WIS., COMMISSIONER OF INSURANCE, STATE OF WISCONSIN

Mr. WILDE. Thank you, Senator. As I was sitting here this morning I have been gradually cutting that statement shorter and shorter.

Senator CHILES. As the hour gets shorter.

Mr. WILDE. I hope that you will ask me some questions concerning some of the testimony you have heard earlier; for example, phrases like "independent contractors" and "terminated for cause." You may want to have some clarification on those.

Senator CHILES. Good.

MEDI-GAP SALES NO. 1 CONCERN

Mr. WILDE. I would like to thank you for the opportunity to speak here today about an issue which I think has been my No. 1 concern since I became commissioner of insurance in the State of Wisconsin.

Senator CHILES. When was that?

Mr. WILDE. Three years ago. There are about one-quarter million senior citizens in the State of Wisconsin who we believe supplement medicare with some form of private health insurance, and it is our belief that those senior citizens are probably wasting well into the millions of dollars.

Senator CHILES. There are still one-quarter of a million there that have not come to Florida?

Mr. WILDE. Oh, there are well over one-half million senior citizens. In fact, we are known as the star of the snowbelt. There are elderly people who move to northern Wisconsin because they like the winters. Different strokes for different folks.

The most basic waste in medicare relates to the product itself. Medicare returns 95 cents on the dollar as a benefit. Some private group insurance normally returns 85 to 95 cents in benefits on every dollar. Good private individual medicare supplement contracts return 70 to 75 cents on the dollar. What is the return in actual benefits on the high commission/low value medicare supplement, nursing home and indemnity contracts which are marketed most aggressively to the elderly? A good guess would be 40 percent, if that.

"INEFFICIENCY AND EXTRAVAGANCE IN MARKETING"

The inefficiencies and extravagances built into the marketing of these health insurance products to the elderly are obscured by the complexity of the products themselves and the marketing techniques utilized.

There is no insurance policy sold in our State—and I doubt that there is any policy sold in any State—which fills all of the gaps of medicare. None. But there are thousands of insurance policies purchased every week which are thought to fill all the gaps in medicare. Then another policy is purchased, and then another.

As we have heard this morning, it is not uncommon for us to find senior citizens in Wisconsin who are spending well over $1,000 a year on health insurance policies, each of which is duplicative of the other, and only one of which will pay off in the event of a loss.

How can this happen? Part of the answer lies in the nature of the "crime." The victims of one fast talking medi-scare peddler may, all together, have wasted $100,000 in a year on inadequate or duplicative coverage. But each victim lost only $200 or $300, so the size of the crime and the pattern of victimization is rarely recognized.

Many old people don't even realize they are victims; some are enfeebled or infirm and incapable of complaining. They make poor witnesses in court and in administrative proceedings. It is no surprise, therefore, that local prosecutors are wary of attemptng to pursue such white-collar crime. It is costly and difficult.

Nor should it be surprising that the ripoff artist himself frequently points to the approval of a policy form by the State commissioner of insurance as evidence of its acceptability.

"REGULATORS ACQUIESCE TO MORALLY INDEFENSIBLE PRACTICES"

Government has been and continues to be part of the problem. State regulators have too long acquiesced in practices which are morally

indefensible. I think it is time to call a halt to such acquiescence by both Government and the private insurance industry. A Government that creates a medicare program for its senior citizens ought to act to assure that the gaps and holes in that program are addressed responsibly.

In Wisconsin we have experienced success, failure, and much frustration over the past 3 years as we have attempted to cope with this problem in its many dimensions. We have greatly strengthened our enforcement efforts. We have increased the number of agent license revocations, suspensions, and forfeitures from a handful in 1974 to nearly 100 last year. We have fined one company $25,000 and suspended it from the market for over 1 year. We have conducted examinations of a number of the insurers with the worst records—and major disciplinary actions may now result. We have distributed directly or indirectly over 100,000 copies of a booklet we prepared for senior citizens outlining their health insurance needs and rights and I have submitted that booklet for the record.

Senator CHILES. A copy of that will be made part of our record.[1]

Mr. WILDE. But, at least until recently, the problem has not shown signs of lessening.

Here are just some of the examples of what we have come across in the past 3 years, and these are the kinds of things you heard this morning. We could go on all day with examples.

LISTS CIRCULATED

Agents tell us about lists of "mooches," or "cripples," or "marks," that have been circulated among the medi-scare peddlers—lists of infirm or senile old people who will take anything offered to them—who will "buy the whole load." We have a list like that in our office of 150 people, and I think that the example you gave this morning was an example taken off that list. I can't think of anything more disgusting in my experience as commissioner than that kind of practice.

We are aware of teams of agents switching from one company to another company and in the process thousands of people getting caught in a war as policies are switched from one company to another company.

We go into a company's files and we find dozens of medical applications from particular agents which have been "clean sheeted." There is a whole vocabulary. "Clean sheeting" means that you take an application from a person over age 65 and where you are supposed to indicate medical history, there is no medical history. Therefore, the person gets underwritten because he does not show up as having medical history. Of course, how many people over age 65 don't have a medical history? So when they have a claim, if it is a serious claim, the company goes back and searches out the medical history. If they find that the person had a medical history, they retract the claim and refund the premium. It is a horrible practice, "post-claim underwriting"; but the clean sheeting is only one part of the process. It is a process quite frequently engaged in unannounced to the purchaser.

[1] See appendix 2, item 1, page 110.

The agent walks away, gets the purchaser's signature on the bottom line, has a whole history and holds it up to the window. That is the classic example. He forges the signature on a new application and hands this in clean sheeted. What kind of company gets applications of people age 65 with no prior health history and does not see something wrong?

"COMPANIES OUGHT TO CATCH ON"

We go into another company's files and find stacks of complaints on a particular agent 6 or 8 inches high—and that company I think was represented here today. Yet the agent had not been dismissed or was not dismissed. Stacks of complaints 6 or 8 inches high. How many complaints does it take before a company decides it is time to boot the guy out? The answer is, of course, that a guy who can generate that many complaints can also generate a hell of a lot of business. He is a good producer, he makes money for the company.

In the course of various investigations we come across evidence of systematic forgery and routine postdating of applications. This is an agent practice, but again, the companies ought to be catching on.

If there is some cause for optimism in Wisconsin, I guess it arises from our experience of the past few months. In January of this year, a new rule went into effect which required all new policies sold as "medicare supplements" to senior citizens in Wisconsin to provide minimum benefit levels and which mandated that whenever an elderly person in Wisconsin is solicited for health insurance he or she must receive a copy of the consumer booklet to which I referred earlier which is produced by our office.

One important byproduct of this rule has been that many of the inadequate policies previously on the market have been withdrawn. Another important result has been the creation of the possibility for elderly consumers to make meaningful pricing comparisons among health insurance policies such as they have always been able to make in buying auto and homeowners insurance. For the first time the senior citizen can see the difference in costs, because the benefits have been standardized in the various policies approved under our rule. The end result is that the policies with ridiculously high expense ratios cannot meet the minimum benefit requirements of the rule and still be offered at a competitive price.

Senator CHILES. What is your minimum benefit?

Mr. WILDE. Well, we have a minimum, not in terms of loss ratio, but in terms of various policies—medicare supplement 1, 2, 3, 4A, and 4B. Each one must have a certain amount of benefits which are specified quite explicitly in the rule. The end result is that we have a medicare supplement 2, for example, where at this point two or three of them have been filed at around $200 and we have a number of others which have been filed at around $400 to $450. Same policy.

Now how can that be? The answer is simple. The companies that are filing them at $200 are viewing them as basically public service policies, low commission, policies that they write because it is kind of their obligation in that marketplace in Wisconsin. Low expense, low administrative cost.

The companies at $400, $450, these are the "drummers," the guys who are out there who have the 50 percent, 60 percent commissions, et cetera, and as a result they have got products that are too expensive, and they come in and weep copious tears and we feel very sad.

Senator CHILES. You don't prevent them writing that policy, you just try to set forth the procedure wherein the person over 65——

Mr. WILDE. All policies have been filed on expense ratios of 55 percent or greater, but the expense ratio is a prospective filing. Somebody here earlier referred to actuarial science. Well, actuarial science is not always what it is cracked up to be. I mean one company comes in and estimates its experience one way and another company comes in and——

Senator CHILES. Do you have an underwriter who works for you?

Mr. WILDE. We have an actuary who reviews these things, but our actuary is often hesitant to second guess their judgments. As I say, one company comes in and says, "We need a $400 premium at an expense ratio of 55 percent." Another company comes in and says, "We need a $200 premium at an expense ratio of 70 percent." Our actuary accepts them both. Now what we then do is look to the actual experience.

Senator CHILES. You are trying to go back and postaudit then?

Mr. WILDE. Yes, but then you are talking about 5 years down the road, and that is a terrible problem with looking to loss ratios. We are now postauditing policies that were filed 5 years ago, and there are some with 10-percent loss ratios. There are some with 75-percent loss ratios, and they come from all over the place. Actuarial science is not a science.

STANDARDIZED POLICIES

What we like to see is not the department making the judgment on price, but the marketplace making the judgment on price by having standardized policies that the consumers can compare. We now have a circumstance where the consumer can see it is the same policy—it is $200 with this company and $400 with this company. That is in fact what is happening. The agents who are selling the $400 policies are going back to their own company and saying: "We cannot sell this. Either lower the price or we will get out of this." So, again, that is the marketplace making the judgment, and we have been publicizing the price differentials for just that reason.

Senator CHILES. Do you think you are really getting that message across to the people who are out there buying it?

Mr. WILDE. Yes, I do. I do. We have purchased public service advertisements and various things like that to get it across. Yet even this rule which provides a mechanism for greater standardization of policies, improved consumer information, elimination of many of the worst policies from the market, can easily be misused and our past experience gives us good reason for caution.

One fear, for example, has been that the medicare peddlers would use the new policies as a justification for people to replace perfectly good current policies and subject themselves to new waiting periods and exclusions, and we have seen examples of this taking place. Another problem has been the group policies, such as those offered by the

AARP—American Association of Retired Persons—policies which have not been subject to the rule and in fact have not been subject to State insurance regulation in most States, including Wisconsin.

Despite the problems at this point, we are guardedly optimistic that the medicare supplement marketplace in Wisconsin may be improving. We are seeing parallel initiatives in California.

Even if the States do finally do their job, even if they are generally effective in meeting that responsibility, I don't think that gets either the Federal Government or the insurance industry off the hook.

FEDERAL GOVERNMENT OBLIGED TO COPE WITH MEDICARE PROBLEMS

The Federal Government, which created the medicare program and its gaps, has an obligation to cope with the problems left in its wake. At a minimum that coping should include:

Extensive information and counseling efforts through the Social Security Administration and its local offices.

Some sort of Federal initiative to target law enforcement funds to State attorneys general, local district attorneys, and State insurance commissioners, to encourage them to pursue and prosecute this type of insurance fraud, and it is a difficult kind of prosecution to make.

Senator CHILES. It is a difficult kind of targeting to make when the Governor says, "Don't tie things on your LEAA funds."

Mr. WILDE. What we have tried to do in Wisconsin is show some local district attorneys that it may be a political page 1 issue. That is the only way, sometimes, you can get them to pay attention. It is a painful issue because if you are going after this kind of fraud, if the guy is a very hard peddler, he is worth a lot and he can raise a very tough defense. It is a sophisticated kind of prosecution to make and most local district attorneys are not equipped to do it.

Finally, I think that the Federal Government could encourage the private insurance industry to offer a small number of standardized, comprehensive medicare supplement alternatives on an open enrollment basis countrywide. I think you can encourage that in a lot of ways: First of all, by setting up some proposed standards which might apply countrywide; and second, by using the market power of the Federal employees who are distributed throughout this country and who can—in effect—dictate terms at least to some of the major carriers; and finally, by using the media power of the Federal Government.

As a State insurance commissioner, while I must be wary of Federal regulatory incursion into areas of State jurisdiction, I believe that States have many effective options to pursue in combating the abuses I have identified. I nevertheless welcome your interest and involvement on this issue because I think there is a Federal moral responsibility involved, and also because I believe your involvement insures that the insurance industry and the insurance commissioners will take the issue seriously. In particular, I should say that it pleases me after having spent a number of years listening to tales such as Mr. Lowry's and seeing the victims and feeling quite often the frustration, it pleases me to see some attention at the Federal level to this issue.

Senator CHILES. Thank you, sir. Your prepared statement will be entered into the record at this time.

[The prepared statement of Mr. Wilde follows:]

PREPARED STATEMENT OF HAROLD R. WILDE

Eleven and one-half years ago, the Government of the United States put into effect a program designed to assure adequate health insurance for every elderly person in America. That program was medicare.

Today, elderly Americans pay far more out-of-pocket for medical attention, hospitals and drugs, than they did before medicare. In fact, of the $1,218 average yearly medical bill in 1975 for a person over age 65—medicare paid only $463, or 38 percent. And this percentage has decreased progressively since 1966, when medicare started.

It is not my purpose today to critique the Federal medicare program. Its deficiencies speak for themselves:

A program designed to assist the elderly pay hospital and doctor costs, end up setting off an unprecedented inflationary spiral in those costs, which hurts everyone (except providers), but most of all, senior citizens on fixed incomes.

Cost control mechanisms built into the program are "too little, too late" and end up penalizing patients in their pocketbooks, instead of restraining the bills of doctors and hospitals.

Medicare's deficiencies have been well documented. So too have been its successes, most notably, a broadening of health care availability to America's senior citizens and a consistent ability to deliver health insurance benefits at an administrative cost of 5 cents on the dollar, or less.

What hasn't been adequately documented, or graphically enough demonstrated, is the nature of the problems for the senior citizens left in medicare's wake in the private insurance system—problems which might be called the "medi-scare insurance racket."

Countrywide, these problems—which are the result of what amounts to an unholy alliance between the public and the private sectors to confuse and exasperate the elderly of America—add up to a multimillion dollar ripoff of our senior citizens. They are nothing less than a national disgrace.

I am convinced that the failure of the private sector to adequately and responsibly address this gouging of America's senior citizens by some insurers and their agents in the name of "medicare supplement," represents the Achilles' heel of the private insurance industry in the debate on national health insurance. In few areas is the record of private insurers less credible.

Paradoxically, because of Government's role in creating this problem, the conclusions Federal policymakers should draw from this sorry situation may be equally painful.

What exactly is the "mediscare insurance racket"?

It starts with the high cost of health care, and the (generally quite rational) fears of senior citizens about their future health needs and the gaps in medicare.

There are the obvious gaps:

The initial deductibles.

The 20 percent copayment for physicians services.

No money for out-of-hospital prescription drugs, eyeglasses, hearing aids. dentures.

No hospital days after the lifetime reserve is exhausted.

Then there are the less obvious holes:

The patient's responsibility to pick up the difference between what medicare calls "reasonable and necessary" (as a cost control measure) and what the physician wants to charge.

Nursing home care in a nonmedicare certified nursing home.

Custodial nursing home care.

When a person anticipates real risks which may drain his or her future resources, it is natural to turn to insurance, as a way of transferring those risks.

It is estimated that at least one-half of America's senior citizens, or over 11 million people, do just this—and that they may spend into the billions of dollars this year on private health insurance, to supplement medicare.

For the smart ones, or the lucky ones, who purchase one comprehensive medicare supplement policy from a reputable carrier (frequently one of the "Blue" plans) and no other health insurance—this insurance can be a relatively good deal. And they may feel reasonably secure.

But when you're dealing with a subject which causes you and your peers continuous and daily worry, when the terms of medicare and health insurance coverage in general are extremely confusing and nonstandardized, and when you've been identified as a target group by a class of hard-selling predator-agents and companies, it is difficult to be either smart or lucky. Millions make a good choice. Millions of others do not.

Think of yourself as a 65-year-old widow or widower.

Which of us would not succumb to the charms of an earnest young man at our door who tells us that the policy we currently have will not fill all the gaps in medicare, but his will?

What would we know about 100 percent first year commissions—yes, unbelievably, there is one policy which offers such a commission—or the more "routine" 65 percent commissions?

What would we know about the economics of an industry where 50 percent or 60 percent expense factors are routine for some companies—leaving 40 cents or less on the dollar for benefits? Would we understand the all-too-frequent need of the earnest young man to turn over, churn, or "twist" business, in order to hang onto the high first year commissions which he depends upon to make a decent living?

And then we're hit by the next appeal.

It may be for a cancer policy, in the newspaper. Or an "inexpensive" hospital indemnity policy, at "low group rates," from a national organization.

Or it may be from another door-to-door agent, telling us that we need a nursing home policy—after all, medicare doesn't pay for custodial nursing home care, and isn't that our number one fear.

Trouble is, she doesn't tell us that there is no insurance policy sold in our State that truly covers custodial nursing home care, and that her policy only pays off for nursing home stays after hospitalization and after medicare benefits are exhausted—which means, the policy is virtually useless.

But how are we to know this?

There are approximately one-quarter million senior ciitzens in Wisconsin who supplement medicare with some form of private health insurance (the figure may be significantly understated). We have no way of estimating the amount of money these citizens waste every year in seeking health insurance to fill the gaps in medicare—but we can guess it is well into the millions of dollars.

The most basic waste relates to the product itself. Medicare returns 95 cents of every dollar spent as a benefit. "Blue" plan group insurance (and some private group insurance) normally return 85 cents to 95 cents in benefits on every dollar. The highest value individually marketed medicare supplement insurance policies return 70 cents to 75 cents on the dollar in the form of benefits.

And what is the return in actual benefits on the high-commission, low-value medicare supplement, nursing home, and hospital indemnity contracts which are most aggressively sold to the elderly? A good guess would be 40 percent, if that.

A glance at the 1977 Wisconsin Insurance Commissioner's report and the loss ratios on Wisconsin business of some of the companies heavily into this market will confirm this dreary conclusion; and Wisconsin's experience is not in any way unique.

Ask yourself: How many senior citizens would spend $200 on a nursing home policy or a medicare supplement policy, if they knew that on the average the highest return they could expect back on that policy was $80?

The inefficiencies and extravagances built into the marketing of these health insurance products to the elderly are obscured by the complexity of the products themselves, and the marketing techniques utilized.

There is no insurance policy sold in our State—and I doubt that there is any policy sold in any State—which fills all of the gaps of medicare. None.

But there are thousands of insurance policies purchased every week which are thought to fill all the gaps—at least, until the next medi-scare salesman knocks on the door.

And then another policy is purchased. And another.

It is not uncommon for us to find senior citizens in Wisconsin who are spending well over $1,000 a year on health insurance policies, each of which is duplicative of the other, and only one of which will pay off in the event of a loss.

How can we allow such waste? How can we excuse it? Why is it allowed to go on?

Part of the answer lies in the nature of the victims: Older people, vulnerable, afraid for their health and their estates, more likely to blame themselves when their insurance proves inadequate than the company or its agent.

Part of the answer lies in the nature of the "crime." The victims of one fast-talking medi-scare peddler may, all together, have wasted $100,000 in a year on inadequate or duplicative coverage. But each victim lost only $200 or $300—so the size of the crime and the pattern of victimization is rarely recognized.

Many old people don't even realize they are victims; some are enfeebled or infirm, and incapable of complaining. They make poor witnesses, and they are reluctant to come forward—because they think it may expose their own ignorance and make them look foolish.

It is no surprise that local prosecutors are wary of attempting to pursue such white collar crime. It is costly and difficult.

Nor should it be surprising that the ripoff artist himself frequently points to the approval of a policy form by the State commissioner of insurance as evidence of its acceptability.

Government has been and continues to be part of the problem. State regulators have too long acquiesced in practices which are morally indefensible.

It is time to call a halt to such acquiescence, by both government and private insurance industry.

A government that creates a medicare program for its senior citizens ought to act to assure that the gaps and holes in that program are addressed responsibly.

For too many years, the attitude has been, "out-of-sight, out-of-mind"—which for the senior citizens usually means "out-of-pocket." Such an attitude cannot be accepted in a government which, out of a commitment to "compassion" and "competence," seeks our support for broader government health initiatives.

Nor can the arguments of the private sector against national health insurance be given much credence, when the performance of some of the insurers in the medicare supplement market is reviewed. If this is the best the private sector can do in working with a public program, then it is a powerful argument for a fully socialized health insurance system—at least for the elderly.

In Wisconsin, we have experienced success, failure, and much frustration over the past 3 years, as we have attempted to cope with this problem.

We have greatly strengthened our enforcement efforts. We have increased the number of agent license revocations, suspensions and forfeitures from a handful in 1974 to nearly 100 last year. We have fined one company $25,000 and suspended it from the market for over a year. We have conducted examinations of a number of the insurers with the worst record—and major disciplinary actions may now result.

We have distributed (directly or indirectly) over 100,000 copies of a booklet we prepared for senior citizens outlining their health insurance needs and rights. But, at least until recently, the problem has not shown signs of lessening.

Here are just some of the examples of what we have come across in the past 3 years:

Agents tell us about lists of "mooches," or "cripples," or "marks," that have been circulated among the medi-scare peddlers—lists of infirm or senile old people who will take anything offered to them—who will "buy the whole load"—and we have seen such lists.

Teams of hundreds of agents switch from one company to another, and thousands of people get caught in the ensuing "war."

We go into a company's files, and find dozens of medical applications from particular agents which have been "clean-sheeted." How many people over age 65 do you know with no prior health problems?

We go into another company's files, and find stacks of complaints 6 or 8 inches high on particular agents—yet these agents are still with the company. The unspoken reason: They're too heavy producers to be dismissed.

In the course of various investigations, we come across evidence of systematic forgery and routine post-dating of applications.

Agents tell us about the message they received from their company supervisor in training: "Don't worry about the replacement regulations, don't worry about the 'outline of coverage,' don't worry about the commissioner. The name of the game is to make a sale."

If there is cause for some optimism in Wisconsin, it arises from our experience of the past few months.

On January 1, 1978, a new rule went into effect, which required all new policies sold as "medicare supplements" to senior citizens in Wisconsin to provide minimum benefit levels; and which mandated that whenever an elderly person in Wisconsin is solicited for health insurance, he or she must receive a copy of the consumer booklet produced by this office concerning the health insurance needs of senior citizens.

One important by-product of this rule has been that many of the inadequate policies previously on the market have been withdrawn. Another important result has been the creation of the possibility for elderly consumers to make meaningful pricing comparisons among health insurance policies, such as they have always been able to make in buying auto and homeowner insurance. For the first time, the senior citizen can see the difference in costs (because the benefits have been held constant). Policies with ridiculously high expense ratios cannot meet the minimum benefit requirements of the rule and still be offered at a competitive price. Indeed, among the first policies approved under the rule were some at over $400, offering identical benefits to others priced at less than half that figure.

Yet, even this rule, which provides a mechanism for greater standardization of policies, improved consumer information, and elimination of many of the worst policies from the market, can easily be misused—and our past experience gives us good reason for caution.

One fear, for example, has been that medi-scare peddlers will use the new policies as a justification for people to replace perfectly good current policies—and subject themselves to new waiting periods and exclusions—and we have already seen examples of this taking place.

Another problem area has been the "group" policies, such as those offered by the American Association of Retired Persons, which have not been subject to the rule—and have therefore become a source of some confusion to the elderly.

But at this point, we are guardedly optimistic that the medicare supplement market place in Wisconsin may be improving. We are receiving strong support in our efforts from elderly groups, and from elements of the insurance industry itself (most notably, the State life insurance underwriters organization, which has set up a counseling program).

Even if our effort, and parallel initiatives by California's insurance department and other States, do show signs of working, I do not feel, however, that that gets either the Federal Government or the insurance industry "off the hook."

The Federal Government which created the medicare program—and its gaps—has an obligation to cope with the problems left in its wake. At a minimum, that "coping" should include:

Extensive information and counseling efforts through the Social Security Administration and its local offices.

The "targeting" of law enforcement funds to State attorney generals, local district attorneys and State insurance commissioners to "encourage" them to pursue and prosecute this type of insurance fraud.

"Encouragement" of the private insurance industry to offer a small number of standardized, comprehensive medicare supplement alternatives on an open enrollment basis country wide (e.g., through use of the market power of Federal employees and the media power of the Federal Government).

As a state insurance commissioner, I must be wary of Federal regulatory "incursion" into areas of State jurisdiction. And I believe that States have many effective options to pursue in combating the abuses I have identified.

Nevertheless, I welcome Federal interest and involvement on this issue—because I think there is a Federal moral responsibility involved; but also, for practical political reasons.

The insurance industry and State insurance regulators frequently do not seem to take an issue completely seriously until the Federal Government starts to rattle its "nuclear saber." In recent weeks, there have been signs, within the National Association of Insurance Commissioners and the Health Insurance Association of America—that this issue is finally being given the attention it deserves.

For that—and I am sure for the recommendations with which this committee comes up—you will deserve the gratitude of this nation's senior citizens.

Thank you.

Senator CHILES. Mr. Cooper, I am going to take your testimony and then I will question you both together.

STATEMENT OF W. W. COOPER, TALLAHASSEE, FLA., ADMINISTRATOR, HEALTH INSURANCE SECTION, OFFICE OF FLORIDA INSURANCE COMMISSIONER

Mr. COOPER. Thank you, Senator.

Senator CHILES. We are pleased to have you here from our State. Your full statement will be made a part of the record [1] and you may summarize.

Mr. COOPER. We have problems in this area. We feel the Florida Insurance Department is setting the pace and controlling the situation in our State, protecting the hundreds of thousands of senior citizens that could be taken advantage of. I entered into the record a letter [2] that is a tragic situation. I think the Senator will note this was in 1976. We have not been confronted with such a flagrant situation of someone being taken advantage of, but we do have problems with it with some companies concerning advertising.

21 SERVICE OFFICES

We have one control center that we feel is a big tool in our area in the State of Florida. That is our 21 service offices. The commissioner for the State of Florida has instructed his staff that each Monday morning, after these big spreads have come out in the newspapers, to check into those and see if there is any violation of our rules and regulations in the State of Florida in controlling advertising. This we monitor constantly. We still have some violations.

Our biggest problem is one of general agents. Another thing that we have in Florida is that we check companies. We have a regulation in the State of Florida that companies have to file their training programs, as has been mentioned here today. A lot of training in the past has been poor, and poor training manuals put out by companies, but in the State of Florida they have to file annually their training programs. We have found that if we review these each year and find a situation as has been brought out here today, we see that this is corrected.

We verify loss ratios in the State of Florida. As the commissioner of Wisconsin says, he has a rule and regulation that I think has just been put in force. We do not have such a rule and regulation but we have Florida statutes that require that the premium be reasonable in relationship to benefits provided.

Since Bill Gunter has taken office he has instructed the staff to check and verify loss ratios. We have started this procedure since he has taken office and we go back 4 years. You mentioned this a moment ago. We feel like that is a credible experience and we check each year for the credibility of this contract to be sure that this loss ratio provides benefits above 50 cents on the dollar.

We have had several companies that we have found that their premium was not reasonable in relation to the benefit provided. We have had several of them to revise their complete portfolio to either reduce the premium or increase the benefits and give refunds to these people in the State of Florida.

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[1] See page 86.
[2] See page 87.

We think in Florida that we are doing an excellent job. We know that Washington has its control and we hope that the other States will follow in behind Florida and will help control their situations such as Bill Gunter is doing in the State of Florida. We have revoked numerous agent's licenses. The word has gotten around in Florida that you cannot become a fat cat by fleecing the senior citizens or the younger age group.

So we feel, Senator, that we are doing a pretty good job, but we still have complaints brought to our attention. We have regional investigators that Bill Gunter has assigned for central Florida, north, south, southwest Florida, et cetera. We don't sit back on our duff and wait until somebody has really been ripped off, we get on top of it immediately.

Senator CHILES. I will enter into the record at this time the prepared statement of Mr. Cooper.

[The prepared statement of Mr. Cooper follows:]

PREPARED STATEMENT OF W. W. COOPER

SENIOR CITIZENS INSURANCE MARKET

(1) The biggest problem Florida has in the area of senior citizens coverage with respect to medicare supplement contracts, also known as medi-gap, is in the replacement of these type contracts during the first 12 months of coverage. Replacement during this initial period of coverage prohibits the insured from being able to receive benefits for pre-existing conditions. This is because the policy must be in force usually, from 1 to 2 years, before he is able to collect benefits for pre-existing conditions. This type of waiting period is common in most contracts, to prevent antiselection against the company, because of people purchasing insurance specifically to pay for expenses on a pre-existing condition. When a policy is replaced before a person satisfies this waiting period, he must pay for all the expenses incurred for a pre-existing condition which causes a further financial hardship on the senior citizens, which is not necessary. The reason agents replace this business, knowing the potential detriment to the insured, is that he will receive first year commission. A first year commission will average between 35 to 65 percent of the annual premium. When an agent makes a practice of replacing medicare supplement coverage, it is common to find that an unscrupulous agent will return to his own client at the time of renewal of a policy, and will sell the client a new policy instead of renewing the current policy.

Renewal commissions are approximately 5 to 10 percent of the annual premium. Therefore, it is more profitable for those agents who are dishonest to sell a new policy instead of collecting the renewal premium on the current policy. It is not uncommon for a dishonest agent to represent more than one company, and replace one of his client's policies with another policy issued by a different company.

(2) Another related problem is a dishonest agent using pressure tactics to sell the insured more coverage than he has a need for. This is called stacking of business. [See attachment, page 87.] This is a common occurrence in the medicare supplement insurance market. There are numerous companies that offer medicare supplement policies that provide sufficient benefits under one policy, to supplement their medicare parts A and B coverage. Therefore, in most cases, there is no need for coverage under several policies that can be provided under one policy.

(3) The third most common practice creating problems in the medicare supplement insurance market is the manner in which these policies are sold. Some dishonest agents, in order to replace a policy or to sell additional and unneeded coverage, will misrepresent a policy and use pressure sales pitches. This results in insureds being confused about what insurance benefits they need and what they are actually purchasing. We have received complaints from in-

sureds stating that they were scared into purchasing coverage and not knowing what they were actually buying.

(4) The Florida Insurance Department regulates advertising used in Florida through the use of guidelines under rule 4–6, which outline the manner in which advertising may be written. The rule requires that all insurance companies provide an annual certification that all of their advertising complies with rule 4–6. However, the problem that most often occurs is with a general agent. The agent will draft his own advertising without prior authorization from the insurance carrier. In the medicare supplement insurance market, the most common violation has been the use of advertising material which is written or designed so as to mislead the reader into thinking that the material is being distributed by the agent of the Federal medicare program. Rule 4–6.13(2), states "no advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color, or other characteristic are so similar to combination of words, symbols, or physical materials, used by agencies of the Federal Government or of this State, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, State, or Federal Government".

The Florida Insurance Department has 21 service offices throughout the State that try to keep a close watch on advertising material being used in their area.

SOLUTIONS

(1) The department is reviewing the annual statements submitted by companies on their experience as to premiums earned and claims paid on each type policy sold. This review is made to find policy forms that reflect a premium which is not reasonable in relation to benefits provided. This indicates a policy that may be designed actuarily so as to provide too small a benefit to the insured, and too high a profit to the company. The recent investigation by the department of one such company resulted in the company, at the department's instructions, having to update and revise their entire policy portfolio in order to provide benefits that are reasonable in relation to the premiums charged. The department is also reviewing request for rate increases to be sure that the company's actual experience justifies the need for a premium increase. In the majority of such requests for rate increases, we have found that the actual experience for Florida policyholders, did not justify the amount of premium increase being requested.

(2) Bill Gunter, as a result of continual problems in the replacement of health insurance, has proposed a rule which would require that agents give full disclosure and comparison of contracts involved in a replacement. This should be a big help in stopping replacement of insurance which is sold for the sole purpose of profit to the agent.

(3) The Florida Insurance Department, in order to provide the citizens of Florida with a better understanding of health insurance, including what a person should be aware of in a policy, is in the process of publishing a booklet to be given to the public. This booklet will explain terms, provisions, definitions, exclusions, and benefits of insurance policies. The booklet will identify what the senior citizens should look for in a medicare supplement policy.

(4) Market conduct surveillance examinations.

[Attachment]

MARCH 11, 1976.

In Reply please refer to: Our file No. 14–76–663 (Oliver) or various policies. Mrs. ———, ———, complainant.

DEAR MR. GREEN: Several recent complaints or inquiries have been brought to the attention of the Insurance Commissioner's Office of insurances where agents of your company have grossly and flagrantly oversold and exploited risks in this area and other areas of Florida.

The most recent is the case of Mr. and Mrs. ———. Mrs. ———, the daughter of this couple is visiting her parents and found that their cooking range. refrigerator, and television were not operating. She asked her parents why they had not had the appliances repaired and was told they could not afford the expense. When she inquired further her parents told her their insurance was such an expense they did not have money for other necessities. Copies of checks drawn on the ——— checking account payable to Insurance Company are attached

and indicate premium payments on December 5, 1975, $1,747.00, January 9, 1976, $354.00, January 1, 1976, $143.40, October 13, 1975, $380,00, January 3, 1974, $134.00, December 26, 1974, $124.00.

In a period of slightly more than a year, these people have paid to your company $2,882.00 for nineteen policies, which are identified on the attached pages.

Mr. ——— is 82 and Mrs. ——— is 78. In speaking to Mr. ——— on the telephone, his speech is halting and barely audible, which is the result of three strokes.

Senator CHILES. You mentioned in your written statement a number of practices that unscrupulous agents use. I suppose those practices, some of those still won't go?

Mr. COOPER. Senator, we still have some of those. They are not running as hard and as fast as they were in the past. We checked in general. We have the right to go in and check a general agent's record even if he is not licensed. Maybe he just sets up an agency and he has men under him. Any time he is transacting insurance in the State of Florida we check those records, and this is how we find stacking of policies.

Senator CHILES. I am delighted to hear that Florida is doing so well and I trust then I am not going to get any letters when the press writes about this hearing, that says there are not any problems in Florida.

Mr. COOPER. Senator, you will get letters. We get letters every day. When these ads hit the paper Sunday, Monday, Tuesday, Wednesday, and Thursday, we receive the letters that we check into, but it is not as rampant as it was in the past, sir.

INDEPENDENT CONTRACTORS

Senator CHILES. Mr. Wilde, you were talking about independent contractors. You were going to comment on that and also on someone being fired "for cause."

Mr. WILDE. Yes. First of all, the phrase "independent contractor," for example, in Wisconsin, would not be an acceptable kind of approach. In Wisconsin, we have only one status of insurance salesman at the moment, which is an agent, and the company is legally responsible for the acts of the agent. Now some companies like to say that their agents are "independent contractors." I suspect in a similar fashion to the way that the guy who sells "numbers" somehow is an independent contractor when you try to trace up the whole chain to the top. I think that the phrase is misleading. Legally, the company is liable for the actions of those agents. They are the company's agents and the company is responsible for their deeds, pure and simple, and so the company has a responsibility to train them.

Senator CHILES. When you are talking about numbers, you are not talking about phone numbers?

Mr. WILDE. No, I am talking about an analogous structure to some elements of the so-called organized crime.

Senator CHILES. We call that bolita.

Mr. WILDE. Second, the "terminated for cause" comment. I am not going to comment on any particular company, but we have discovered, and I suspect most insurance departments would discover, that almost

no agent is ever "terminated for cause." When agents are terminated, they are terminated for "nonproduction."

Senator CHILES. When one gets in a U.S. Senate hearing he might be terminated for cause.

Mr. WILDE. That is not to say they are not terminated for cause, but I am saying from a departmental standpoint, one of the important controls we have is when a company has a bum agent and they know he is a bum agent, they want to get rid of him. I accept that fact. Good companies, bad companies, nobody wants a bum agent—he might steal from them. Generally, when they get rid of him they are afraid to say that they terminated him for cause, they are afraid he will sue them or whatever, so they indicate in their notice to the department that they terminated him for nonproduction.

Under our rules, if they do that, it is a violation by the company; and we are now finding dozens and dozens of these kinds of violations as we go into company records. When we examine their records we discover agent X has been dismissed for all kinds of horrible activities and complaints, yet in our records it shows he was dismissed for nonproduction.

Senator CHILES. Then you require, as part of your regulations, that they notify you?

Mr. WILDE. Absolutely.

Senator CHILES. And what the reasons are?

Mr. WILDE. Absolutely. As I say, that is a requirement that has been in place for years.

Senator CHILES. Do you license these agents?

Mr. WILDE. Yes. That is why it is so crucial that we get that kind of evidence, because, as Senator Glenn was referring earlier to the fact that these guys jump around from company to company; this is very, very true.

Senator CHILES. What kind of results have you had where you failed to license an agent? Have you been tested? Has anybody taken you to court for failure to grant a license?

Mr. WILDE No. We have refused licenses to a number of agents in recent years and we so far have gotten away with it.

Senator CHILES. Nothing has been overturned?

Mr. WILDE. That is right.

Senator CHILES. So it can be an effective means of getting these people out of writing insurance where you have this information?

Mr. WILDE. Yes. In fact, I would say that one of the most striking things is that just one general agent, with a team of a few hundred subagents, can generate hundreds of thousands of dollars of business and hundreds of complaints. If you go after that general agent, it is very hard to get him. They are insulated and protected. But if you go after them, if you can stop them, you see a literal drop-off in the number of complaints in the hundreds, just from the prosecution of a few key agents.

AN AGENT GRAPEVINE

Senator CHILES. Word gets around fast.

Mr. WILDE. Yes.

Senator CHILES. There is a great grapevine out there among those agents, is there not?

Mr. WILDE. Yes, there certainly is.

Senator CHILES. You mention certain things you think the Federal Government can do, and you also mention that you see some more activity on the part of the National Association of Insurance Commissioners. Do you think that is really moving? Is there a possibility for some kind of model law and model regulations, or is the Federal Government going to have to get into this field, as we have gotten into so many areas when the job wasn't being done?

Mr. WILDE. I think that there are some National Association of Insurance Commissioners models of minimum standard things in place now, but in the medicare supplement area it is not very helpful. There may well be at this point in time some interest in the National Association of Insurance Commissioners in going to a much more detailed approach, such as California and Wisconsin have gone to, and it should be said California and Wisconsin have gone in somewhat different directions and that suggests the need for some form of uniformity.

I think that there are agencies of the Federal Government, perhaps the Federal Trade Commission, and others, who have some interest in this issue. I don't think at this point there is a need for a Federal law to establish minimum standards, but as I suggested in my testimony, it would be very appropriate for an agency of the Federal Government and the Congress to develop some guidelines as to what you think would be good and then take the Health Insurance Association of America at their word and walk back to them and say, "OK, you say there is a small number of sharks; what about the good guys?" What are you good guys going to do?

Are you going to offer, countrywide, a few good policies, on an open enrollment basis, so that anyone can get them—and that are offered on an accommodation basis—which means they are not high expense, high commission products? Maybe you can get the private health insurance industry to recognize what I think is its clear responsibility and if it does not recognize it then I think we may have to come back to the Federal Government and say what is the Federal Government's responsibility given the fact that a large part of the problem is created by medicare and the gaps in medicare.

Senator CHILES. Mr. Cooper, what kind of requirement does Florida have in regard to standardization of policies?

Mr. COOPER. In the accident and health field?

Senator CHILES. Yes.

Mr. COOPER. We have what was put into effect a couple years ago, Senator, minimum standards which the commissioner from Wisconsin mentioned, and they are pretty stringent. We have certain guidelines that companies have to comply with when they file policy forms, and if these do not comply with these guidelines then they are not permitted to sell them in our State. Every company had to revise their contracts to bring them into compliance within the State of Florida.

Senator CHILES. Do you have provisions that would require the contract to show what percentage, what is the cost of the accident and health for each coverage A and B and supplemental coverage?

Mr. COOPER. In all areas, Senator, we require in the State of Florida when a company submits a new policy that they have to give us a 10 year breakdown on their anticipated loss ratio and we have received

a little bit of flack from industry in this area because several of the companies did not want to reflect what they anticipated down the road. They might have a 10-percent loss ratio on the contract that is in force in Florida and if we knew it we would withdraw the form which we have statutory authority to do and we have done so. We feel that by requesting this anticipated loss ratio that it is going to correct some of the situations that have been brought out here today.

Mr. WILDE. Senator, if I could comment, I thought I heard your question differently. I thought you were asking what was required in terms of information on the policy.

Senator CHILES. That is what I am trying to find out. What do you require of the purchaser of the policy so that he will see on the face of that policy what the expense is for A coverage or B coverage, medicare A, medicare B?

Mr. COOPER. As far as specifics, Senator, we don't have anything of that nature. We have an outline that is required to be filed with medicare supplements and it tells what they get but it does not go into the cost of the contract.

Senator CHILES. Well, it sounds like to me from what Wisconsin is doing and California—is California doing that, too, what you are talking about?

Mr. WILDE. Well, I am not sure exactly what California requires. What we require is that on any of these medicare supplement contracts they must provide a chart in a very simple, readable form of medicare, what medicare covers, what the policy covers, and what neither covers, side by side, so that it is very simple for the policyholder to figure out what is not covered and what is covered. I don't know if California does that or not.

Mr. COOPER. That is included in our outline.

Senator CHILES. That is included?

Mr. COOPER. Yes, we include what you get and what you don't get on the medicare supplement. I didn't quite understand your question.

Senator CHILES. I am also trying to reach the provision that you are talking about where some companies would show their expense ratio was $400 and another would show that it was $200. That would be in your——

Mr. WILDE. That would be just the basic price of the policy, that would not be the expense ratio. That comparison, of course, every State would have. In States that did not have a standardized approach, company A and company B could both be offering a policy which they call medicare supplement. Company A could have huge exclusions in it and have a very high expense ratio and company B could have no exclusions and be a very comprehensive policy yet they could have the same price.

Senator CHILES. Standardized policy?

Mr. COOPER. Right, sir. Our actuary has told us that any contract written in the accident and health field, that when the company structured its rates and did not have a 55-percent loss ratio that it could cause a large increase in premiums down the road within a couple of years, and this we have found true in Florida after we began to check exhibits of loss ratios where companies would apply for a 200-percent premium increase, as the commissioner has mentioned.

Senator CHILES. How prevalent would either of you judge instances of insurance oversale to the elderly to be?

Mr. COOPER. There is quite a bit of it, Senator.

Senator CHILES. Can you give me a ballpark figure of what you would say it is in Florida?

Mr. COOPER. Most of these people that we have found, that have been brought out today, are very insurance minded. They realize what could happen to their life savings and a lot of them will buy unnecessary contracts such as these policies. So there are quite a few. As far as the numbers, it would be hard to say, Senator.

Senator CHILES. Mr. Wilde.

Mr. WILDE. One way of measuring that question would be to look at the number of people on the medicaid program, which is, after all, only available to people of moderate or low incomes, the number of people on the medicaid program who are insured improperly—since the medicaid program in Wisconsin, and I assume the rest of the country, has to get reimbursement from private insurance where a person in medicaid also has private insurance.

20 PERCENT OF MEDICAID RECIPIENTS WITH PRIVATE INSURANCE

Now the State of Wisconsin Department of Health and Social Services has done some survey work, and at this point I think it is something like 20 percent of the people on medicaid have been shown to have some form of private health insurance. Now there is very little rhyme or reason to people having that health insurance, since by law they really have to turn all the money they receive from insurance over to the State anyway, since they are taking the medicaid benefits and that is one of the prices of those medicaid benefits.

Some people have told us they think they are about to go off medicaid and that's why they want to hang on to insurance. But a lot of those people, particularly people with cancer policies and limited policies of various types, are holding insurance that they should not be holding, and this is an indication of how the marketing tactics have gotten through to the people who clearly can't afford it.

I would like to turn your question around a little bit and also say that the problem in this market is not just one of people being oversold too much insurance, it is also a problem of people being oversold a lot of inadequate insurance so that, for example, they get a stack of policies, such as you have heard today, rather than getting one comprehensive policy, let's say, to supplement medicare. They get four or five limited policies which end up costing $100 or $200 more, and when the crunch comes they find out that those policies are not worth very much.

Mr. COOPER. This is the reason, Senator, that we have withdrawn numerous contracts in the State of Florida because of companies that did not wish to comply with our request.

Senator CHILES. Some people have suggested to the committee that some companies, no matter what the training manual of the company policy says, unofficially encourage agents to disregard the rules as long as the high volume of sales will continue. Do you have any actual knowledge of this, either of you?

Mr. COOPER. Senator, as far as actual knowledge, we don't, but we have been told this and you are going to have some, but most of them

police their own self in this area because we come down on the company. As someone stated, we see that it is corrected. As the commissioner of Wisconsin said, contract or no contract.

Mr. WILDE. I think the answer to that question is that that is the case in this marketplace and has been the case. We have had agents tell us point blank that vice presidents or whatnot of the company have said to them, "Ignore the rules, ignore the commissioner, that is not what you are out there for." As I indicated before, we have come into company records where we could see a stack of complaints 6 inches high on the agent and the agent was still there. That tells us something; it tells us that the company values that agent's production more than their own credibility. We know that we have taken action against agents in Wisconsin and the companies have come in and said: "We agree with you completely. That guy is a bum; we don't want anything to do with him." Then they have licensed him in Illinois.

Senator CHILES. Both of you talked about agents. Do you know anything when you take this action? Do you send that to other States, neighboring States?

Mr. WILDE. Yes, we do and we distribute it. The National Association of Insurance Commissioners distributes a monthly or bimonthly list of agents whose licenses have been revoked or terminated, but it is a very inadequate procedure, because a lot of disciplinary actions don't necessarily result in revocations. They may result in forfeitures, they may result in voluntary withdrawals by the agent, and so on and so forth. I have no doubt that when a State really cracks down, that it may be exporting its problems to other States.

POSING AS MEDICARE REPRESENTATIVES

Senator CHILES. Both of you have talked about agents misrepresenting themselves as agents of the Federal medicare program. I noticed in some of the material provided to the committee, for example, cards mailed to people asking them to return the cards if they want information or changes in medicare. Can you describe how this type of contract works?

Mr. WILDE. When we first started going after this problem 3 years ago, Senator, we used to see literally packets of 10,000 and 50,000 of these cards being mailed out of three or four different agencies. I don't know where they got the lists from, probably from some source that uses motor vehicle records, or some other records that are typed by date.

They would send out a card saying: "Medicare changes information. If you want to know about what is going on in medicare, write to us." Then they would systematically follow up on this. Now we have set up rules which don't allow that kind of misrepresentation and I think we have largely cut it out, but it seems to go on in various ways no matter what we do.

For example, when our new rule went into effect January 1, one of the first things that happened was that some kind of boilerroom agent operation was set up north where someone was calling up lists of senior citizens and saying: "Under the commissioner's new rule, all medicare supplement policies have been abolished; you have to buy

our new medicare supplement policy." The ingenuity of the people in this market is infinite.

Senator CHILES. Mr. Wilde, what has been the reaction of the insurance companies to your new rules and clarification system for medicare supplemental policies?

Mr. WILDE. I think I would say, generally, it has been a healthy reaction. A number of the companies have withdrawn from the market, which is probably healthy. Some companies have gone into the market and made what I would call a public service commitment. They have said that, "We are going to write these policies, not to make a lot of money, but because we think it is the need."

As I indicated in my prepared testimony, they have already distributed 100,000 copies of our booklet to elderly people in Wisconsin, so somebody is out there selling. We have seen the distribution of prices that I referred to, which is, some companies have come in at low prices, some at high, and I think that is important for the consumer.

We have had some problems and one of them, as I indicated in my prepared testimony, was with the American Association of Retired Persons group policy which does not come under the rule. There are something like 40,000 people in Wisconsin who have these policies and many of them are very confused about how they relate to the rule and what their needs are and how their policies relate. I would say we have not been too successful, up to now, in trying to get that situation resolved, but I trust that after "60 Minutes" went to work, maybe we can resolve it much quicker.

Senator CHILES. Mr. Cooper.

Mr. COOPER. Referring to the premium, Senator, some of these companies in the past, we have found some would come out with a gimmick contract and we would disapprove it due to the fact that the premium was not justifiable, it would be too low. We could see that it would create insolvency. We turned those down, we didn't try to have the premium too low for benefits provided. This would cause a problem. We watched both ends of it, whether it was too high or too low.

Senator CHILES. We thank you both very much for your testimony. You have been very helpful to the committee and we appreciate it.

This concludes our hearing.

The committee will be looking at this question further and we will probably be seeking additional information trying to determine what is the extent of the problem and how many States are adequately trying to police the problem.

[Whereupon, at 12:28 p.m., the hearing adjourned.]

APPENDIXES

Appendix 1

ADDITIONAL MATERIAL SUBMITTED BY ROBERT E. LOWRY [1]

ITEM 1. FURTHER COMMENTS OF ROBERT E. LOWRY

Several concerns exist on a highly personal and, I believe, relatively unselfish level. These are "awarenesses" which developed as I groped my way toward the original goal. The light manner in which the problem and complaint was handled in Ohio and the official indifference or unwillingness to initiate action (either in criminal charges for the inducement to forgery, or disciplinary for the company and agents) for behavior which the same officials found "reprehensible" in private conversations. Add to this the concerns which developed during the contacts and communications with company representatives; their insensitive reaction to the factor of financial hardship caused by overinsurance, their insults and insinuations.

I don't give up a fight easily, but I confess that these layers of resistance, to an appropriate resolution of the problem, were almost overwhelmingly discouraging. After 2 months of effort and having apparently exhausted the remedies available in Ohio, my only accomplishments were the company's grudging admission that two policies were refundable, having been "improperly written," and a suggestion that we lapse any other policies found financially burdensome. I tried to imagine my mother or some other "typical" gentle-mannered elderly person attempting to fight their own battles in pursuit of a correction to their grievance on problem along the same path I had traveled. The willingness to admit one has been deceived, the energy to knock on many doors and write innumerable letters, or the ability to endure bureaucractic delays and indifference may be lacking. It is not my intention to demean the spirit or capabilities which many senior citizens retain, but my observations suggest that these types of frustrations and confrontations are neither desired nor needed at this stage of their lives. In short, I became convinced that neither the systems designed to prevent insurance exploitation and abuse nor the systems designed to correct such abuses, after they occur, are adequate in meeting the needs of elderly consumers. This concern and its exposition became as important as resolution of the specific family problem.

I've still got a little fight left in me, but these factors were almost overwhelmingly discouraging. I tried to imagine my mother or some other "typical," gentle-mannered elderly person attempting to pursue a correction of their grievance or problem along the same path I had traveled. The system is neither fair nor adequate to meet their needs when a problem arises. I also learned a few facts of life about the insurance industry, how powerful it is, both economically and politically, and how aggressive they appear to be in their relationships with the various state agencies which regulate their activities. The relevance of these factors seemed to merit equal emphasis within any presentation of our insurance problem to the committee.

There is a direct correlation between our exposure of my mother's insurance problem and the company's willingness to take corrective actions in refunds and, 6 months later, to guardedly admit that insurance oversale did occur and tender an apology. The admissions that something had gone wrong within the company's sales and fiduciary relationship with my mother finally occurred under the bright lights of the committee hearing room with the close attention of

[1] See statement, page 30.

Senators and the media. I feel very strongly that the committee needs to be aware of the very different attitude which this company manifested and the formal stand it took, in reference to our specific problem and complaint, during the 8 months prior to the hearing date. This earlier attitude is relevant to the committee's interests since it represents exactly what we would have had to content ourselves with if the committee had not interceded with a closer examination. As recently as April 5, Mr. Grubbs wrote to the North Carolina Department of Insurance and reaffirmed the statements made in an earlier (January 13) letter concerning my complaint of mistreatment and insurance oversale. The change of heart and attitude occurred between April 5 and May 16. The committee's concern is, I am sure, directed toward the many elderly consumers whose legitimate complaints are not so publicly exposed or favored by Senatorial intervention and who, consequently, may not benefit from a changed attitude by this or other insurance companies.

For this reason, I would like to request that all correspondence between the company and the North Carolina Department of Insurance be included as information supplemental to my testimony. In these and other letters you will note that the company never recognized nor admitted the possibility of overinsurance, nor did it ever mention the New York Life policies as the factor which had motivated their refund in December, although this was the reason given to the committee. Neither the facts of the originating problem nor the information available to the company, from which their attitude and decisions were presumably derived, have altered since last fall. The investigation initiated by the North Carolina Department of Insurance is a positive and energetic response to the complaint I filed as a resident of that State. The correspondence stimulated by this continuing investigation provides both public record and documentary proof that statements made by Mr. Grubbs and other company representatives to a responsible State regulatory agency vary considerably from the company's testimony before the committee (in certain key areas including the issue of overinsurance). The point being made is now obvious. If insurance companies feel free to deal with the consumer in a callous, indifferent manner, and with State regulatory agencies in misleading, possibly deceptive statements, to whom do they respond with the truth? The committee cannot serve as a consumer's "court of last resort."

ITEM. 2. EXCHANGE OF CORRESPONDENCE BETWEEN ROBERT LOWRY, THE NORTH CAROLINA COMMISSIONER OF INSURANCE, AND BANKERS LIFE & CASUALTY CO., CHICAGO, ILL.

RALEIGH, N.C., *November 30, 1977.*

Attn.: W. Kenneth Brown, deputy commissioner.

Hon. JOHN R. INGRAM,
Commissioner of Insurance, Department of Insurance, State of North Carolina, Raleigh, N.C.

DEAR COMMISSIONER INGRAM: As a resident of North Carolina since 1974, I have noted, with considerable satisfaction, your personal concern and the aggressive efforts of the department of insurance in the provision of guidance and protection for the consuming public against unfair insurance industry practices. Unfortunately, not all States enjoy such independent and effective regulatory controls against abusive sales tactics. I feel it is now my responsibility to inform you of a problem situation facing my family and myself which involves a company licensed to do business in North Carolina, Bankers Life & Casualty Co. of Chicago.

In August 1977, I visited my ailing mother, Lucille W. Lowry, age 75, at the Otterbein (retirement) Home in Lebanon, Ohio. Her financial affairs were in a state of chaos due to recent, extremely heavy (nearly $13,500) investments in unnecessary insurance coverage with the above company, as described in the enclosed documents. In examining her papers, I discovered a number of cancelled checks and bank drafts for premium payments on policies she did not have in her possession. Upon inquiry, a Banker's Life agent confirmed the existence of two identical whole life policies with a principal sum of $2,000, one on my life (No. 5,432.307) and another on my brother's life (No. 5.432.306), for which monthly premiums of $140.44 were being collected by bank drafts. During the phone conversation, the agent twice suggested that I might wish to cancel the policies and obtain a full refund. He also stated that the policies had apparently never been "placed" or delivered to my mother. The company's reluc-

tance to deliver the policies emphasized the need to know how life policies could be created on two adult sons without their knowledge, approval and signatures.

Together with other missing policies, the two subject policies were finally delivered on October 13 during a meeting with the Bankers Life chief counsel, Wm. Grubbs, in the offices of the Ohio insurance warden, Mr. R. Katz. The two subject policies had an issue date of April 22, 1977 and all missing policies were stamped "duplicate," an identification which I protested. The contract signatures were not in my brother's or my handwriting and may have been written by my mother, but they were witnessed or authenticated by the selling agent, R. M. Mr. Grubbs commented that these particular policies were "bad" and were not properly written, but that R. M. was no longer with the company. My mother's apparent participation in the creation of these questionable contracts was represented as a serious inconvenience to the company, but Mr. Grubbs said they would overlook her offense and we would be permitted to choose whether to continue the policies in force or rescind them for a full refund of premiums.

Subsequent to the meeting on October 13, the company supplied three other missing policies which my mother had purchased in March 1977 on the lives of her three grandchildren, two of whom are my children with residence in Raleigh. The policies have an issue date of April 6, 1977 and they had apparently never been delivered to my mother, but were stamped "duplicate" when received. I had requested that the company provide me with an accounting for all monies paid in as premiums on life policies. The accounting was sent along with the children's policies, but the dollar amounts do not correspond with the cancelled checks and bank drafts in my possession relating to items #2 and 4 of the enclosed list, the two major life policies.

Mr. Grubss had agreed to maintain all policies in force until November 14 so as to provide time for the family to study the recently supplied policies and determine which policies, of the entire insurance program with this company, should be maintained. Following consultations with my mother, my brother and other advisors, I wrote to the company on November 3 with the details of our decision (copy enclosed). The relatively small health, accident and childrens policies were not of major concern, although they certainly form a part of what is considered the oversale of insurance programs to an elderly woman. My letter requested rescission and refunds on three major life policies and one health policy representing exorbitantly expensive and totally unnecessary coverage in view of her pre-existing insurance program.

As indicated, the company has offered to rescind and refund the two highly questionable policies written on my brother's and my lives. While we regard them as undesirable and are offended by their manner of creation and existence, no decision has, as yet, been reached in reference to accepting the offer pending further legal consultations and your investigation of the matter. I do protest, most strongly, that a contract concerning my life or death, however well-meaning, was accomplished in another State without my knowledge and a financial commitment was created which I would have to assume upon my mother's death. I respectfully request your investigation of this situation and the general business practices of Bankers Life & Casualty Co. of Chicago as they may relate to the citizens of North Carolina.

Sincerely,

ROBERT E. LOWRY.

STATE OF NORTH CAROLINA,
DEPARTMENT OF INSURANCE,
December 19, 1977.

Re: Various Policies, Mrs. Lucille W. Lowry, Lebanon, Ohio.

DONALD CLARKE,
Manager, Claim Review Department,
Bankers Life & Casualty Co.,
Chicago, Ill.

DEAR MR. CLARKE: Your attention is directed to the attached letter, with enclosures, of November 30, 1977 from Robert E. Lowry.

After carefully reviewing the letter and enclosures and discussing this matter with Mr. Lowry, it is our observation that since a citizen of North Carolina has been involved in the manner alleged that we have an obligation to become concerned with his interests and with the sales practices which caused his involvement.

Because of this we request that you furnish this office with a complete report surrounding this matter and responding specifically in detail to each and every charge of Mr. Lowry.

If it is found that all or any of these charges are correct we also request that you inform this department what measures you have taken to determine that such practices will not occur in this State involving our citizens.

We are concerned with the welfare of all citizens with respect to sales practices and tactics but must necessarily be especially interested in any improper application of such practices with respect to our elderly population.

Your prompt reply is expected.

Very truly yours,

FRED L. SEAMAN,
Assistant Deputy Commissioner,
Consumer Insurance Information Division.

BANKERS LIFE & CASUALTY CO.,
Chicago, Ill., January 13, 1978.

Attn.: Mr. Fred L. Seaman, Assistant Deputy Commissioner, Consumer Insurance Information Division.

Re: Your December 19, 1977 letter concerning Lucille W. Lowry—my January 3, 1978 letter.

JOHN RANDOLPH INGRAM,
Commissioner of Insurance,
State of North Carolina,
North Carolina Insurance Department, Raleigh, N.C.

DEAR MR. SEAMAN: This is a followup to my January 3 letter concerning Mr. Robert E. Lowry—your letter of December 19, 1977.

I have reviewed the entire file and have completed a policyowner review of all coverages applied for by Mrs. Lowry.

1. Here's a review of the coverages that were issued for Mr. Lowry. On November 9, 1973, we issued a No. 717 Medical-Surgical Policy, No. 747 Extended Care Facility Policy and No. 780 Hospital Indemnity Policy, all of which were under Policy No. 730,576.561. We don't feel the sale of these policies would have been detrimental to Mrs. Lowry.

2. The Hospital Indemnity Policy, No. 780, was converted and replaced to a 74J Hospital Indemnity Policy, the current form essentially replacing the No. 780 form, under policy No. 730,576,561.

3. On April 19, 1976, the Company issued a No. 774 Intensive Care Policy to Mrs. Lowry under policy No. 760,175,115. This is supplemental insurance which provides a benefit of $50 per week for hospital confinement plus additional benefits of $100 a day for intensive care in the hospital.

4. On December 16, 1976, there was issued a No. 764 Hospital Medicare Supplement Policy to Mrs. Lowry, policy No. 760,392,452 which was a guaranteed issue. In retrospect, this Medicare Supplement probably should not have been issued because of the existence of other coverages. Apparently, since this particular product was a guaranteed issue, it did not become personally reviewed by an underwriter.

5. On April 22, 1977, a Traffic and Travel Accident Policy was issued to Mrs. Lowry.

6. On April 2, 1977, an Intensive Care Policy No. 770,150,792 was issued, but was voided as Mrs. Lowry already had a plan of this kind in force.

7. On April 22, 1977, the Company issued policies 5,432,306 and 5,432,307 which were life insurance policies for Kenneth and Robert Lowry. I am attaching photocopies of the applications which show the signatures of Mr. Kenneth Lowry and Mr. Robert Lowry. We have since learned that Mr. Robert Lowry and Mr. Kenneth Lowry may not sign the applications, but were signed by Mrs. Lowry. We refunded the entire amount of $842. This action was taken immediately when we did discover these were not properly signed.

8. On April 6, 1977, we issued three Juvenile Estate Life Policies on Mrs. Lowry's grandchildren; policies 5,423,861, 5,423,862 and 5,423,863.

9. Mrs. Lowry was also owner of four policies on her life: policy 5,393,843, issued December 15, 1976. That policy was voided as of the issue date. Policy 4,854,476 was issued June 14, 1976: policy 5,248,470 was issued on June 3, 1975: policy 5,413,376 was issued on March 2, 1977.

10. It did appear from our review, of the underwriting file for Mrs. Lowry, that the life policies could have had a definite need. The files would reflect that at the time of issue, Mrs. Lowry was in a strong financial position.

11. We are concerned with the abuse of the senior citizen in the sale of insurance. We have taken action to attempt to curb such abuse when we have it.

12. As a means of assuring fair treatment of senior citizens, Bankers Life and Casualty Company has established several rules concerning abuse in the sale of Accident & Health insurance to senior citizens.

13. The most important of the current rules are: (1) For individuals 65 or over, the maximum allowable premium, including substandard, for all Accident & Health policies for all companies, is $50 monthly. We have established extensive computer systems involving a computer check of all in-force business when a new application is received. Our agents are required to carefully review a prospective insured's current coverage and note such coverages on the application. (2) A policy for an age 65+ policyholder, which has been lapsed less than 12 months must be reinstated, upgraded or exchanged. Such a policy lapsing over a 12 month period can be rewritten, but such rewrites are limited to one in a 12-month period. (3) The Company will not allow any switching of an over-65 policy to another policy in Bankers or any affiliated Company regardless of any explanation given by the agency associate.

14. These rules have been adhered to by the Company. For example, to monitor the success of our rules, I reviewed the computer records on rejection of applications for the reason that a person over 65 has $50 per month in accident and health premiums.

Month	Number of rejections	Percent of all A. & H. premiums
November 1977	130	6.6
October 1977	98	4.1
September 1977	83	3.4
August 1977	70	2.7
July 1977	64	3.0

15. We carefully train our agency associates to use common sense underwriting in the saie of insurance to the senior citizen. We tell our agents when selling health insurance to people in the over age 65 market, that we, the Company, and the agent incur legal, social and moral responsibilities to help these people identify their proper insurance needs and prevent situations that would constitute overinsurance or undue financial hardship. Our agents are made aware that because of the prospect's age, the normal anxiety relating to the increased possibility of illness, and ever increasing hospital and medical costs, that such a person is quite susceptible to being taken advantage of. We teach our agents to review the finances of a senior citizen prospect. We tell our agents to judge an applicant's ability to pay not by how much he has in the bank, but on the actual income they have from their pension or other retirement as well as social security.

16. The Life policies written by ex-agent R.M. on the lives of Robert and Kenneth Lowry appeared to have been signed by Mrs. Lowry rather than her two sons. The Company issued these policies on the assumption the applications were signed by Robert and Kenneth Lowry. When the purported applicants contended otherwise, we made refund and rescission as requested. Our attorney for Agents Licensing matters is also investigating the matter to determine if ex-agent R.M. should have his file in the Insurance Department and the Company indicate "termination for cause".

17. We issued the duplicate policies mentioned in Mr. Lowry's November 30, 1977 letter, since it was apparent Mrs. Lowry could not locate the original policies.

18. The Company has granted a full refund of all premiums we received for all applications of Mrs. Lowry. All policies issued were rescinded. This action was explained to Mr. Robert Lowry on December 5th.

19. On October 13th, Mr. William Grubbs of our Company met with Regional Sales Manager, William Tobin, Mr. Robert Katz and Mr. William White of the Ohio Insurance Department, along with Mr. Lowry. Our Company explained Mrs. Lowry's coverage to the Department and Mr. Lowry at that time, along with an accounting of all premiums for all of the policies she purchased.

20. It was agreed at that time, that Mr. Lowry would notify Mr. Grubbs before November 14th as to whether or not be wished rescission of the two policies issued for Kenneth and Robert Lowry. We did not hear from Mr. Lowry as to his decision.

21. The decision to grant the refund was not based on the Company's conclusion that Mrs. Lowry was overinsured or was mistreated in the sale of these policies. We made the refund as an accommodation for Mrs. Lowry, considering her apparent present circumstances.

If you have further questions, please feel free to write or call. Thank you for the time and attention you have given this matter.

Sincerely,

MICHAEL J. DRESSENDORFER,
Government Relations Department.

STATE OF NORTH CAROLINA,
DEPARTMENT OF INSURANCE,
Raleigh, N.C., March 29, 1978.

Re: Lucille W. Lowry and Robert Lowry.

MICHAEL J. DRESSENDORFER,
Government Relations Department,
Bankers Life & Casualty Co., Chicago, Ill.

DEAR MR. DRESSENDORFER: Your file will reveal that you furnished this office a report on January 13, 1978 with a supplemental letter on January 18, 1978 enclosing material omitted from the first letter.

In keeping with our normal practice we have supplied the complainant, Robert Lowry, with a copy of your report and we now have the attached response from him addressing the contents of your letter which he has numbered by paragraph for convenient reply.

We are aware that the refunds for all policies sold Mrs. Lowry have been made and that the agent reportedly making the sale of this life insurance on Mr. Lowry is under investigation. We also realize that all of these transactions occurred in another State, however, the nature of the charges brought against your company which is licensed in North Carolina are of sufficient scope to make it necessary that we interest this Department further in this matter on the premise that we monitor the conduct of all companies when charges of this nature arise regardless of where they occur.

We consider this a fundamental obligation to our citizens which we are required to protect by law.

In reviewing Mr. Lowry's comments we find interest in and request explanation of the following numbered items on the basis that if he is correct, we are entitled to further explanation.

These items are No. 7, No. 8, No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17, No. 18, No. 21.

We trust that you will furnish a complete response to the questions and observations of Mr. Lowry as promptly as possible.

Very truly yours,

FRED L. SEAMAN,
Assistant Deputy Commissioner,
Consumer Insurance Information Division.

Attn.: Mr. Fred L. Seaman, Assistant Deputy Commissioner, Consumer Insurance Information Division.

Re Analysis/Response to Bankers Life & Casualty Co. letter of January 13, 1978 to the North Carolina Department of Insurance.

Hon. JOHN R. INGRAM,
Commissioner of Insurance, Department of Insurance, State of North Carolina, Raleigh, N.C.

DEAR MR. SEAMAN: In order to facilitate an understandable discussion of the various issues touched on, I have numbered the paragraphs on the accompanying copy of the Company's letter. Please read each numbered paragraph in the Company letter and then refer to the corresponding item number in the analysis/response. Certain issues or subject areas not mentioned in the Company letter, but considered relevant to the overall problem, are discussed in my analysis. For convenience, Mr. Dressendorfer is referred to as Mr. "D".

1. This original, three-part Health policy No. 730,576,561 may have been the most reasonable policy of the entire program. (The annual premium was $220.91.) However, the later "conversion" of the Hospital Indemnity portion considerably increased the cost.

2. With the removal of the Hospital Indemnity portion, the premium on the old policy was reduced to $109.64. The Hospital Indemnity coverage paying benefits of $14.28 per day (per Mr. Grubbs and Mr. Tobin) had apparently cost $111.27 per year. The new, "converted" Hospital Indemnity policy No. 770,052,917 had an annual premium of $284.72 which resulted in a cost increase of $173.45 (256%), yet benefits only increased to $30.00 per day. The very high cost of this converted policy is felt to be disproportionate to the small increase in benefits and, for this reason, I requested rescission and refund on this policy in my November 3 letter to the Company. I suggest that possibly the real reason for the salesman's suggestion to convert was: a.) to accomplish a new policy sale or, b.) to remove Mrs. Lowry from a policy coverage not "cost efficient" to the Company (the rates for which could only be raised by class and throughout the state). Within some circles this sales tactic is considered a form of "twisting".

3. This Intensive Care coverage was certainly the favorite of the various Bankers agents in that at least two (and possibly three) duplicate policies were apparently sold to Mrs. Lowry and subsequently refunded. I had planned to maintain this coverage for the time being.

4. Mr. D. recognizes this policy as inappropriate in view of existing coverage. The selling agent who suggested it was quite familiar with the existing coverage. Thus far, this is the only admission of possible oversale or inappropriate coverage by the Company . . . out of the entire 16 sales accomplished within a period of two years.

5. This was a relatively inexpensive coverage and we had decided to maintain the policy. The policy was delivered seven months after its issue date.

6. As previously mentioned in Item No. 3, this was the *third* (and second duplicate) sale of this same Intensive Care coverage. The second sale was in December, 1976 by Agent Walsh. This is puzzling because Walsh was the same Agent who had sold the original coverage only nine months earlier, in April, 1976. The subsequent repeat sales were each increasingly expensive: No. 1 $73.09, No. 2 $109.64, No. 3 $129.82.

The excuse provided by the Company for such duplicate sales was an absence of records or client's file maintenance at the local offices. The fact that Agents from two separate Bankers offices in Dayton, Ohio were working (with) Mrs. Lowry was also tendered as a possible reason for confusion and duplicate sales. Mrs. Lowry had entrusted the planning of her insurance program to the Bankers "professionals" and obediently followed their guidance. She was, in fact, confused as to what coverage she had as were, apparently, the Agents who were intent on selling her still more policies. Her handwritten notes reveal that she was receiving conflicting guidance from the various Bankers Agents, including conflicting advice as to which of her health policies with other companies should be kept or dropped.

7. The Company is quite sensitive regarding the manner of creation of these policies and their subsequent handling of the resultant problem. A number of misleading statements which attempt to portray an openness and promptness of corrective action are contained in Company correspondence to myself and to investigating officials. In light of this, the key question becomes, "On or about what date did the Company *discover* that the policy applications were improperly or fraudulently completed?"

In mid August, I discovered the existence of two mysterious policies, which apparently concerned my brother and I, through the canceled premium checks in my mother's possession. Bankers Agent Paul Grooms was contacted and asked to provide information as to the nature of the policies since they were not in Mrs. Lowry's possession. On August 25, Mr. Grooms telephoned to inform me that the policies were on me and my brother's lives, that they had been issued on April 22, 1977, but had never been delivered to Mrs. Lowry. Twice during the conversation, Mr. Grooms suggested that the policies might not fit our needs and that he would be willing to order their cancellation and provide a full refund of all premium payments. The Company seemed curiously reluctant to make delivery of these policies. (At this time, I was still unaware that the Company had similarly failed to deliver four other policies issued in April.)

My suspicions aroused by the number of selling Agents involved, the appearance of oversell and the extremely high premium outlay to this one Company, I refused to sign a Company statement of "Lost Policy" and requested both the missing

policies and an accounting of all policies through Mr. R. Katz, Warden for the Ohio Department of Insurance. The two subject policies were finally delivered during the October 13 meeting with Mr. Grubbs and Mr. Tobin in Mr. Katz' office. At that time, I stated that the signatures on the application forms were not mine or my brothers and that both were possibly signed by Lucille Lowry. "Our" signatures were, however, witnessed or authenticated by selling Agent Ronald Montgomery. *If* the Company did not know that the applications were improperly signed by the time Mr. Grooms suggested cancellation in August, they were informed of such on October 13.

A check for $842.24 identified as an "Issue Date Refund" (copy enclosed), for the two subject policies, was subsequently received from the Company on December 12, 1977. Interestingly enough, this Company check No. 495917 was stamped with a date of issuance of October 7, 1977. While no request for a refund on these policies had been made, Mr. Katz had asked for copies of the original application forms in his letter of September 28 to the Company. It is reasonable to assume that the Company had some motive for issuing the check at that time, possibly in preparation for the scheduled meeting on October 13. Further, the check was probably in Mr. Grubbs' possession during the meeting, but no request for refund was made and the check was never shown nor offered. In view of the above described events which strongly suggest that the Company had prior knowledge of the improper creation of these policies, how can Mr. D. now claim that the refund "action was taken immediately when we did discover these were not properly signed."?

A number of reasonable questions arise which are relevant to any examination of this Company's business practices, controls against abusive sales tactics, promptness and adequate in taking necessary corrective action, and candor in dealing with investigating officials or regulatory agencies.

(a) When did the Company discover the policies were not properly created?

(b) Why were the policies withheld and not delivered until nearly six months after date of issue?

(c) Why were the policies stamped "Duplicate" when finally delivered: was this not a rather obvious method of covering up for the long delay in delivery?

(d) Why did Agent Grooms suggest that I might wish to cancel the undelivered policies on August 25 with the offer of a full refund?

(e) Was Mr. Grooms' suggestion not prompted by his or the Company's discovery of an improper, if not illegal, act by one of their agents?

(f) When was selling Agent Montgomery dismissed and on what grounds?

(g) If representatives of the Company had prior knowledge of the improper creation of these policies, why was there no one with the honesty, integrity and courage to bring this to the attention of the client and stop the collection of monthly premium payments?

8. These grandchildren policies were acceptable and no cancellation was requested. As with the policies described above, these were not delivered until six months after issue date and were incorrectly stamped "Duplicate".

9. This is correct.

10. The issues and subject matter touched on in this paragraph are worthy of a much more detailed statement of justification, particularly in view of my frequently expressed complaint regarding oversale. It would be most appropriate and interesting to learn what "definite needs" the life policies were intended to meet. Mrs. Lowry had the following life insurance coverage in force at the time of purchasing the various Bankers policies:

LIFE INSURANCE, LUCILLE W. LOWRY

Company	Status	Year of issue	Death benefits
Midland Mutual	Paid up	1924	$1,000
Union Central	do	1960	2,000
New York Life	do	1932	5,000
Do	do	1954	5,000
Do	Annual premium	1968	25,000
Do	do	1968	25,000
Total life insurance coverage in force plus accumulated dividends			63,000

Mrs. Lowry has no one dependent upon her for support. Her two married sons, ages 43 and 46, are and have been independently self-supporting for many years. Who was dependent upon future death benefits from these policies? As one of the two designated beneficiaries to the policies listed above and to the more recently purchased Bankers Life policies, I am not unaware of the comforts which can be derived from receipt of "windfall income", but neither my brother nor I are dependent upon these future benefits. What constitutes the "definite need" described in the statement by Mr. D? I suggest the possibility that the "financial needs" of the selling agent were a much stronger factor in the creation of these life policies than any concern for Lowry heirs or sound estate planning, particularly in view of existing coverage.

"The files" referred to by Mr. D. appear to contain the key information which serves as the basis for the Company's interpretation of "definite need" and their determination that, "at the time of issue, Mrs. Lowry was in a strong financial position". During the October 13 meeting, I was denied access to these files by Mr. Grubbs. His position was that the Company's first obligation was to protect the "best interests" and privacy of their client, Lucille Lowry, and that revelation of the confidential, privileged information contained in these files would not be in keeping with this obligation.

Mr. D.'s reference to Mrs. Lowry's "strong financial position" at the time of issue and his much more pointed statement in paragraph No. 21 regarding "her apparent present circumstances" attempt to suggest an altered or deteriorated financial situation due to causes beyond the Company's knowledge. It has been my contention that the deteriorated "present circumstances" were *directly* attributable to the rapidly growing financial involvement with the Company which represented an unbearable drain on her income and resources for the payment of insurance premiums. The facts are that one of Mrs. Lowry's important income producing assets, her savings accounts, were being gradually reduced due to large withdrawals for the payment of annual and quarterly premiums. Fortunately, both her income as beneficiary of the trust account and her Federal benefits have increased somewhat.

In both Mr. Grubbs' letter of December 5 and in the present letter from Mr. D., the Company has conveniently portrayed itself as "accommodating" an unfortunate person who has fallen on hard times. They have consistenly avoided a direct and detailed response to the charges contained in my letter of November 3 to the Company:

(a) That an appropriate evaluation was *not* accomplished of Lucille Lowry's existing insurance coveage, her present residential circumstances and financial obligations, and, most importantly, her real need and ability to pay for so much additional insurance. The Company's vague references to a "review of the (secret) underwriting file" does not constitute an adequate justification of their actions nor an explanation of "definite need".

(b) That the accomplishment of *sixteen* separate sales of insurance policies (less four cancellations and refunds) *within a two year period* was an obvious abuse by Company representatives which clearly demonstrates an irresponsibility within the fiduciary relationship of advisor and client.

(c) That the resulting financial committment to annual premium payments amounting to *$9,158.61* represented approximately *68%* of Mrs. Lowry's annual income and thus constituted not only an unreasonable financial burden, but an indefensible abuse of her confidence and an unconscionable, possibly malicious, attack on her resources.

The circumstances and facts detailed above certainly betray the ineffectiveness of the Company's training program or code of behavior which is so eloquently described by Mr. D. in paragraph No. 15 of his letter.

11. It would be reasonable to ask how long the Company has seriously evidenced a concern for protecting senior citizens from abuse in the sale of insurance. I was informed, by a senior official of the Pennsylvania Department of Insurance, that Bankers Life and Casualty had been seriously involved in abusive practices of sales of unnecessary insurance to Pennsylvania senior citizens during 1973 and 1974. It would be relevant to know to what extent they were involved there and what corrective actions were required by the authorities.

If, for a moment, one could assume that an improper sales practice was called to the Company's attention in 1974, what excuse or justification now exists for agents of the same company to practice similar abusive sales tactics in the neighboring state of Ohio or elsewhere in 1975, 1976 or 1977? Can either agents or Company home office officials dare to claim they were unaware that such prac-

tices, as described in the enclosed Pennsylvania press release, were no longer to be tolerated? You will note that a majority of the condemned sales practices described in the press release checklist *were accomplished* in the Company's dealings with Mrs. Lowry. With the present evidence of the Company's behavior so readily apparent, can this company properly claim to be effectively self-regulating?

12. Mr. D. has now narrowed the scope of his explanation to the field of Accident and Health insurance. Some of the Health policies sold to Mrs. Lowry were considered excessive and of doubtful value, but the major strain on her financial resources was caused by the various expensive life policies. With reference to sales of life coverage, would not similar rules be equally appropriate "as a means of assuring fair treatment of senior citizens"?

13. Mr. D. has stressed the importance of the described rules designed to prevent abuse of senior citizens. Unfortunately, Mrs. Lowry was not a beneficiary of this "protection". The premiums for her Banker's Health and Accident policies averaged $47.68 per month *in addition* to her Blue Cross, Blue Shield and other previously existing Health coverages. (This amount is, of course, apart from the premiums Mrs. Lowry was paying the Company for her life insurance policies . . . averaging $715.53 *per month!*)

The establishment of "extensive computer systems and checks of all in-force business", as described by Mr. D., are worthless if the applications do not detail such other coverages. He states, "Our agents are required to carefully review a prospective insured's current coverage and note such coverages on the application." Why was this *not done* in the case of Mrs. Lowry? On most of the attached application forms there is simply the scrawled notation, "Medicare and BL&C". Only on the original application for Health policy #730,576,561, issued in November, 1973, was the Blue Cross mentioned, but no other coverages were described. No indications of monthly or annual premium amounts for existing coverages were included on the application forms despite a specific block which requests such information.

There seems to be little point to a recitation of "Company Rules", the "careful training programs" and good intents of the Company if its representatives ignore them. The existence of rules, mottos and codes of behavior may serve a practical purpose, however, in advertising and public relations. They can be referred to with pride or conveniently trotted out to stifle some complaint or defuse an investigation by a regulatory official. The defense strategy is all too obvious, "That (incident) could not have happened because the Company rules don't allow it." or, "If it did happen, that certainly was not the way those agents were trained or told to behave."

During the October 13 meeting, Mr. Grubbs mentioned that the Company had experienced a turnover of approximately 2,000 agents during the past year. His meaning, I assume, was to suggest that hard working, honest and faithful representatives were hard to find. With such a turnover, I would also assume that training programs are less effective than might be desired. This is a Company problem and I sincerely resent the fact that Mrs. Lowry was used as a training ground and that their problem has become our problem. The point is clear: rules may exist, but their usefulness to the consumer is minimal *if they are not enforced* and if agents are not checked by supervisors as to compliance. After having carefully "reviewed the entire file", Mr. D. decided to include a description of certain Company rules and training guidance. I am surprised, but pleased that he included these for *they have been ignored* in nearly every instance in the specific case of Mrs. Lowry. Are we expected to believe that she is a unique exception and that other senior citizen clients in North Carolina, Ohio, Pennsylvania and elsewhere will benefit from the protection afforded by these rules? The Company's past track record suggests otherwise.

14. Mr. D. says, "These rules have been adhered to by the Company." At the risk of appearing overly repetitious, I must again point out that this is *not* a truthful or accurate statement (see above). As I have mentioned previously, the Company's handling of our complaint has been deceptive rather than frank and their correspondence concerning the situation is riddled with statements which are intentionally misleading. Their decision to deal with me, the perceived antagonist, in this manner was not unexpected, but I am very much surprised that the responsible Company officials would risk jeopardizing their considerable business interest in this state by utilizing the same deceptive tactics in their official response to the inquiry made by the North Carolina Department of Insurance.

It is interesting to note the steady increase in both percentage and number of rejections from July through November, 1977 in the computer data provided. But, why is there no data prior to July? I suggest the strong possibility that this Company rule is a new one (i.e. as of May or June, 1977) and that compliance by agents is increasing as news of the rule spreads.

In recognition of the pride with which Mr. D. presents the Company rules established for the protection of senior citizens, perhaps if will be considered nitpicking if I point out what appears to be an area of serious omission in rule No. 1 if the rule is intended to avoid overloading or strain on the client's budget and resources. Average, necessary expenditures for housing, food, medications, transportation and, in some cases, life insurance premiums are factors whose relevance cannot be denied and which must figure in any equation designed to evaluate a client's capability to assume additional financial committments. Rather than setting some arbitrary dollar amount as a maximum allowable premium obligation, I suggest that a safer, more equitable premium maximum could be established as a percentage of average monthly income. For thousands of clients, the $50.00 maximum could represent 25% or more of average monthly income and would be excessive. When were these rules created and what circumstances prompted their creation? They may form a part of some corrective actions which were required by another state's regulatory agency.

15. The validity or truth of the first sentence in this paragraph is clearly disproved by a review of the correspondence and case history detailing Lucille Lowry's financial overinvolvement with the Company. The following, rather laudable, Company interpretation of appropriate business ethics and practices again appears to deal exclusively with the subject of Health insurance sales. Is this a safer ground for the Company's posturing of virtue and moral concern for the client's welfare? There is a definite avoidance of any mention of the ethics involved in life insurance planning and sales throughout the Company's correspondence. This ommission is puzzling and perhaps deliberately misleading within the context of a discussion or investigation concerning policies requiring an annual premium expenditure of $9,158.61, of which 94% is life insurance premiums. The Company's ploy seems rather transparent with their "Let's talk about what I want to talk about" attitude. Are we to assume, and be fairly warned, that the Company and the agents do not similarly "incur legal, social and moral responsibilities to help these people identify their proper insurance needs and prevent situations that would constitute overinsurance or undue financial hardship" in the sale of life insurance?

The paragraph's last sentence is particularly commendable, "We tell our agents to judge an applicant's ability to pay not by how much he has in the bank, but on the actual income they have from their pension or other retirement as well as social security". While this statement probably refers to premium outlay for Health coverage, it seems equally appropriate, with few exceptions, to the planning for a life insurance program. The Company obviously does not see the correlation or rejects the applicability of this judgemental factor to the sales of life insurance coverage. The "guidance" received by Mrs. Lowry resulted in the creation of a Bankers insurance program with an average monthly premium obligation of $763.21 representing 68% of her average monthly income. Of this amount, $715.53, or 63.5% of monthly income, applied to payment of premiums on expensive, unnecessary life insurance policies. The Company's assessment of this situation, as expressed by Mr. D. in paragraph No. 21, is that Mrs. Lowry was neither mistreated nor overinsured in the sale of these policies. We may conclude, therefore, that the history of sixteen policy sales within a two year time frame and the resulting financial committment to premium expenditures reaching 68% of a client's income is, in the Company's view, acceptable and perhaps even standard business practice. We have also established the apparent existence of a double standard within the Company rules and sales guidelines (Health vs. Life coverages) which were ostensibly designed to protect the elderly client from abusive practices.

16. Once again, either Mr. D. has not reviewed the files of correspondence carefully or the Company has experienced yet another communications "misunderstanding". He says, "we made refund and rescission as requested". As previously indicated, I clearly stated, at the Oct. 13 meeting in Columbus, Ohio and again in my letter of November 30 to Commissioner Ingram, that the signatures on the applications were not mine nor my brother's. *No* request for refund or rescission on these two highly improper policies was even made pending possible civil or

criminal prosecution. The decision to refund was made by the Company alone and was undoubtedly in recognition that a wrongful act had been committed, and to avoid possible legal action.

Under the circumstances, I feel it is appropriate to inquire the date on which Mr. Montgomery became "ex-agent Montgomery" and the reasons for his termination. Was there a connection between his sale of these policies to Mrs. Lowry and his termination? Is the act of encouraging and authenticating the improper signing of applications considered a "cause" for termination? Was his supervisor, Agent LaBovick, who generally accompanied him on the sales visits to Mrs. Lowry and co-brokered one sale with Montgomery, also held partly responsible for what transpired? In a company which claims to be so concerned about propriety of conduct with senior citizen clients, why would nearly six months have to elapse before an investigation is initiated to determine whether or not Montgomery's termination should be identified as "for cause"? To which Insurance Department would Mr. Montgomery's file be referred, Illinois or Ohio?

17. This paragraph is partially true, but the Company persists with the insinuation that Mrs. Lowry lost the original policies despite Agent Grooms' statement to me that the policies had never been delivered. The sentence is yet another example of the skillfully crafted phraseology which avoids an outright falsehood, but attempts to deceive through misleading the reader. In effect, it is true that "Mrs. Lowry could not locate the original policies", but this is because she never had them in her possession. I suggest it is now high time that the Company provide proof of an earlier, original policy delivery. At the same time, proof of earlier, timely delivery could be provided for Accident policy #770,149,043 issued April 22, 1977 and the three Juvenile policies #5,423,861; #5,423,862; and #5,423,863 issued on April 6, 1977. All of the above policies were finally delivered during or shortly following the October 13 meeting and were erroneously stamped "Duplicate".

The Company's "lost policy" insinuation is particularly hard to accept when all other Company policies were located in Mrs. Lowry's safe deposit box at the Lebanon bank. Rather neatly filed in her apartment was nearly every other document relating to her contacts with the Company; cancelled checks, refund check vouchers, sales brochures, envelopes and booklets with notes of decisions reached during meetings with agents from Bankers. It is unknown whether the non-delivery of these six policies was an act of oversight, negligence or embarrasment at the discovery of oversale and improper acts.

18. The Company has apparently "granted" a full refund of all premiums paid in by Lucille Lowry. This rescission and refund of all policies was *not* requested in my November 3 formal letter to the Company. The Company's decision to rescind all policies was very definitely not explained, nor was it even mentioned in Mr. Grubbs' letter of December 5. The heading of Mr. Grubbs' letter listed only the Life policies #4,834,476, #5,248,470, #5,413,376 for which rescission and refund had been requested, plus the policies #5,432,306 and #5,432,307 on Robert and Kenneth Lowry, for which rescission and refund was *not* requested. No other policies or coverages are described or referred to in the letter.

Mr. Grubbs' letter closes with, "we herewith enclose a full refund of the premium we have received. The policies issued herein are, as of this date, rescinded and are under no force and effect". No mention nor explanation was provided concerning the rescission of the eight other Health, Accident and Juvenile policies, only one of which, Health policy No. 770,052,917, it was our intention to rescind. The Company's actions in this regard came as a complete surprise. Were we to interpret this blanket cancellation as a petty act of revenge for having requested undelivered policies, adjustments and corrections in Mrs. Lowry's insurance program? Or, in view of our questioning the sales tactics, the frequency of visits and sales, and the number (two and three) of salesmen arriving together, was this a "closing of the books" on an elderly and troublesome client? While we were not enormously pleased with the Company's past handling of her insurance program, due to her advanced age, we had decided to maintain some of the Health and Accident coverage for the time being. Indeed, Mr. Katz' letter of December 14 (copy enclosed) indicates his interpretation of the Company's December 5 communication as encompassing refunds on Life policies only and he urges that we consider continuation of appropriate Health coverages.

Thus, we now have a situation wherein the original series of abuses involving improper documents and the oversale of insurance have been unnecessarily

complicated by intentionally misleading statements from Company officials and, finally, by the undesired cancellation of all coverage for this elderly woman. This behavior can scarcely be regarded as the corrective actions of a respectable business firm which proclaims a concern for protecting the interests of senior citizens and recognizes the Company's "legal, social and moral responsibilities to help these people". It seems appropriate that a company's image and reputation should be based on the realities of what it does rather than upon its artfully prepared statements of intentions.

During the meeting on October 13, Mr. Grubbs cited "clerical error" as the culprit in certain questionable practices involving altered signature blocks and unsigned application form copies within policies. The same excuse will probably be offered when the Company is reminded that each Health and Accident policy sold to Mrs. Lowry contains the clearly labeled statement, "The Company may *not* cancel this policy". Is this not simply one more "rule" or policy statement, designed to protect the best interests of the client and the public image of the Company, which is conveniently forgotten or set aside when necessary?

In the event of a serious complaint regarding the blanket cancellation of all policies, the Company's defense posture is already prepared. A break down of communications or a "misunderstanding" of Mr. Grubbs' instructions will have occurred in the office that issued the check. Certainly Mr. Grubbs' letter of December 5 makes no mention of cancellation of Health policies and very clearly spells out the policy numbers of the Life policies which were being cancelled. Aware that the unrequested cancellation of all Health policies would leave this elderly client without insurance protection and, aware also that such an action would be viewed negatively by others, the deed was accomplished unobtrusively simply by failing to mention the Health policies within the letter. Mr. Grubbs was mindful of the need to avoid stimulating a negative reaction among the distinguished and lengthy list of individuals who were scheduled to receive copies of his December 5 letter. I strongly suggest that it was the intent of that letter to confound and placate the readership while appearing to bring the entire matter to "an amicable conclusion". Again the question may reasonably be asked; can the above described handling of this problem situation be considered standard, proper or acceptable business practice?

19. Mr. Grubbs and Mr. Tobin did interpret much of Mrs. Lowry's insurance program during the October 13 meeting. The premium accounting explanation became overly complicated and time consuming so I requested a written accounting for all Life insurance premiums paid in. This accounting was received subsequently, but, as indicated previously, their figures do not tally with the cancelled checks in my possession.

20. This is essentially true. My formal response to the Company on November 3 did mention the two subject policies, but indicated that no decision had, as yet, been reached as to their disposition. This position was taken on the advice of legal counsel.

21. This paragraph is particularly significant in that it appears to represent the Company's overall assessment or evaluation of the quality of service provided to Mrs. Lucille Lowry within an extensive business relationship. The statement may reasonably be interpreted as Company conclusion that Mrs. Lowry was not mistreated and was not overinsured in the sale of these policies. In his letter of December 5 to Senator Adlai Stevenson, Mr. Grubbs stated, "We feel we have acted in good faith in regard to Mrs. Lowry's purchases". With these statements providing a frame of reference, we may deduce that the Company maintains an unusually liberal approach toward its definition of what constitutes acceptable or standard business practice.

The Company has concluded that no mistreatment took place in the sale of twelve separate, largely unnecessary, insurance policies within a two year period and the resultant creation of a financial burden in annual premiums amounting to $9,158.61 or approximately 68% of the elderly client's income. No mistreatment occurred in the preparation of applications and sale of two undesired policies on the lives of adult sons, nor in the non-delivery of these and other policies. The presence of two or three aggressive young Agents during a sales visit would not, from the Company's viewpoint, constitute inappropriate pressure tactics. Overinsurance with new Bankers policies did not occur, according to the Company, despite the existence of a variety of Health coverages and more than adequate Life coverage with other companies. Finally, within the same context, the Company possibly intended no mistreatment in its action of an abrupt, unrequested

cancellation of all Health insurance coverages for this client. It is fortunate, indeed, that most business firms have a much more conservative attitude in regard to acceptable business practices and factors which would represent mistreatment, particularly with respect to dealings with senior citizens.

Despite the Company's apparent conviction that no mistreatment occurred within its business relationship with Mrs. Lowry, a decision was reached to cancel and refund all thirteen policies then in force although cancellation had been requested only on four of the most expensive coverages. Mr. D. says, "We made the refund as an accommodation for Mrs. Lowry, considering her apparent present circumstances." For the record, Mrs. Lowry's "present circumstances," as of December 5, were no worse than they had been in September when the complaint alleging oversale was first filed with Ohio authorities and the Company was notified. This relatively minor point is mentioned only to show the time frame within which the Company apparently experienced a change of heart; a period wherein the Company became aware of the interest and concern, on the part of Federal officials and consumer oriented groups, for a satisfactory resolution of Mrs. Lowry's problem and complaint. The fact is that the only "accommodation" offered by the Company, during the October 13 meeting, involved the cancellation and refund of the two fraudulently created policies, a thirty day grace period for the family to consult and render a decision as to which policies of the program would be maintained, and a suggested "adjustment" to the program by lapsing the life policies.

While the two extremely expensive Life policies represented 70% ($6,455.00) of Mrs. Lowry's annual premium payments to the Company, the suggestion to lapse these was rejected. Though considered undesirable and unnecessary, it is common knowledge that Life policies which are lapsed within two or three years of their issue date provide a negligible return of the dollars invested due to their minimal cash value. Convinced that these policies represented the grossest example of overinsurance and exploitation, I requested rescission and full refund on these as a more appropriate and logical alternative or solution. In his December 5 letter, Mr. Grubbs chose to avoid mention of my alternative request and insinuated that my letter of November 3, containing the request, was never received. Surprisingly, he commented on my failure to "advise us if your mother wished to allow the two life policies on herself to lapse. We have not heard from you in this regard." After referring to the policies as fulfilling a "definite need", he said that, "a refund wouldn't be due under any rule or law". Yet, despite the various Company statements of righteous and correct behavior, of conviction that neither overinsurance nor mistreatment had occurred, a blanket cancellation and full refund for all policies was made, "as an accommodation for Mrs. Lowry, considering her apparent present circumstances".

This statement's suggestion of Company compassion and generosity is highly suspect in view of the earlier rigidity of their position. The "present circumstances" referred to were a direct result of Mrs. Lowry's deepening involvement with the Company and are a subject of discussion in paragraph #10. I submit that the Company's ultimate decision to "accommodate" and refund was motivated primarily by the desire to remove both itself and the problem issue from the focused attention of increasing numbers of concerned officials and observers. Certainly the Company was aware of the issue's appearance of: impropriety in the type and frequency of sales contacts with Mrs. Lowry; insurance oversale, in view of all prior existing coverage; and exploitation of a senior citizen's concerns and resources through the creation of a contractual burden equalling 68% of her annual income.

The "accommodation" made by the Company was offensive and petty in its seemingly vengeful cancellation of all coverage. It is imperfect in that the Company refuses to admit or recognize the occurrence of excesses in its sales contacts and contracts with Mrs. Lowry, to apologize to her for these excesses, and to provide assurances that the questionable practices will not be repeated with other elderly clients. The "accommodation" is incomplete due to its failure to address the issue of compensation for the anguish and actual expenses suffered by Mrs. Lowry in the effort to correct this problem situation, as detailed in Item #3 of my November 3 letter to the Coompany. Was this letter not received by the Company?

To prevent future abuses of the elderly in the sale of insurance programs, adequate safeguards must exist within the companies themselves and, in the

event of their failure, easily accessible and effective mechanisms for remedy are needed at the state and Federal level. Based upon our experience, effective safeguards are not utilized by this Company. I suggest that the mere refund of $14,100 will not serve as an adequate deterrent to future abuses, whereas a close monitoring and investigation of the Company's business practices would have a positive effect. Is this case history one of which the Company is proud?

Thank you for the opportunity to review the Company's letter of explanation. As has been repeatedly shown, the realities and facts of their business practices are very frequently at odds with their public relations pronouncements.

Sincerely,

ROBERT E. LOWRY.

BANKERS LIFE & CASUALTY CO.,
Chicago, Ill., April 5, 1978.

Attention: Mr. Fred L. Seaman, assistant deputy commissioner, consumer insurance information division.

Re: Lucille W. Lowry and Robert Lowry.

Hon. JOHN RANDOLPH INGRAM,
Commissioner of Insurance, State of North Carolina, Raleigh, N.C.

DEAR MR. SEAMAN: This will acknowledge your letter of March 29, 1978 with attachments concerning the captioned matter directed to Mr. Michael J. Dressendorfer, which has been handed to me for answer.

Please be advised that I have carefully reviewed your letter and attachments together with the file.

You have requested a response to 12 paragraphs of Mr. Lowry's undated letter to you, which is attached. I believe the answers to the questions posed by Mr. Lowry in his letter to you can be found in Mr. Dressendorfer's letter to you dated January 13, 1978.

Shortly after the advent of the federal legislation commonly lumped together and called Medicare, in 1966 Bankers Life and Casualty Company which as you know sells approximately 99% of its business through agents licensed in the state in which they operate, the Company decided to provide coverage of the initial deductible and co-insurance factors left uncovered by that legislation. As the Company gained experience in selling this coverage, rules were enacted governing the sale of products to those persons over the age of 65, in order to prevent abuses in the sale of insurance products to them. During the early 1970s, the company provided that the maximum allowable premium including substandard for all accident and health policies would be $35.00 monthly—since raised to $50.00.

We have established extensive computer systems involving a computer check of all in-force business when a new application is received. Our agents are required to carefully review a prospective insured's current coverage and note such coverages on the application.

Incidentally, in the third paragraph of your above indicated letter, the statement that "agent R. M. is under investigation" is not correct; our records indicate he was terminated September 10, 1977.

As you point out in your letter, a refund for all policies sold to Mrs. Lowry has been made and the transactions herein occurred in another state, but in addition, I would like to emphasize that the State of Ohio in which the transactions occurred, made a complete investigation including a four-hour informal hearing, and found it unnecessary to take any disciplinary action against the Company.

It appears to me to be non-productive and inappropriate for either your Department or the Company to expend any further time and funds on this matter. I am certain that I don't need to remind you the administrative costs of answering correspondence and reviewing files becomes a factor in the computation of premium rates which the insurance-buying public of North Carolina must pay.

We have done our best to satisfy Mr. Lowry and to answer your questions, and regrettably no matter what we do, it doesn't appear to me that we will be able to satisfy Mr. Lowry.

Thank you for the time and attention you have given this matter.

Sincerely,

WILLIAM E. GRUBBS,
Director of Government Relations.

Appendix 2

ADDITIONAL MATERIAL SUBMITTED BY HAROLD R. WILDE[1]

ITEM 1. BOOKLET ENTITLED, "HEALTH INSURANCE ADVICE FOR SENIOR CITIZENS," PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE, STATE OF WISCONSIN

HEALTH INSURANCE ADVICE

FOR

SENIOR CITIZENS

THE PURPOSE OF THIS BOOKLET IS TO HELP SENIOR CITIZENS DECIDE WHETHER OR NOT TO PURCHASE PRIVATE HEALTH INSURANCE TO HELP SUPPLEMENT THE MEDICARE PROGRAM.

PLEASE READ IT CAREFULLY!

Prepared By

State of Wisconsin
Office of the Commissioner of Insurance
123 West Washington Avenue
Madison, Wisconsin 53702

1978

[1] See statement, page 75.

INTRODUCTION

Medicare, and Medicare supplement insurance, are complicated. Don't be embarrassed if you have trouble understanding some items.

As you go through this booklet, jot down any questions that you may have. If the person trying to sell you a policy cannot answer those questions (and a good agent should be able to), feel free to contact the insurance company involved, your local Social Security office, or the Office of the Commissioner of Insurance.

IF YOU ALREADY HAVE INSURANCE TO SUPPLEMENT MEDICARE, PLEASE READ THE FOLLOWING VERY CAREFULLY!

* * * * *

A WORD OF CAUTION ON REPLACING YOUR PRESENT POLICY.

A new state rule requires all Medicare Supplement policies to bear a special state-approved label and contain a minimum level of benefits. This rule is meant to make it easier for you to understand your health insurance needs and to compare health insurance policies you might purchase. But don't think that your old policy is inadequate or needs to be replaced, just because it isn't "up to date." Any decision to replace an old health insurance policy should be made extremely cautiously.

Replacing any health insurance policy with new insurance may subject you to new waiting periods and new exclusions for various health conditions.

I. GENERAL INFORMATION ON MEDICARE SUPPLEMENT INSURANCE

Medicare supplement insurance is insurance sold by private insurance companies to fill in some of the "gaps" in the federal Medicare program. These "gaps" are outlined in detail on pages 7 to 9 of this booklet.

The following general information should be helpful to anyone who is considering the purchase of this type of insurance coverage.

1. MEDICARE SUPPLEMENT INSURANCE IS SOLD ONLY BY PRIVATE INSURANCE COMPANIES.

It is not sold or serviced by either the state or the federal government. Although the Office of the Commissioner of Insurance "approves" all policy forms used by insurance companies, it does not recommend particular companies or policies. Do not be confused by misleading advertising or by agents who suggest that Medicare supplement insurance is a government-sponsored program. If an insurance agent tells you he or she is from the government and later tries to sell you a policy, please report that agent's name to the Commissioner's office.

2. NOT EVERYONE NEEDS INDIVIDUAL MEDICARE SUPPLEMENT INSURANCE.

Anyone who is eligible for Medicaid (Title 19 - the federal medical assistance program for low-income people) does not need to purchase any private health insurance. This program pays almost all the health care costs for anyone who is eligible. To find out about your eligibility for Medicaid, contact your county social services department.

Many people have health insurance as part of a group while they are employed. If you are covered by a group plan, find out before you retire if this coverage can be continued or converted to suitable Medicare supplement coverage when you reach 65. If

your spouse is included in your group health plan, find out what happens if he or she reaches 65 before you do. Group insurance is usually less expensive and often provides more coverage than insurance purchased individually.

If you are eligible for Medicare (but not Medicaid) and do not have other insurance, you have two choices. The first is to rely entirely on Medicare and expect to pay any other health care costs yourself. These costs can be substantial for persons with long-term illnesses.

The second choice is to purchase an insurance policy to supplement Medicare. The types of policies which are currently available to supplement Medicare are described on pages 9 - 13. The coverage which is best for you depends primarily on the state of your health, and your ability to pay the necessary premiums.

3. NO INSURANCE POLICY WILL COVER EVERYTHING WHICH MEDICARE DOES NOT.

Medicare excludes certain types of medical expenses. So do Medicare supplement policies. Some items which are frequently excluded from Medicare supplement policies are: Private duty nursing, routine check-ups, eye glasses, hearing aids, dental work, cosmetic surgery, custodial care in nursing homes, psychiatric care and self-administered drugs. (An exception to this is a Medicare Supplement I policy - explained on page 10 - which offers some coverage for prescription drugs and psychiatric care.)

MEDICARE PAYS ONLY FOR CHARGES WHICH ARE CONSIDERED "USUAL AND CUSTOMARY" AND SERVICES WHICH ARE CONSIDERED "REASONABLE AND NECESSARY." MOST MEDICARE SUPPLEMENT POLICIES FOLLOW MEDICARE GUIDELINES.

This means that:

a. If you are charged more for a service than Medicare thinks is reasonable, neither Medicare nor your insurance policy will pay the difference. For example, if a surgeon charges you $400 for an operation and Medicare decides $300 is a reasonable charge, Medicare will pay 80% of $300, the insurance company will pay 20% of $300 -- You will be left with the difference. That is, you will have to pay the difference between the actual and the reasonable charge. (Before paying this amount, you may want to contact your doctor and see if he or she will reduce the charge.)

b. If you receive a service which is not considered medically necessary by Medicare (cosmetic surgery, for example) most insurance policies will not cover this expense.

4. TRY TO PURCHASE ONLY ONE MEDICARE SUPPLEMENT POLICY.

Purchasing the most complete Medicare supplement policy which you can afford is much better than purchasing several incomplete policies. Duplicating coverage is both costly and unnecessary.

5. SHOP AROUND.

Try to talk to several agents and companies before deciding which policy is best for you. The POLICY CHECKLIST on the inside back cover will help you keep track of the coverage and cost of each policy.

6. THE LAW REQUIRES AN AGENT TO LEAVE YOU AN OUTLINE OF COVERAGE WHEN SELLING YOU A POLICY.

The Outline of Coverage is very important. Read it carefully! It should contain the following information:

a. A clearly worded chart which summarizes the benefits provided by Medicare Parts A and B, and the Medicare supplement benefits provided by the policy -- and indicates what expenses are not covered by either.

b. The name and address of the company.

7. MANY MEDICARE SUPPLEMENT POLICIES ARE WRITTEN WITH WAITING PERIODS AND LIMITATIONS AND EXCLUSIONS.

Many health insurance policies have some waiting periods before coverage begins. This may apply to illnesses or physical disorders which are new or which existed prior to the purchase of the policy, or both.

Many policies exclude coverage for pre-existing conditions completely -- others for a limited period of time only. Sometimes if you have a medical history involving a particular health problem, the insurance company will not insure you for expenses connected with that problem. If that is the case, the insurance policy will have a separate page attached when you receive it. The condition which is to be excluded must be identified specifically on this page.

If the policy excludes pre-existing conditions for a limited period of time, this information must be clearly stated in the policy. The waiting period for coverage of pre-existing conditions cannot be longer than 12 months if the condition has not been explicitly excluded from coverage. General information on exclusions may also be included in the "definitions" and "limitations and exclusions" section of the policy.

* * * * * * * * *

REMEMBER

BE SURE TO ASK THE AGENT ABOUT THE LIMITATIONS AND EXCLUSIONS OF THE POLICY AS WELL AS ANY WAITING PERIODS BEFORE COVERAGE BEGINS.

8. OMITTING SPECIFIC MEDICAL INFORMATION REQUESTED ON YOUR APPLICATION CAN BE VERY COSTLY.

DO NOT BE MISLED BY AGENTS WHO INDICATE THAT YOUR MEDICAL HISTORY ON AN APPLICATION IS NOT IMPORTANT.

When you complete an application for individual health insurance which includes medical information, be sure that all medical questions are answered completely and accurately. If an agent helps you fill out the application, do not sign it unless you have had a chance to read it and make sure that all the medical information requested is included. If you omit medical information and the insurance company finds out about it later, the company may deny your claim and/or terminate the policy.

9. POLICIES WHICH CAN BE RENEWED AUTOMATICALLY OFFER AN ADDED PROTECTION.

Be sure and ask the agent or company about the "renewability" of the policy.

10. MAKE CHECKS PAYABLE ONLY TO THE INSURANCE COMPANY. DO NOT PAY CASH OR MAKE A CHECK OUT TO THE AGENT.

And be sure you have the agent's name, address and Wisconsin agent's license number and the name and address of the company from whom you are purchasing the policy.

11. EVERY INDIVIDUAL HEALTH INSURANCE POLICY PURCHASED IN THE STATE OF WISCONSIN COMES WITH A GUARANTEED 10-DAY FREE LOOK.

State law gives you 10 days after you actually receive a policy to make sure it's right for you. If you are at all dissatisfied with it, you can return it to the company and receive a full refund of your premium.

You should use these 10 days to:

a. Read the policy carefully and make sure it offers the benefits you expected, and

b. Check for any limitations, exclusions or waiting periods. If specific medical conditions are to be excluded from coverage, this is the time you will find out about it.

If the language is too difficult to understand, ask someone who understands insurance to help you figure out what the policy is offering.

If the application is part of the insurance contract, you will receive a copy of it with the policy. Read it carefully to make sure that it has not been changed in any way and that all the medical information is completely accurate.

12. POLICY DELIVERY, AND REFUNDS ON POLICIES SHOULD BE MADE PROMPTLY BY INSURANCE COMPANIES.

If you do not receive your policy within a month, or if there is a delay in receiving a refund, call or write the insurance company and inform them of your problem.

13. BE VERY CAREFUL WHEN PURCHASING INDIVIDUAL HEALTH INSURANCE FROM AGENTS OR COMPANIES WHOSE NAMES ARE UNFAMILIAR TO YOU.

14. KEEP A COPY OF YOUR HEALTH INSURANCE POLICY (and any other insurance policies) IN A SAFE PLACE.

It is a good idea to choose someone ahead of time who can take over your affairs in case of a long-term or serious illness. This person should know where all your records are kept.

II. EXPLANATION OF MEDICARE AND MEDICARE "GAPS."

Medicare is the health insurance program administered by the Social Security Administration for people over 65 and some people who are disabled. It is designed to pay many, but not all, of the health care costs incurred by senior citizens and other eligible persons. The chart below gives a brief outline of those costs which Medicare does and does not pay.

A booklet entitled Your Medicare Handbook is available free from any Social Security office. It gives a detailed explanation of Medicare and how it works. Read it carefully before purchasing any supplemental insurance!

Medicare is divided into two types of coverage: Hospitalization Insurance (Part A) which pays hospital bills and Medical Insurance (Part B) which pays doctors' bills and some other charges. Compare the items Medicare will not pay with the supplemental insurance policy you are considering to see how many "gaps" are covered. The deductible figures are for 1978 only and are subject to change periodically.

REMEMBER: MEDICARE IS WRITTEN WITH INITIAL PAYMENTS (DEDUCTIBLES) FOR WHICH THE INDIVIDUAL IS RESPONSIBLE.

If you can afford to pay these deductibles out-of-pocket, the savings you will realize in paying for supplemental insurance policies may be considerable (i.e., having these deductibles covered by an insurance policy will result in a higher premium than for similar policies which do not cover deductibles). The policies discussed in Section III may or may not cover these deductibles.

PART A - HOSPITAL INSURANCE BENEFITS

HOSPITAL IN-PATIENT (Semi-private Room and Board, General Nursing, and Miscellaneous Hospital Services)
FOR EACH BENEFIT PERIOD

First 60 Days:	YOU PAY THE FIRST $144.00 IN EACH BENEFIT PERIOD. Medicare pays the balance.
61st - 90th Day:	YOU PAY $36.00 PER DAY. Medicare pays the balance.
91st - 150th Day: (60 Day Life Time Reserve Period):	YOU PAY $72.00 PER DAY DURING THE RESERVE PERIOD. Medicare pays the balance.
Beyond 150th Day (or when your reserve days are exhausted)	YOU PAY ALL COSTS.

POST HOSPITAL CARE (In a facility approved by Medicare, provided you have been in the hospital for three days, go to the approved facility within 14 days and meet several other conditions.) MEDICARE DOES NOT PAY FOR CARE WHICH IS CUSTODIAL ONLY. VERY FEW PATIENTS IN NURSING HOMES QUALIFY FOR MEDICARE BENEFITS!

NURSING HOME CARE First 20 Days:	Medicare pays the entire cost.
Next 80 Days of Continuous Confinement	YOU PAY $18.00 PER DAY. Medicare pays the balance.
HOME HEALTH CARE Home Health Care (after Hospital Confinement)	YOU PAY FOR VISITS BEYOND 100 AND ANY SERVICES NOT COVERED BY MEDICARE. Medicare pays for 100 visits per benefit period (If you qualify).
Blood	YOU PAY FOR FIRST 3 PINTS. Medicare pays the balance.

PART B - MEDICAL INSURANCE BENEFITS	
Physicians Services Inpatient Services Outpatient Medical Services and Supplies at a hospital Outpatient Physical and Speech Therapy Ambulance	EACH CALENDAR YEAR YOU PAY A $60.00 DEDUCTIBLE AND 20% OF ALL REASONABLE CHARGES. Medicare pays the balance. NOTE: YOU ARE FULLY RESPONSIBLE FOR THOSE CHARGES WHICH MEDICARE DECIDES ARE NOT REASONABLE AND NECESSARY.
Prescription Drugs	YOU PAY FOR SELF-ADMINISTERED PRESCRIPTION DRUGS AND NON-PRESCRIPTION DRUGS. Medicare pays for all drugs administered by trained professionals.
Home Health Care	YOU PAY FOR VISITS BEYOND 100 AND NON-COVERED SERVICES. Medicare pays for 100 visits per year (if you qualify).
Dental Care, Eye Care, Hearing Aids, Routine check-ups	YOU PAY FOR ALL THESE ITEMS.
Blood	YOU PAY FOR THE FIRST 3 PINTS AND 20% AFTER THAT. Medicare pays for 80% after first 3 pints.

III. MEDICARE SUPPLEMENT INSURANCE: CATEGORIES 1 THROUGH 4

The Office of the Commissioner of Insurance recently adopted a rule which establishes four categories of Medicare supplement insurance policies.

The purpose of this rule is to help senior citizens who are purchasing Medicare supplement insurance choose the policy which is most appropriate for their needs. The rule provides for easily understandable categories of Medicare supplement insurance and appropriate benefit standards for each of these categories.

All policies sold in Wisconsin for the purpose of supplementing Medicare must now fit into one of four categories and be appropriately labeled. NO POLICY SHOULD BE PURCHASED TO SUPPLEMENT MEDICARE WHICH IS NOT LABELED AS A MEDICARE SUPPLEMENT 1, 2, 3, 4a or 4b. A "1" policy is the most complete (and most expensive) policy. Policies numbered "2" and "3" are progressively less complete (and probably less costly). A "4a" policy supplements Part A of Medicare only. A "4b" policy supplements Part B of Medicare only.

REMEMBER:

1. The benefits provided in these policies will generally be tied to Medicare benefits. Few, if any, will pay expenses not considered "reasonable and necessary" or "usual and customary" by Medicare. The charts on pages 12 and 13 give detailed information on what is or is not covered by each policy. Keep in mind that these are minimum standards. Some policies may be sold with extra benefits.

2. Most of the policies are written with maximum dollar amounts or day limits. If these limits are reached, you are responsible for any additional costs.

3. Policies in any of the categories may or may not cover the initial deductibles under Medicare Part A and Part B. Keep in mind that including the initial deductible increases the cost of the policy by a substantial amount.

MEDICARE SUPPLEMENT 1

A policy labeled "1" is the most complete Medicare supplement policy. It will pay most of your medically necessary health care expenses left unpaid by Medicare. In addition, these policies will cover most prescription drug expenses and some psychiatric treatment costs.

The minimum limits for a Medicare Supplement 1 are:

a. $22,500 per benefit period for both Part A and Part B; or

b. $15,000 per benefit period for Part A and $7,500 per year for Part B.

MEDICARE SUPPLEMENT 2

Policies in this category supply major, broad-based protection against catastrophic and less serious illnesses. Number "2" policies do not have to pay and usually do not pay for prescription drugs or psychiatric treatment.

The minimum limits for a "2" policy are:

a. $15,000 per benefit period for both Part A and Part B; or

b. $10,000 per benefit period for Part A and $5,000 per year for Part B.

"2" policies cover almost as wide a range of items as "1" policies, but the maximum you can collect will usually be lower for a "2" than a "1" policy. A "2" policy need not cover blood, prosthetic devices, durable medical equipment (home oxygen, wheelchairs, etc.), prescription drugs or extensive outpatient psychiatric care.

REMEMBER

* * * * * * * * * * *

THESE ARE MINIMUM BENEFITS. INSURANCE COMPANIES MAY CHOOSE TO PROVIDE EXTRA BENEFITS ON SOME POLICIES.

MEDICARE SUPPLEMENT 3

The coverage for a category "3" policy is selective but substantial. A "3" policy will pay many of the most important expenses not covered by Medicare.

A "3" policy need not cover home health care without previous hospitalization, drugs which are not self-administered, outpatient speech therapy, certain diagnostic tests, independent lab tests, surgical dressings, prosthetic devices, durable medical equipment, blood, prescription drugs or extensive outpatient psychiatric care.
The minimum limits for a "3" policy are:

a. $6,500 per benefit period for both Part A and Part B; or

b. $5,000 per benefit period for Part A and $1,500 per year for Part B.

MEDICARE SUPPLEMENT 4

This category includes two types of limited or specialized policies.

"4a" policies provide payments for Medicare Part A (hospital) expenses only. A 4a policy will pay up to a maximum of $15,000 per benefit period for Part A expenses. There is no coverage for Part B expenses.

"4b" policies supply broad coverage of Medicare Part B (medical) expenses. There is no coverage for Part A expenses. Coverage extends to at least $7,500 per year. "4b" policies are not required to cover prescription drugs or extensive outpatient psychiatric care. There also may be a large deductible in "4b" coverage - up to $500 per year. This decreases the cost of the policy but makes the policyholder liable for most of the medical expense of a short illness.

FOUR CATEGORIES OF MEDICARE SUPPLEMENTS COMPARED

Caution: This chart outlines Minimum Provisions. It does not show variations among policies in each category or the options, deductibles and exclusions which could affect your coverage.

MEDICARE PART A LIMITS:	M.S. 1 $15,000	M.S. 2 $10,000	M.S. 3 $5,000	M.S. 4a $15,000	M.S. 4b
	YOU MAY HAVE TO PAY THE INITIAL DEDUCTIBLE FOR EACH BENEFIT PERIOD				
1. Hospitalization to 90th day	Yes	Yes	Yes	Yes	NO COVERAGE
2. 60 Extra Hospital days- usable once	Yes	Yes	30 days only	Yes	
3. Skilled Nursing Facility after Hospital	Yes	Only to 100th day	Only to 100th day	Yes	
4. Health care at Home after Hospital	Yes	Yes	No	Yes	
5. Blood: First 3 pints	Yes	No	No	Yes	
6. Custodial or rest care in nursing facility or at home	No	No	No	No	

MEDICARE PART B	M.S. 1	M.S. 2	M.S. 3	M.S. 4A	M.S. 4B
LIMITS:	$7,500 You may have to pay up per year	$5,000 to	$1,500 $60.00 deductible		$7,500 Up to $500 deductible per yr
1. Physicians Services, Hospital or Office (Excluding office routine exams)	Yes	Yes	Yes	NO COVERAGE	Yes
2. Health Care at Home without previous hospitalization	Yes	Yes	No		Yes
3. Outpatient Services at Hospital: Emergency Room Lab Tests X-rays Medical Supplies	Yes	Yes	Yes		Yes
Drugs (not self-administered)	Yes	Yes	No		Yes

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4. Outpatient Speech Therapy	Yes	Yes	No	Yes
5. Other Services & Supplies: (Diagnostic, X-ray at home)	Yes	Yes	No	Yes
Ambulance (if Medicare approved)	Yes	Yes	Yes	Yes
Independent Lab Tests	Yes	Yes	No	Yes
Surgical Dressing	Yes	Yes	No	Yes
Prosthetic Devices (Organ substitutes)	Yes	No	No	Yes
Durable Medical Equipment (prescribed)	Yes	No	No	Yes
6. Blood: First 3 pints + 20%	Yes	No	No	Yes
7. Prescription Drugs	At least 75%	No	No	No
8. Psychiatric Services (outpatient)	50% up to Max. of $1,000	50% up to $500	50% up to $500	50% up to $500

IV. LIMITED POLICIES: Nursing Home, Hospital Confinement Indemnity, and Specified Disease

THE POLICIES DISCUSSED BELOW ARE ALL LIMITED IN NATURE: They are not adequate substitutes for the broader health care protection provided in a Medicare supplement policy.

1. Nursing Home Coverage. Most coverage for confinement in a nursing facility which is included in a Medicare supplement policy is for Skilled Nursing Facilities approved by Medicare. Although the number is growing, there are few of these in Wisconsin at this time.

If you buy a separate policy for nursing home care (not a Medicare supplement policy), the coverage or reimbursement must be effective for any nursing home licensed by the State of Wisconsin which provides skilled nursing care. However, such policies are not related to Medicare in any way and you must be careful that the policy fits your overall needs. REMEMBER: LENGTHY CONFINEMENT IN A HOME WHICH INVOLVES REST CARE OR CUSTODIAL CARE (CARE THAT DOES NOT REQUIRE MEDICAL TREATMENT) RATHER THAN SKILLED NURSING CARE IS NOT COVERED UNDER ANY POLICY ON THE MARKET TODAY.

2. Hospital Confinement Indemnity Insurance. Hospital confinement indemnity insurance policies pay a fixed amount per day for a specific number of days and may not pay if you have Medicare or other coverage. Hospital confinement indemnity coverage frequently is not effective until after you have been hospitalized for a specified period of time. Such policies are not related to Medicare and may not be necessary if you have a good Medicare supplement policy.

3. Specified Disease Coverage: Policies which protect the insured person from a single disease or group of specified diseases are not Medicare supplements. The value of such coverage depends on the chance that you will contract the specific disease covered. Although some diseases covered by such policies are not rare (cancer or heart disease, for example), many are uncommon. These policies should not be purchased as an alternative to Medicare supplement insurance. Any specified disease policy should have the words "This is a Limited Policy - Read it Carefully" printed on the face of the policy.

V. HOW TO FILE A CLAIM

In order to get the most from your Medicare supplement insurance policy after you purchase it, it is important to file a claim properly. The following checklist should be helpful.

1. Keep an accurate record of all your health care expenses. It is probably a good idea to keep the record with your health insurance policies.

2. Whenever you receive treatment, make sure to present both your Medicare card and any other insurance cards which you have.

3. File all claims promptly. With each claim payment from Medicare, you will receive an "Explanation of Benefits." If the insurance company requests this in order to figure out its share of the cost, make a copy of it to send to the insurance company. When you send in a claim, write down the date you mail it. Keep copies of any information you have concerning services received, the dates of services and the person or persons who provided the services.

4. Many large clinics will provide a special billing to be submitted to your insurance company. If your physician does not, make sure that you are provided with an itemized bill. This bill should include the date, type of service, and amount charged for each service performed. There must also be a diagnosis, or "symptoms and complaints," for each item of expense.

5. Insurance companies will not accept clinic or hospital statements which show only the "balance due." You can speed up claim handling if you make sure any required claim form is completed properly, that itemized bills are attached and that copies of the Medicare Explanation of Benefit forms are submitted, if required.

If you have a specific complaint, refer it first to the insurance company involved. If you do not receive satisfactory answers from the company, please contact:

Office of the Commissioner of Insurance
123 West Washington Avenue
Madison, Wisconsin 53702 (608) 266-0103

NOTICE: The Wisconsin Association of Life Underwriters conducts periodic counseling sessions for senior citizens. Please contact:

Wisconsin Association of Life Underwriters
4513 Vernon Boulevard
Madison, Wisconsin 53711 (608) 233-7085

for more information about this program.

Other sources of information are Social Security offices and county Social Services departments located throughout the state.

POLICY CHECKLIST

Name of Company/Agent:

Type of Policy:

Cost of Policy:

Limits of Policy: Part A _____
Part B _____
Total _____

Part A (Hospital)		YES	NO
Hospitalization			
Initial Deductible	($144)		
61 - 90th Day	($36)		
60 Reserve Days	($72)		
Nursing Home			
21 - 100th Day	($18)		
Home Health Care (after hospitalization)			
Blood			
Part B (Medical)			
Physicians Services			
Home Health Care (without hospitalization)			
Outpatient Services (which ones)			
Other Services & Supplies			
Ambulance			
Lab Tests			
Surgical Dressing			
Prosthetic Devices			
Durable Medical Equipment			
Blood			
Prescription Drugs			
Psychiatric Services			
Extra Benefits of policy			

ITEM 2. "OUTLINE OF COVERAGE" LETTERS REQUIRED AND APPROVED BY THE WISCONSIN INSURANCE COMMISSIONER

OUTLINE OF COVERAGE — POLICY FORM LIC-6030 W

Retain for your records

MEDICARE SUPPLEMENT 3 POLICY

The Wisconsin Insurance Commissioner's Office has established four categories of Medicare Supplement Insurance and Minimum benefit standards for each. These range from the most comprehensive (Medicare Supplement 1) to the least comprehensive (Medicare Supplement 4). For an explanation of the differences between this "3" policy and policies in the other categories, consult the Commissioner's pamphlet "Health Insurance Advice for Senior Citizens" which you received with the application for this policy. Do not buy this policy if you did not get this pamphlet and were not given a chance to review this Outline of Coverage provided you.

READ YOUR POLICY CAREFULLY. This outline of coverage provides a very brief description of some important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. It is, therefore, important that you Read Your Policy Carefully!

This outline of coverage, including the following chart, provides a very brief description of some of the important provisions of Medicare as they apply for the calendar year 1978. We suggest that you get in touch with your local Social Security Office or obtain one of their publications to obtain more complete and current details of the coverage provided.

Neither ITT Life nor its representatives are in any way connected with the Federal Medicare Program or Social Security Administration.

ITT *ITT Life Insurance Corporation*

HOME OFFICE: THORP, WI 54771 (715) 669-5405
EXECUTIVE AND MARKETING OFFICE: MINNEAPOLIS, MN 55426 (612) 545-2100

Toll Free Customer Service Telephone 1-800/826-6941

APPROVED
JAN 10 1978
INDIVIDUAL A & H
INSURANCE DEPARTMENT
STATE OF WISCONSIN

OOC-6030-W 1/78

GUARANTEED RENEWABLE-ADJUSTABLE PREMIUMS

Your policy is renewable for your entire lifetime by the payment of premiums in effect at the time of renewal.

There are two things that could cause your premium to be different than it was at the time your policy was issued. They are:

1. The dollar amounts shown in the chart on the following page are based upon Medicare regulations for the calendar year 1978. These amounts may vary from year to year, but your ITT Life policy is designed to adjust to these variations so that the amounts shown in the columns "% Covered" should always remain the same. Of course, your premium will also vary up or down to reflect such changes, but any future premium will be based on your age when your policy was issued and in direct proportion to the benefit adjustment.

2. ITT Life may also adjust premiums based upon the loss experience within your state but only if the identical adjustment is made on all policies in your state that bear form LIC-6030 W. Adjustment can never be made based upon your individual experience.

MAXIMUM BENEFITS

PART A - The maximum benefit payable for Part A Expenses is $50,000. per benefit period. A benefit period begins on the first day you are hospitalized and ends when you have not been confined to a Hospital or Nursing Home for 60 consecutive days, at which time your full maximum benefit amount of $50,000. is restored.

PART B - The maximum benefit payable for Part B expenses is $5,000. per calendar year beginning on January 1st and ending on December 31st. Each calendar year stands on its own with a new $5,000. maximum benefit amount.

PRE-EXISTING CONDITIONS

The following pre-existing conditions will not be covered for the first six months your policy is in force, but will be covered thereafter:

1. Conditions which have been diagnosed or treated in the 24 months prior to the policy effective date.

2. The presence of symptoms which ordinarily would cause a person to seek medical advice and which occur within 12 months of the policy date.

NOT COVERED

Policy benefits payable will not duplicate any benefits payable by Medicare. Your policy also does not cover:

1. War or act of war, whether declared or not;
2. Dental care, unless required as the result of injury to sound natural teeth;
3. Cosmetic surgery unless required as the result of an accidental injury;
4. Routine physical examinations or immunizations, eye glasses or eye examinations for the purpose of prescribing eye glasses, hearing aids or examinations for prescribing hearing aids;
5. Orthopedic shoes or other supportive devices for the feet;
6. Personal comfort items;
7. Injury or sickness for which benefits are provided by Workers Compensation or Employer's Liability Laws;
8. Outpatient treatment for: mental disease or disorder as shown in Part VI, Paragraph 2, in your policy.

There may be instances where all costs of an Extended Care Facility (Skilled Nursing Home) will not be covered. The chart on the next page shows the conditions that must be met for Medicare participation.

EXTENDED CARE ALTERNATE BENEFIT. If your confinement to an Extended Care Facility (Skilled Nursing Home) does not qualify for Medicare participation, you may still be eligible to have your policy help pay for the first 30 days. The daily benefit payable will be that established by the Wisconsin Department of Health and Social Services. Your confinement must begin within 24 hours of hospital discharge and be certified as necessary by a physician.

ADDITIONAL BENEFITS. Your policy will have benefits for tuberculosis and kidney disease attached by rider in accordance with Wisconsin statutes.

THIS CHART IS ONLY A BRIEF DESCRIPTION OF MEDICARE AND YOUR POLICY.

For further details, conditions and limitations you may consult:

- for Medicare — your local Social Security Administration Office.
- for ITT Life's policy — the policy itself (Form LIC-6030-W).

	ITEMS OF MEDICAL EXPENSE	MEDICARE	YOUR ITT LIFE POLICY		combined % covered	REQUIREMENTS	NOT COVERED
HOSPITAL INSURANCE — PART A OF MEDICARE	Hospital Confinement Room, Board, Miscellaneous and general nursing care			ITT Life pays to maximum of $30,000 per benefit period			
	First 60 days	Medicare pays all but first $144	ITT Life pays first $144		100	You must be eligible for Medicare.	
	61st to 90th day	Medicare pays all but $36 per day	ITT Life pays $36 per day		100		
	60 reserve days	Medicare pays all but $72 per day	ITT Life pays $72 per day		100		Medicare reserve once used not rep
	151st day and thereafter	No Payment	ITT Life pays 100% (daily room and board limited to semi-private rate).		100		Portion of expens exceeds $50,000 one benefit period
	Extended Care Facility (Skilled Nursing Home) First 20 days	Medicare pays all	No Payment		100	The facility must be Medicare participating and the 5 conditions below met.	Neither Medicare ITT Life will pay fc care which is cust or rest care.
	21st to 100th day	Medicare pays all but $18 per day	ITT Life pays $18 per day		100	ITT Life does not require Medicare participating facility. See alternate benefit.	
	Home Health Care (post-hospital nursing/therapy)	Pays full cost up to 100 eligible visits per benefit period.	No Payment		100		Visits over 100 pe benefit period
	Blood — 1st 3 pints	No Payment	ITT Life pays up to $35 per pint		100		Excess of $35 per
	After 3 pints	Medicare pays all	No Payment		100		
MEDICAL INSURANCE — PART B OF MEDICARE	Initial Deductible In Hospital	No Payment	ITT Life pays $60	ITT Life pays to maximum of $3,000 per calendar year	100	Must be enrolled and pay premiums to Medicare. ITT Life does not require that you be enrolled in part B Medicare	
	Out Patient	No Payment	No Payment		0		
	Home Health Care Service (Nursing/Therapy)	Pays full cost up to 100 eligible visits per year	No Payment		100		Visits over 100 per year
	Outpatient Services (hospital, office, home) physicians, emergency room, lab, x-ray, radiology, splints, casts, dressings, etc., drugs not self-administered, ambulance	80% of reasonable cost	20% of reasonable cost		100		
	Speech and Physical Therapy	80% of reasonable cost	No Payment		80		20% of reasonable cost
	Prosthetic Devices	80% of reasonable cost	No Payment		80		20% of reasonable
	Durable Medical Equip.	80% of reasonable cost	No Payment		80		20% of reasonable
	Blood 1st 3 pints	No Payment	No Payment		0		No payment unless hospitalized.
	Blood after 3 pints	Pays All	No Payment		100		
	Prescription Drugs	No Payment	No Payment		0		Total Cost
	Psychiatric Services	Physicians limit of $250 per year	No Payment		limited		Excess of $250 per year

Both Medicare and ITT Life base payment on charges that are considered reasonable and necessary. The chart above is based on "reasonable and necessary charges. If Medicare or ITT Life were to disallow all or part of any charge as not being reasonable and necessary, then, of course, the percentage figures above would be different.

Conditions for Medicare payment in Skilled Nursing Facility.

1. Must follow 3 days of hospital confinement.
2. Must be for the same condition that required hospital confinement.
3. Must enter within 14 days of hospital discharge.
4. Your doctor must certify that you need and receive the daily care provided by the facility.
5. The facility's Utilization Review Committee or Professional Standards Review Organization approves of your stay.

Reliable Life and Casualty Company
Madison, Wisconsin

OUTLINE OF COVERAGE FOR RELIABLE'S

MEDICARE SUPPLEMENT 3

The Wisconsin State Insurance Commissioner's Office has established four categories of Medicare Supplement insurance and minimum benefit standards for each. These categories range from the most comprehensive (Medicare Supplement 1) to the least comprehensive (Medicare Supplement 4). For an explanation of the differences between this "3" policy and policies in the other categories, consult the Commissioner's pamphlet "Health Insurance Advice for Senior Citizens" which you received with the application for this policy. Do not buy this policy if you did not get this pamphlet and were not given a chance to review the Outline of Coverage provided you.

Reliable is an insurance company offering insurance to supplement Medicare's hospital, medical, surgical and skilled nursing home benefits.

NEITHER RELIABLE NOR ITS AGENTS ARE IN ANY MANNER CONNECTED WITH MEDICARE.

THINGS YOU SHOULD KNOW ABOUT MEDICARE AND RELIABLE'S GR 645

Unnecessary Charges
Neither Medicare nor Reliable will pay for charges which Medicare considers unnecessary.

Unreasonable Charges
Medicare will not pay for charges it considers unreasonable. Reliable will pay its full share of the actual charges you incur.

Expenses Not Covered by Medicare
Certain types of expenses are not covered at all by Medicare, such as: routine physical examinations; eyeglasses or hearing aids or examinations for them; prescription or non-prescription drugs you buy yourself; self-administered injections; and others. Neither Medicare nor Reliable will pay benefits for these types of expenses.

What is a Skilled Nursing Home?
Under the Medicare program, a Skilled Nursing Home is an institution or a portion of an institution certified as a Skilled Nursing Facility by Medicare.

Under Reliable's GR 645, a Skilled Nursing Home is an institution or a portion of an institution which is licensed in your State to provide Skilled Nursing Care and which regularly engages in providing such care. Under Reliable's policy definition, the institution need not be certified by Medicare as a Skilled Nursing Facility.

Under both Medicare and Reliable, a Skilled Nursing Home does not include an institution or a portion of an institution which is licensed to provide a lesser degree of care such as intermediate, residential, personal, boarding, or custodial care.

To determine whether an institution is certified by Medicare as a Skilled Nursing Home, check with the Administrator of the institution or with the Social Security Administration. To determine whether a Skilled Nursing Home is licensed in your state to provide Skilled Nursing Care, check with the Administrator of the institution or with the State Department of Health and Social Services.

What Skilled Nursing Care is covered by this Policy?
Not all nursing home expenses are covered by this Policy. Neither Medicare nor this Policy will pay for custodial or rest care. To be covered by this Policy, Skilled Nursing Care must: (1) be care regularly and customarily given inpatients of a Skilled Nursing Home; (2) be under the supervision of a graduate registered nurse; (3) include the keeping of your medical records on a daily basis; (4) be based on a planned program of observation and treatment by a physician; (5) include a physical examination given to you at least once every 30 days by a physician; and (6) include certification by a physician (other than a podiatrist) that you need on a daily basis and actually receive services or care which as a practical matter can be provided only in a Skilled Nursing Home on an inpatient basis.

Exceptions and Limitations under Reliable's GR 645
Reliable's plan does not cover: (1) plastic surgical operations for cosmetic purposes, (2) dental care except surgery of the jaw or the setting of fractures of the jaw or facial bones, (3) simple rest or custodial care, (4) outpatient care for mental illness or disorders, (5) war, declared or undeclared, or (6) that part of any covered expense payable by Medicare or any other government health program, workmen's compensation law or any other law of the United States or a State.

Pre-existing Conditions
There is no coverage for a loss commencing during the first 365 days after the effective date of the policy if caused by a condition existing prior to the effective date of the policy.

Renewability

This policy is Guaranteed Renewable for your lifetime at the rates in force at the time of renewal. If the premium is paid on time, Reliable cannot reduce any benefit period or amount, or add any restrictive provision whatsoever.

Tuberculosis and Kidney Disease Treatment

Additional benefits may be payable under rider Form 246R attached to your policy.

Maximum Stated Benefits

Maximum Benefits payable by Reliable's GR 645:
To Supplement Medicare Part A: $25,000 per benefit period
To Supplement Medicare part B: $1,500.00 per calendar year

Here is a summary of benefits paid by Medicare and Reliable's GR 645			
	Not covered By Either Medicare or GR 645:	GR 645 Will Pay, To Stated Maximums:	Medicare Will Pay:
MEDICARE PART A ELIGIBLE EXPENSES*			
Hospitalization			
First 60 Days (Initial Medicare Part A deductible of $144.00)		$144.00	the balance
61st - 90th day		$36.00 per day	the balance
91st - 150th day (Lifetime Reserve Period)		$72.00 per day	the balance
Beyond 150th Day (or when your Lifetime Reserve Days are exhausted)	20% of hospital expense plus balance of daily Room and Board	80% of Hospital Expense Other than Room & Board plus $50.00/day Room and Board	
Skilled Nursing Home (if confined in hospital 3 days in a row and within 14 days thereafter confined in a Skilled Nursing Home for covered Skilled Nursing Care of same sickness or injury) (If confinement is not covered by Medicare, first thirty days may be covered under Rider 288R.)			
First 20 days			entire balance
21st to 100th day		$18.00 per day	the balance
Post-Hospital Home Health Care (per benefit period)	100% beyond visits paid by Medicare Part A or B		100% of 100 visits per benefit period
Blood	First 3 Pints		the balance after 1st 3 Pints
MEDICARE PART B ELIGIBLE EXPENSES*			
Yearly Deductible (1st $60.00)	$60.00 if incurred while not hospital confined	$60.00 if incurred while hospital confined	
Treatment by a Physician (other than by a member of your family) Outpatient services billed by Hospital: Emergency Room and Outpatient Clinic (except physical therapy and speech pathology), Splints, Casts, Laboratory Tests, X-rays & Radiology Ambulance		20%	80%
Independent Lab Tests, X-Rays not Billed by Hospital, Outpatient drugs and biologicals which must be professionally administered, prosthetic devices, durable medical equipment used in your home, physical or speech therapy, surgical dressing.	20%		80%
Blood (per year)	1st 3 pints plus 20% of balance		80% after 1st 3 pints
Home Health Care	100% beyond visits paid by Medicare Part A or B		100% of 100 visits per year (May pay in addition to Medicare Part A 100 visits.)

***This chart, required by Wisconsin law, is only a brief description of Medicare. It assumes that: (1) the expenses stated are Medicare eligible expenses; (2) Medicare pays only reasonable and necessary charges; and (3) the Medicare Part B $60 yearly deductible is paid. This chart does not completely explain the details, conditions, or limitations of Medicare or the facts or circumstances under which Medicare benefits may or may not be payable. For further explanation of the details, conditions, and limitations of Medicare, do not rely on this chart but instead consult the U.S. Social Security Administration or its Medicare publications.**

This Outline of Coverage is only a brief summary of the policy and is not the contract of insurance. The policy itself sets forth the rights and obligations of the Insured and the Insurer.

ITEM 3. EXCERPTS FROM PUBLIC TESTIMONY AT A HEARING OF NEW WISCONSIN INSURANCE RULES GOVERNING SALES OF MEDICARE SUPPLEMENTS, APRIL 20, 1976, BEFORE COMMISSIONER OF INSURANCE, STATE OF WISCONSIN

LT. GOV. MARTIN SCHREIBER

"Abuses have been reported to us on a regular basis and also reported to the State and other local consumer agencies. I don't think anything could be more revealing than the elderly person being sold supplemental coverage and then discovers its benefits do not cover medical costs of other major illness. Unfortunately, this kind of result has been the rule rather than the exception.

"Unfortunately (the elderly's), critical need for insurance protection has forced the elderly to seek and embrace almost any insurance policy that offers to fill in this medicare gap."

STATE SENATOR TIM CULLEN, CHAIRMAN, WISCONSIN SENATE SPECIAL COMMITTEE ON AGING

"The unscrupulous agents and companies concentrate on the small towns and rural areas of Wisconsin where senior citizens are less likely to be active in senior citizen groups and be warned of potential abuses."

JANE M. SADUSKY, INVESTIGATOR, CONSUMER FRAUD AGENCY, PORTAGE AND MARATHON COUNTY DISTRICT ATTORNEYS OFFICE

"Complaints reveal a pattern of sales practices characterized by misrepresentation, scare tactics, and pressure selling. These practices are common to certain firms that are the subject of recurring complaints.

"In the past month alone we have received 24 complaints and are in the process of interviewing complainants and obtaining statements.

"A salesman appeared unannounced and claims he had been referred to these people by their cousin. The complainants already had a supplemental policy and informed the salesman of this. He urged them to cancel it, claiming that the company was going to raise its rate without announcing it and it was in financial trouble and was likely to go broke within the year. . . . The salesman claimed that his company paid a $225 surgical deductible which medicare did not. When the complainant responded that she had never heard of such nor received any notice of it he insisted that the social security office was not telling people about it in order to 'rip them off.' When the complainant requested a brochure about the coverage he refused to provide anything on the grounds that insurance agents, like physicians, were not allowed to advertise."

ITEM 4. EXAMPLES OF MISLEADING MAILINGS AND SOLICITATIONS WHICH MISREPRESENT THE RELATIONSHIP BETWEEN PRIVATE HEALTH INSURANCE PLANS AND THE FEDERAL GOVERNMENT; SUBMITTED BY OFFICE OF COMMISSIONER OF INSURANCE, STATE OF WISCONSIN

BUSINESS REPLY MAIL
NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

Postage Will Be Paid By:

WISCONSIN AGENCY
Senior Citizen Information
5225 West Center Street
Milwaukee, Wisconsin 53210

SENIOR CITIZEN INFORMATION CARD

PLEASE COMPLETE EACH QUESTION

Your replies will be a great help in evaluating your total coverage: So we may provide you with complete information on Health Insurance alternatives for senior citizens to help meet today's rising cost of Health and Medical Services.

NO POSTAGE NECESSARY - - - - MAIL TODAY

[redacted]

Yes ☐ No ☐ I AM COVERED BY MEDICARE ☐ Part A ☐ Part B

Yes ☐ No ☐ I HAVE SUPPLEMENTAL COVERAGE

Yes ☐ No ☐ I HAVE COVERAGE FOR A SKILLED NURSING FACILITY

My date of Birth:

Month _____ Day _____ Year _____

WISCONSIN AGENCY - REPRESENTING OLD EQUITY LIFE - EVANSTON, ILLINOIS — NO PART OF THE STATE OR FEDERAL GOVERNMENT

WISCONSIN AGENCY
Senior Citizen Information
5225 West Center Street
Milwaukee, Wisconsin 53210

QUESTIONNAIRE

[redacted] REPLY REQUESTED

Insurance Advisory Services
P.O. BOX 4181
MADISON, WISCONSIN 53711

MEDICARE CHANGES INFORMATION

EFFECTIVE JANUARY OF THIS YEAR NEW CHANGES IN MEDICARE WHICH AFFECT YOU

To The Senior Citizen Addressed:

In January of this year, certain changes were made concerning Medicare which you should know about as they personally affect you.

Many people do not fully understand what benefits are payable under Medicare and what expenses the Senior Citizen himself must pay.

Medicare was enacted to help our Senior Citizens pay the ever-rising cost of Hospital and Medical Services; however, Medicare does not pay the entire bill. As you know some expense is left for you to pay in addition to Medicare. Now, with these new changes effective this January there are more expenses left for the Senior Citizen to pay.

As it is very important that you know about these changes, complete and mail the enclosed postage-free card immediately, so that we may have our representative furnish you complete information concerning the new changes in Medicare. Of course, this is not sponsored by nor connected with the Federal Government, and there is no obligation.

Sincerely,

Insurance Advisory Services

EFFECTIVE JANUARY 1, 1976

The cost of Medicare to people over 65 increased 13% in addition to

JANUARY 1, 1975

when

The cost of Medicare to people over 65 increased 9.5%

Return enclosed card for complete information.

MAIL THIS CARD TODAY

NO POSTAGE STAMP REQUIRED

- ☐ I would like to have further information concerning the changes in Medicare.
- ☐ I would like further information concerning skilled nursing home and extended care insurance coverage.
- ☐ I would like to have further information concerning how the changes in Medicare affect my Supplemental Insurance.

MEDICO LIFE INSURANCE COMPANY

3860 LEVENWORTH STREET • OMAHA, NEBRASKA

INFORMATION REGARDING CHANGES IN MEDICARE

To The Senior Citizen Addressed:

On January first, certain changes were made concerning Medicare which you should know about as they personally affect you.

Many people do not fully understand what benefits are payable under Medicare and what expenses the Senior Citizen himself must pay.

Medicare was enacted to help our Senior Citizens pay the ever-rising cost of Hospital and Medical Services; however, Medicare does not pay the entire bill. As you know, some expense is left for you to pay in addition to Medicare. Now, with these new changes effective January first there are more expenses left for the Senior Citizen to pay.

As it is very important that you know about these changes, complete and mail the enclosed postage-free card immediately, so that we may rush you complete information and give you a full explanation of the new changes in Medicare.

(Front)

FIRST CLASS
Permit No. 3205
Madison, Wis.

BUSINESS REPLY MAIL
No Postage Necessary if mailed in the United States

Postage will be paid by

MEDICO LIFE INSURANCE COMPANY
INSURANCE ADVISORY SERVICES
P.O. BOX 4181
MADISON, WISCONSIN 53711

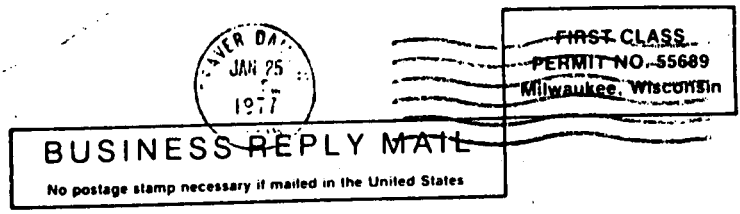
(Back)

☐ I would like to have further information concerning the changes in Medicare.

☐ I would like further information concerning "Medico," Medicare and Skilled Nursing Home Coverage.

My age is _____

(Front)



MEDICARE CHANGES INFORMATION
SENIOR CITIZEN INFORMATION DIVISION

Philips Agency
P.O. Box 11544
Milwaukee, Wisconsin 53211

(Back)

I would like you to tell me how I can get money to pay all your

MAIL THIS CARD TODAY
NO POSTAGE STAMP REQUIRED

☐ YES—I would like to have further information concerning the NEW Changes in MEDICARE.

I don't understand only things we pay for

☐ YES—I would like further information concerning skilled Nursing Home care.

How do I get a medicare card?

Please tell

[redacted]

MC 6/76

Appendix 3

ADDITIONAL MATERIAL SUBMITTED BY BANKERS LIFE & CASUALTY CO.[1] OF ILLINOIS

ITEM 1. LETTER FROM MICHAEL J. DRESSENDORFER, GOVERNMENT RELATIONS DEPARTMENT, TO KATHLEEN M. DEIGNAN, SENATE SPECIAL COMMITTEE ON AGING, DATED JUNE 23, 1978

DEAR MS. DEIGNAN: Enclosed is the information our company promised to furnish the committee at the June 13, 1978, meeting.

Here are our agent's contract form 710–1 and the commission schedules 1787–J, 7172C, and 7049C.

In addition, here are copies of policy forms GR–75J, GR–74B, GR–764A, and GR–74J. These policy forms represent our current portfolio of over-age 65 accident and health insurance policies. As you will note, the policy forms fit the four categories enumerated in our written statement to the committee on May 16. I am also enclosing copies of policy summaries; these summaries will enable you to determine the benefit levels for the policy forms. I have included our field office bulletin No. F–74–4 and manager's sales brief FOB F–74–4 which discuss our maximum premium rule.

I am furnishing you with copies of our agent complaint procedure.[2] I am including the June 1, 1978 version and the May 1, 1976 version. The differences involve changes to reflect additional routing copies of the form 1122 to our data processing department and incorporation of form 2428 which has been used for several years by our claim department in the complaint procedure.

We will be happy to answer any further questions you have.

Very truly yours,

MICHAEL J. DRESSENDORFER.

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[1] See statement, page 53.
[2] Retained in committee files.

ITEM 2. AGENT'S CONTRACT FORM

BANKERS LIFE AND CASUALTY COMPANY
AGENT'S CONTRACT

1. PARTIES

THIS CONTRACT is made in duplicate between BANKERS LIFE AND CASUALTY COMPANY of Chicago, Illinois, hereinafter called the "Company," and _____ of _____, hereinafter called the "Agent."

2. EFFECTIVE DATE

This contract shall take effect on _____, 19____.

3. APPOINTMENT

The Company hereby appoints as its Agent the above named for the purpose of soliciting and procuring applications for policies of insurance sold by the Company. This appointment shall continue until terminated as provided in paragraph 20 hereof.

4. INDEPENDENT CONTRACTOR

It is the intent of the parties that the Agent is and shall be an independent contractor. Nothing herein contained nor any of the acts of the Agent pursuant hereto shall be construed as creating the relationship of employer and employee.

5. TERRITORY

This contract does not confer on the Agent exclusive representation of the Company in any territory, and the Company may appoint other Agents in the same territory.

6. COMPENSATION

As compensation in full for the performance of services of the Agent as authorized in this contract, the Company will pay commissions as set forth in the attached Schedules of Commissions. Said Schedules may be altered, decreased, modified or withdrawn at any time by the Company, and effective upon any business written by the Agent subsequent to the effective date of the change.

7. AUTHORITY

While this contract is in effect, the Agent has the authority to:

(a) procure applications for insurance issued by the Company and payments thereon, and to issue receipts for the monies so collected;

(b) deliver policies issued on applications so procured, provided the first premium has been paid;

(c) give service to policyholders of policies so written so as to maintain the policies in force;

(d) endeavor to procure applications for reinstatement of lapsed policies.

8. LIMITATIONS OF AUTHORITY

The authority given in this contract is subject to the provisions and limitations contained herein, and the Company's manuals, rate books, rules and regulations. The Company may, from time to time, prescribe rules concerning the conduct of the business covered herein and amend its manuals, rate books, rules and regulations. This contract does not give the Agent any authority to represent the Company, except as specifically set forth herein, nor any authority to alter, modify, waive or change the insurance contracts written by the Company, nor to commit the Company in any respect regarding liability or payment of claims, nor to commit nor incur liability on behalf of the Company in any respect. The authority herein granted shall end upon termination of this contract.

9. REPORTS, LICENSES AND TAXES

(a) The Agent agrees to advise the Company of any change of address of his regular place of business, and further agrees to furnish the Company with all information concerning business that he has written for the Company.

(b) The Agent shall prepare and file all reports and returns required of him by any municipal, state or federal statute or regulation, and shall pay all taxes levied against him by same. (This provision shall not be construed as requiring the Agent to pay premium taxes or any other taxes levied against the Company.) The Agent shall pay for the renewal state agent license fees, and any occupational license fee required under local ordinances. The Agent is to secure and maintain such other municipal and state licenses necessary for him to conduct business, and he shall not write insurance unless properly licensed.

10. COLLECTION OF PREMIUMS—SUBMITTAL OF APPLICATIONS—DELIVERY OF POLICIES

(a) The Agent will report and remit all Company monies received or collected in accordance with the Company's rules governing collections; and he hereby agrees that he receives and holds said funds in a fiduciary capacity as trustee until remitted to the Company, and further agrees not to commingle or divert them in any manner.

(b) The Agent shall immediately submit applications to the Company, make no alterations in the text nor the terms of the application, nor modify nor alter any representations made by or for the applicant therein without the written authority of said applicant.

(c) All policies sent to the Agent shall be delivered promptly to the applicant and, whenever such delivery cannot be made, the Agent agrees to return each such policy to the Company with a written report stating the specific reasons.

11. INDEBTEDNESS

The Company may deduct any indebtedness due or to become due at any time from the Agent to the Company from any commissions or other payments due hereunder without limitation of the Company's other legal or equitable remedies as regards indebtedness. Said indebtedness shall be a first lien on all payments due or to become due the Agent.

12. REFUNDS

Whenever a premium has been refunded to an applicant or policyholder in accordance with the rules and regulations of the Company, the Agent agrees to immediately return to the Company any commissions received as a result of that business.

13. BOOKS, SUPPLIES AND DATA

The Company will supply rate information, sales manuals and forms for the solicitation of applications for insurance. Upon termination of this contract, all rate books, manuals, records, policyholder cards, supplies, sample policies and other materials so furnished to the Agent shall concurrently be surrendered and delivered to the Company. The Agent agrees at any and all times to hold all names, policyholder cards or other contact data furnished him by the Company in a fiduciary capacity, and he agrees at all times not to divulge such names, policyholder cards or other contact data to any other company or agency and to return the same to the Company upon demand.

14. ADVERTISING

No promotional material, advertising circulars, radio or TV broadcasts or other advertising, in any form, shall be made, published or circulated by the Agent unless written approval of the Company shall have been obtained.

15. PROMOTE INTEREST

The Agent shall promote the interest of the Company as contemplated by this contract and shall conduct himself in a fair, honest, lawful and courteous manner so as not to adversely affect the business, good will, or reputation of the Company, nor shall he assist any competitive insurer by referral of Agents, materials or otherwise to the detriment of the Company.

16. NO WAIVER

No act of forbearance or toleration on the part of the Company in favor of the Agent in respect to provisions of the contract, either expressed or implied, shall be construed as a waiver by the Company of any of its rights hereunder.

17. SURETY BOND

The Agent agrees to furnish bond in amount and surety satisfactory to the Company for the faithful discharge and performance of all the duties and obligations of this contract.

18. NON-ASSIGNABILITY

No assignment of this contract nor of any benefit to accrue hereunder, in whole or in part, shall be valid or in any way binding on the Company without its prior written consent.

19. RIGHT TO REJECT APPLICATIONS AND REMOVE POLICIES FROM SALE

The Company reserves the right to reject any application for insurance submitted hereunder without specifying the reason therefor. It reserves the right to remove from sale any policy of insurance from the territory or parts thereof assigned to the Agent, and it may increase or decrease the premiums charged for any policy issued by it.

20. TERMINATION OF CONTRACT

(a) Either party may terminate this contract at will by giving notice to the other party of his intention to terminate this contract.

(b) Upon the termination of this contract commissions will be paid as set out in the attached Schedules. The Agent agrees that nothing herein gives, or is intended to give, the Agent any right, claim, title or interest of any kind in or to any special accounts or funds established by the Company including, but not limited to, any account which has as its purpose the promotion of the health, safety and welfare of its employees and agents, and that he has no right, title, claim or interest therein.

(c) The Company may terminate this contract immediately for cause. For cause means any violation by the Agent of the terms of this contract and includes, but is not limited to, fraud, failure to remit funds, or failure to secure and maintain necessary licenses.

(d) If this contract is terminated for cause as herein defined, no commissions or other compensation or allowances shall be payable.

(e) Upon termination of this contract for any reason, all liability to the Company hereunder shall immediately become due and payable.

21. CAPTIONS

The captions and sub-captions contained in this contract are for the purpose of convenience and shall not be construed as limiting or expanding the text.

22. ENTIRE CONTRACT

This contract and the Commission Schedules referred to herein supersede all previous contracts between the parties, if any, and constitute the entire contract between the parties. The contract can be changed or modified in behalf of the Company only by the written consent of the President or a Vice President of the Company.

IN WITNESS WHEREOF, this Contract was executed on this _____ day of _____, 19__, at Chicago, Illinois.

BANKERS LIFE AND CASUALTY COMPANY

By _____
President

_____
Agent

Witness: _____

710-I

ITEM 3

CAREER AGENT'S HEALTH COMMISSION SCHEDULE

Subject to paragraphs 1 through 22 of the Career Agent's Contract, to which this Schedule is attached, and as long as the Career Agent is actively performing under the terms of the Career Agent's Contract, the Company will allow, and the Career Agent will accept as full and complete compensation, (less application fee, if any), commission in accordance with the following Schedule:

1. COMMISSION PERCENTAGES

Type of Contract	Initial	Subsequent
(a) Renewable at Option Disability Income Policies	100% of 1st and 2nd mo. premium	30% of 3rd through 6th mo. premium as collected by Company
(b) Guaranteed Renewable and Collectively Renewable (Franchise & Association) Disability Income Policies	100% of 1st and 2nd mo. premium	40% of 3rd through 6th mo. premium as collected by Company
(c) All other Renewable at Option policies (including Collectively Renewable P-7 & P-7A Franchise Policies)	100% of 1st mo. premium	30% of 2nd through 6th mo. premium as collected by Company
(d) Guaranteed Renewable and Collectively Renewable (Franchise & Association) Hospital-Surgical, Medical or Surgical, & Hospital Indemnity Policies	100% of 1st mo. premium	40% of 2nd through 6th mo. premium as collected by Company

(e) Commission percentages on Benefit Riders, for which premium is charged, is the same as the Policy to which the Rider is attached, unless otherwise indicated in other rules published by the Company.

(f) In addition, the Career Agent may retain additional commission computed as follows:

(1) In the case of Renewable at Option policies, the Career Agent may retain 10% of the difference between the Annual Premium and commission due on the first six (6) months, when the Annual Premium is collected at time of sale.

(2) In the case of Guaranteed and Collectively Renewable policies, the Career Agent may retain 10% of the difference between the Annual Premium and six (6) full monthly premiums in addition to the regular commission, when the Annual Premium is collected at time of sale.

(g) The Company may, from time to time, grant additional commission as a bonus, based upon the volume of business the Career Agent has in force at semi-annual intervals. The formula for such bonus will be at the sole discretion of the Company. Any such bonus shall become payable when so declared by the Company, and then only if and upon the express condition that the Career Agent is at that time actively performing under the provisions of the Career Agent's Contract. Nothing herein contained gives, or shall be construed to give, to the Career Agent any vested or earned interest or any claim in any such bonus, regardless of the date of termination of this Contract, and the same may or may not be paid solely at the option of the Company. It may be withheld, increased, decreased, or discontinued, at any time solely at the discretion of the Company.

2. COMMISSION WHEN BALANCE OF QUARTERLY, SEMI-ANNUAL, OR ANNUAL PREMIUM IS COLLECTED ON DELIVERY

If the writing Career Agent collects the balance of a quarterly, semi-annual, or annual premium on delivery, or within 30 days following date of issue, the Career Agent may retain, according to the above Schedule, the commission due on the balance of the first-year's premium collected. This applies to Health Policies issued on a monthly, quarterly, or semi-annual basis. (This does not apply to PPSP or Payroll Deduction.)

3. REINSTATEMENTS, UPGRADES, OR EXCHANGES

The commission paid to the Career Agent shall be in accordance with the Company's last published rules.

4. VESTED DISABILITY INCOME COMMISSION AFTER TERMINATION OF CONTRACT

Commission on Disability Income premiums shall be vested and paid subject to the following:

(a) Disability Income monthly premium in force is that premium in force under the Career Agent's number at time of termination.

(b) Reinstated Career Agents will be eligible for vested commission under their assigned Career Agent number on a "Reinstated Career Agent" basis.

(c) Commission will be five percent (5%) of all Disability Income monthly premium in force, less a service charge of one-half of one percent (½ of 1%).

(d) Commission may be vested and paid for a maximum of ten (10) years.

(e) The vested period shall begin only after the Career Agent has completed eighteen (18) consecutive months of active service, and shall be credited on a month-for-month basis after the eighteenth (18th) month through five (5) years of service, and on a year-for-year basis after five (5) years of service.

(f) Vested commission will be paid to the Career Agent monthly until such vested monthly commission (gross amount) due the Career Agent falls below $25.00.

(g) In the event of the Career Agent's death, Renewal Commission will be paid as set out above, subject to the service fee.

ITEM 4

CAREER AGENT'S LIFE COMMISSION SCHEDULE

Subject to paragraphs 1 through 22 of the Career Agent's Contract, to which this Schedule is attached, and as long as the Career Agent is actively performing under the terms of the Career Agent's Contract, the following Life commissions shall be allowed for Life policies and Life riders approved and issued by the Company. Such commissions shall be allowed on policies maintained in force by Waiver of Premium or Policy Loan provision, and to policy reinstatement, if the Career Agent collects the full premium in default. Commission on premiums paid in advance of the current policy year shall not be paid until the policy year the premiums are due.

1. LIFE INSURANCE PLANS AVAILABLE AND COMMISSION PERCENTAGES

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd Year Renew. Comm.	3rd-10th Year Renew. Comm.
12B	Joint Whole Life	18-70	65%	25%	2%
020	20 Pay Life - Return of Premium	0-45	65%	25%	2%
29A	Whole Life (Par)	60-64	55%	15%	2%
		65-69	40%	15%	2%
		70-74	35%	15%	2%
		75-80	30%	15%	2%
030	30 Pay Life - Return of Premium	0-35	65%	25%	2%
46J	Retirement	0-40	65%	25%	2%
	Income At	41-45	60%	20%	2%
	Age 65 (Par)	46-50	45%	15%	2%
		51-55	30%	15%	2%
52B	Single Life Decreasing Term				
	10 Year Term	18-60	40%	15%	2%
	15 Year Term	18-60	40%	15%	2%
	20 Year Term	18-55	45%	20%	2%
	25 Year Term	18-50	45%	20%	2%
	30 Year Term	18-45	45%	20%	2%
52N	Annual Renewable Term	18-65	40%	15%	2%
53A	Joint Decreasing Term				
	10 Year Term	18-60	40%	15%	2%
	15 Year Term	18-60	40%	15%	2%
	20 Year Term	18-55	45%	20%	2%
	25 Year Term	18-50	45%	20%	2%
	30 Year Term	18-45	45%	20%	2%
101	Preferred Risk Whole Life	15-65	65%	25%	2%
105	Whole Life - Par	0-70	65%	25%	2%
111	Executive Ordinary Life	10-70	65%	25%	2%
120	20 Pay Life	0-65	60%	20%	2%
	In Wisconsin and Connecticut only	66-70	55%	20%	2%
	In Wisconsin and Connecticut only	71-75	50%	20%	2%
	In Wisconsin and Connecticut only	76-80	45%	20%	2%
129	20 Pay Life-Par	0-39	60%	20%	2%
		40-64	55%	20%	2%
		65-69	40%	20%	2%
		70-74	35%	20%	2%
		75-80	30%	20%	2%
165	Life Paid-Up at Age 65	0-40	65%	25%	2%
		41-45	60%	20%	2%
		46-50	50%	15%	2%
		51-55	40%	15%	2%
168	Juvenile Limited Payment Life	0-14	55%	25%	2%
170	Life Modified at Attained Age 70	0-55 M/0-58F	70%	25%	2%
195	Life Paid-Up at Age 95	0-70	60%	15%	2%
198	Life Paid-Up at Age 98	0-70	60%	15%	2%

32-703 O - 78 - 10

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd Year Renew. Comm.	3rd-10th Year Renew. Comm.
299	Whole Life	60-80	35%	5%	2%
320	20-Year Endowment	0-65	45%	20%	2%
365	Endowment at Age 65	0-30	65%	25%	2%
		31-35	60%	25%	2%
		36-40	55%	25%	2%
		41-45	45%	20%	2%
		46-50	35%	15%	2%
		51-55	25%	15%	2%
385	Endowment at Age 85	0-50	65%	25%	2%
		51-55	60%	25%	2%
		56-60	55%	25%	2%
		61-64	45%	20%	2%
395	Family Insurance	*	60%	25%	2%
418	Endowment at Age 18	0-3	30%	15%	2%
		4-9	20%	15%	2%
428	20 Pay Endowment at Age 65-Return of Premium-Par	0-45	65%	25%	2%
440	Joint Life 20 Year Endowment	0-60**	45%	20%	2%
504	5-Year Level Convertible Term	15-60	35%	10%	2%
505	5-Year Level Renew. & Convert. Term	15-60	35%	10%	***
507	F&A 5 Year Renew. & Convert. Term	0-65	35%	15%	2%
510	10-Year Level Convertible Term	15-55	40%	10%	2%
511	Executive Decreasing Term-Convertible				
	10-Year Term Period	15-60	40%	10%	2%
	15-Year Term Period	15-60	40%	15%	2%
	20-Year Term Period	15-55	45%	20%	2%
	25-Year Term Period	15-50	45%	20%	2%
515	15-Year Level Convertible Term	15-50	50%	15%	2%
551	Joint Life-Last Survivor Term-Level	18-50****	60%	5%	5%
565	Level Term to Age 65	15-40	60%	25%	2%
		41-45	55%	20%	2%
		46-49	50%	15%	2%
623	Juvenile Estate Builder	0-4	20%	—	—
		5-14	25%	—	—
	Renewal at Age 23 (treat as new issue)	23	65%	25%	2%
698	Single Premium Endowment				
	Maturing in 20 Years or more	*****	3%	—	—
	Maturing in 10-19 Years	*****	2½%	—	—
	Maturing in less than 10 Years	*****	2%	—	—
400	Retirement Annuity	0-65	25%	20%	2%
	In the state of Washington And Tennessee	0-65	20%	20%	2%
1401	Retirement Income Rider	0-65	60%	15%	2%
	In the State of Washington And Tennessee	0-65	20%	20%	2%

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd Year Ren. Comm.	2nd Year Serv. Fee	3rd-10th Year Ren. Comm.	3rd-10th Year Serv. Fee	11th & Thereafter Service Fee
47J	Retirement Income at Age 70 - Par.	15-19	55%	10%	5%	1.5%	1.5%	1.5%
		20-24	50%	10%	5%	1.5%	1.5%	1.5%
		25-29	45%	10%	5%	1.5%	1.5%	1.5%
		30-34	40%	10%	5%	1.5%	1.5%	1.5%
		35-44	35%	10%	5%	1.5%	1.5%	1.5%
48J	Retirement Income at Age 70 - Non-Par	45-49	30%	10%	5%	1.5%	1.5%	1.5%
		50-54	25%	7%	3%	1.5%	1.5%	1.5%
		55-59	20%	7%	3%	1.0%	0.5%	1.5%
		60	15%	5%	2.5%	1.0%	0.5%	—

Special Service Fees

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd-10th Year Renew. Comm.	2nd-10th Year	11th-20th Year	21st Year and thereafter
404	Retirement Annuity at age 70 - Par.	15-25	27%	1.0%	3.0%	2.5%	1.5%
		26-35	24%	1.0%	2.5%	2.5%	1.5%
		36-45	20%	1.0%	2.0%	2.5%	1.5%
		46-50	17%	1.0%	1.5%	2.5%	1.5%
		51-55	14%	1.0%	1.5%	2.5%	—
		56-60	10%	1.0%	1.5%	2.5%	—
		61-63	7%	0.5%	1.0%	—	—
		64-65	5%	0.5%	1.0%	—	—
		66-67	4%	0.5%	1.0%	—	—
		68-69	3%	0.5%	1.0%	—	—

Special Service Fees are payable only to an active career agent who provides the necessary service as determined by the Company. Section 3 of the Career Agent's Life Commission Schedule does not apply to the 47J, 48J or 404 Policies.

Plan No.	Policy Plan	Age At Issue	Single Premium Comm.
04A	Single Premium Deferred Annuity	All Ages	3%
690	Single Premium Immediate Annuity (Individual)	All Ages	3%
691	Single Premium Immediate Annuity (Joint and Survivor)	All Ages	3%

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd Year Ren. Comm.	2nd Year Serv. Fee	3rd Year Ren. Comm.	3rd Year Serv. Fee	4th-5th Year Ren. Comm.	4th-5th Year Serv. Fee	6th-10th Year Service Fee	11th & Thereafter Service Fee
02A	Flexible Premium Annuity	18-60	20%	5%	5%	2.5%	5%	2.5%	2.5%	2%	1.5%
		61-69	6.5%	2%	3%	2%	2.5%	2%	2.5%	2%	—

Additional new money contributions for ages 18-60 is 20% for all years; for ages 61-69, 6.5% for all years.

Commissions/Service Fees are payable for the years shown or to the Policy Anniversary nearest age 70, if earlier.

NOTE: On Military Risks in the first 3 pay grades, reduce commission by 25% of that shown.

* Issue Ages: Applicant (Primary Insured) 18-45 } Provided Primary Insured is between 7 years younger and
Insured Spouse 17-52 } 12 years older than spouse
Insured Children 15 days - 18 birthday

** One of the applicants must be at least age 15 and neither may be over age 60. Any applicant under age 15 will be treated as age 15.

*** Renewal Commission as follows:

3rd to 5th Year	2%
6th Year	20%
7th to 10th Year	2%

**** The Average of both actual ages must be between 19-45.
***** Policy can be used for virtually any combination of Issue Age and Endowment Period.

2. COMMISSION ON BALANCE OF QUARTERLY, SEMI-ANNUAL, OR ANNUAL COLLECTIONS

If the balance of a quarterly, semi-annual or annual premium is collected on delivery, or within 30 days following date of issue, the commission due on the balance of the First Year's premium that is collected may be retained by the Writing Career Agent or split according to prior agreement according to the above Schedule. This applies to all Life policies issued on a monthly, quarterly, or semi-annual basis. (This does not apply to PPSP or Payroll Deduction.)

3. SERVICE FEE

From the 11th to the 20th year, inclusive, an active Career Agent will also receive 2% of the Renewal Premium collected as a Service Fee on all Life business in force on a premium paying basis, with the exception of L-507 and L-511 (10-Year Term) and those plans for which special service fees are indicated.

4. COMPENSATION PROVISIONS

(a) The Company may, from time to time, determine the right to commissions, the amount and the period of payment thereof, in the following cases: (1) policies and riders hereafter introduced; (2) reinstated, reissued, or changed policies; (3) policies where part or all of the risk is reinsured; (4) conversions of Term Life policies or riders, provided no commission is allowed on conversion of a Group policy; (5) renewals of Renewable Term policies; (6) policies issued with substandard or flat extra ratings.

(b) Commission on Life riders is the same percentage as the policy to which the rider is attached, unless otherwise indicated in other rules published by the Company.

5. VESTED COMMISSIONS AFTER TERMINATION OF CONTRACT

(a) If this contract is terminated after the Career Agent has ten (10) years continuous service, or upon reaching age 65, whichever comes first, or as a result of the Career Agent's death or total and permanent disability as defined in paragraph 5 (b) of this Schedule, renewal commissions shall be vested and paid as set out in paragraph 1 of this Schedule, as long as such commissions equal or exceed $200 in any calendar year.

(b) If the Career Agent, due to illness or injury, is unable to perform as a Career Agent of the Company in accordance with the terms of this contract for a period of six (6) months, and shall require the regular attendance of a licensed physician, and is certified to be in such a condition by such licensed physician, then the Career Agent shall be considered totally and permanently disabled.

(c) If this contract shall be terminated prior to the time the Career Agent shall qualify under any of the conditions set out in paragraph 5 (a) above, then only commissions on first-year premiums shall be paid.

SUPPLEMENT TO BANKERS LIFE AND CASUALTY COMPANY

CAREER AGENTS AND AGENTS LIFE COMMISSION SCHEDULE

Plan No.	Policy Plan	Age At Issue	1st Year Comm.	2nd Year Renew. Comm.	3rd-10th Year Renew. Comm.
1579	Annual Renew. Term	0-65	50%	Same as policy to which attached.	

ITEM 5

CAREER AGENT'S GROUP COMMISSION SCHEDULE

Subject to paragraphs 1 through 22 of the Career Agent's Contract, to which this Schedule is attached, the Company shall pay commissions at the rates shown below, provided the Career Agent: (1) is continuously and actively performing under the terms of the Career Agent's Contract; (2) is continuously recognized by the policyholder as Career Agent for the Group Policy, and (3) services the Group Policy in a manner satisfactory to the Company.

	Regular Scale		Level Scale
Annual Premium	% 1st Year	Renewal % 2nd through 10th Yrs.	% 10 Yr. Level Graded
First $1,000*	20%	5%	6.5%
Next 4,000*	20%	3%	4.7%
Next 5,000*	15%	1.5%	2.85%
Next 10,000*	12.5%	1.5%	2.6%
Next 10,000*	10%	1.5%	2.35%

*Or any part thereof

ABOVE COMMISSIONS TO BE PAID AS FOLLOWS:

1. Group (over 25 lives):

   (a) Regular Scale

   (b) At option of Career Agent with Company approval—Level Scale

   (c) Upon election by the Company—Level Scale

   (d) Business previously in force, in whole or in part, in another insurance company, within six (6) months of effective date of the business placed with our Company—Level Scale

   (e) Group with Annual Premium in excess of $30,000, or on any case where a special agreement is required, commissions and overwrite to be determined by the Company.

ITEM 6. FIELD OFFICE BULLETIN

OVER-INSURANCE - SENIOR CITIZENS F.O.B. F-74-4

The attached bulletin establishes a new rule for writing Health Insurance in the Senior Citizen market.

The maximum allowable monthly premium for Health Insurance will be $30.00 per individual, based upon the standard premium for that person at age 65 for all Health Insurance policies in force and applied for in all companies.

This new rule is a necessary reinforcement of our senior citizen "common sense underwriting" guidelines as spelled out in F.O.B. No. F-71-41, which bulletin remains in full force and effect.

Along with your Company, many State Insurance Departments are becoming concerned about the problem of over-insuring persons over 65. The Company's attitude toward Senior Citizens is that they should own adequate Health Insurance. However, with few exceptions, everyone over age 65 is covered by both Part A and Part B of Medicare. Therefore, their primary Health Insurance needs can be adequately covered by Medicare Supplement Policies, Extended Care Facility Policies and/or Hospital Indemnity Policies, if there is a need and they can afford them. Excessive coverage must be avoided.

It is the responsibility of every sales manager to see that his agents fully understand the new rule governing sales of Health Insurance to this market, along with the importance of using "common sense underwriting." Please review this bulletin very carefully with your agents using the examples shown, and also review with your agents F.O.B. No. F-71-41, "Common Sense Underwriting."

Place this bulletin in your Bulletin file.

BANKERS LIFE AND CASUALTY COMPANY

FIELD OFFICE BULLETIN NO. F-74-4
DATE: 1/28/74
RE: OVER-INSURANCE -- SENIOR CITIZENS

TO: ALL SALES MANAGERS AND AGENTS

Recently, there have been indications that many policyholders in the over-65 age market have been sold excessive amounts of health insurance; amounts that would constitute over-insurance far beyond their means. In addition, in some cases, the amounts of premium involved are inconsistent with the incomes of the applicants. Remember, it is not in the best interest of the policyholder to be paying premiums on policies which he or she does not really need.

Effective immediately, for individuals age 65 or over, the maximum allowable monthly premium for all health insurance policies in force or applied for with all MacArthur Insurance Companies and other companies is $30. This includes 1441 Business. This does not include premiums paid for Part B of Medicare. Remember, $30 is the maximum allowable premiums; individual financial circumstances may indicate that an even lower premium would be prudent.

The $30 per month limit is based upon a standard premium at age 65 and not on the dollar amount actually being paid. With a prospect over age 65, the agent must therefore:

1. Determine existing in-force coverage.
2. Based on similar MacArthur Insurance Companies coverage sold, find standard monthly rate at age 65 for all policies.
3. Total all monthly rates.
4. Subtract from $30.00.
5. If answer is greater than 0, that is the "available monthly premium" which can be written using the following formula:

   For plan of coverage desired, find standard monthly rate at age 65. If this exceeds amount obtained in #4, reduce coverage to point where it doesn't exceed amount in #4.

   NOTE: If after reducing to the minimum benefits of plan desired, the rate still exceeds the "available monthly premium" that plan may not be written. The only plan that may be written at that point, is one that does not exceed the "available monthly premium."

   If that is the case - only that plan/benefit can be sold at the actual age/rate.

For example, assume Sam Smythe is 75 years old and has cirrhosis of the liver (Qualified Risk Point Value of 75). He is paying $15 in standard monthly health insurance premiums on policies purchased at age 65. He recently purchased a 717 on which he pays a rated premium of $11.70 monthly. In determining the standard monthly rate at age 65, the $15 would remain unchanged. The $11.70 paid for the 717 would be adjusted downward to $5, altogether the

total being (15 + 5) $20. Subtracting $20 from $30 leaves $10 which is the amount of standard monthly premium (at age 65) which may be written on Sam Smythe. For instance, a 774 with an actual premium (age 75 with Qualified Risk Point Value of 75 for cirrhosis) of $16.15 can be written since the standard rate at age 65 for this policy is $6.

For a second example John Jones is age 65. He purchased a 780 policy last year when he was 64 for $7.70. Since the premium at age 65 is $8.80 for this policy, the premium must be adjusted upward. In addition he has purchased other policies since he turned 65, with monthly premiums of $15. Mr. Jones is now applying for a 764A with a premium of $4.00. Since $4.00 + $8.80 + $15 equals $27.80 the 764A can be written.

Finally, with the implementation of the $30 monthly health premium limit, increased emphasis is placed on listing all information concerning insurance now in force or applied for with this or other companies on the application. An accurate and thorough job of reporting this data will serve to speed Home Office handling of all Senior Citizen health insurance applications.

ITEM 7. MEDICARE SUPPLEMENTAL POLICY FORMS, OUTLINES OF COVERAGE[1]

BANKERS LIFE AND CASUALTY COMPANY
4444 West Lawrence Avenue, Chicago, Illinois 60630

OUTLINE OF COVERAGE

For Medical-Surgical Policy GR-75J
(Retain this for your records)

BENEFITS

The Medical-Surgical Policy provides for each insured family member:

For Doctor Calls

Up to $10 for each treatment at home:
Up to $5 for each treatment in the hospital, nursing home, convalescent home, rest home, extended care facility, or in a doctor's office.
Doctor calls start with the first treatment for accident, third treatment for sickness, and are limited to one treatment per day.

Total payments for each insured family member shall not exceed $600 for any one accident or any one sickness.

For Surgery

From $6 up to $600 based on the nature of the operation as set forth in the surgery schedule.

Benefits will be paid for both doctor calls and surgery if each service is performed by a different doctor. If the same doctor provides the doctor calls and the surgery, then benefits either for the doctor calls or surgery, whichever is greater, but not both, will be payable.

Miscellaneous Expense Benefits

Up to $25 for Radiologist's services;
Up to $15 for Pathologist's services;
For Anesthetist's services; 15% of the Surgical Benefits payable, or $10, whichever is greater.

The above benefits are not available when the services are performed by hospital employees.

EXCEPTIONS

The Medical-Surgical Policy does not cover loss due to:

Mental disturbance without demonstrable organic disease; dental operations or dental treatment; any act of war; services rendered by any agency of the Federal Government, including Veterans Administration; services rendered by any agency of a State Government, unless the Insured is legally obligated to pay for such services; any injury or sickness covered by any Workmen's Compensation or Occupational Disease Law.

Conditions commencing within the six months prior to the effective date of coverage are not covered for a period of six months after the effective date of coverage.

RENEWAL CONDITIONS

The Medical-Surgical Policy is renewable for life as long as premiums are paid on time. The Company may change premium rates only on a class basis.

You have a ten day right to examine the policy and return it for any reason for a full refund.

This is an outline of coverage for the Medical-Surgical Policy Form GR-75J and is not a contract. The policy itself sets forth the rights and obligations of both you and the insurance company. It is therefore imperative that you READ YOUR POLICY carefully.

[1] **Complete policy forms retained in committee files.**

BANKERS LIFE AND CASUALTY COMPANY
4444 West Lawrence Avenue, Chicago, IL 60630

OUTLINE OF COVERAGE

For Skilled Nursing Facilty Policy Form GR-74B
(Retain this for your records)

The policy provides Skilled Nursing Facility Benefits only, which are supplemental to Part A of Medicare.

BENEFITS

The Skilled Nursing Facility Policy provides for each insured Family member the following:

If a Family member is confined in a Skilled Nursing Facility within 28 days after a confinement of 3 or more consecutive days in a hospital due to injury or sickness, the Company will pay during the 21st through the 100th day of confinement, the following:

The room and board expense incurred (not to exceed the reasonable and customary charge for semi-private accommodations); the expense incurred for services and supplies including regular nursing services; medicines and drugs; medical supplies such as splints and casts; use of appliances and equipment such as a wheelchair, crutches and braces; physical occupational and speech therapy; and other medically necessary services and supplies, but not to exceed the amount of Medicare Deductible for which the Family member is responsible. At the time of application, this amount is $18.00 per day.

Expenses due to medical or surgical services provided by a physician, surgeon on intern; services of a private duty nurse or other private duty attendant; blood of blood transfusion; custodial care; and personal comfort or convenience items such as telephone, radio or television furnished at the Family members request, are not covered.

During the 101st through the 400th day of confinement in a Skilled Nursing Facility, the Company will pay the above benefits, but not to exceed $15 per day.

If the insured Family member is not eligible or does not qualify to receive payments under any Federal Medicare Legislation or plan, the benefits provided by the policy will be paid as though the insured Family member was eligible or qualified to receive such payments.

If changes are made in Medicare benefits which effect the benefits provided by the policy, an appropriate adjustment in benefits will automatically be made with an appropriate adjustment in premium, if necessary.

EXCEPTIONS

The Skilled Nursing Facility Policy does not cover loss incurred while under the influence of any drug not administered by a physician.

Conditions commencing within the six months prior to the effective date of coverage are not covered for a period of six months after the effective date of coverage.

Other Insurance in this Company — Only one of these policies can be effective for the family at any one time. If more than one is effective, the Company will return all premiums paid for all other such policies.

RENEWAL CONDITIONS

The Skilled Nursing Facility Policy is renewable for life. The Company may change premium rates on a class basis.

You have a ten day right to examine the policy and return it for any reason for a full refund.

This is an outline of coverage for Skilled Nursing Facility Policy Form GR-74B and is not a contract. The policy itself sets forth the rights and obligations of both you and the insurance company. It is therefore imperative that you READ YOUR POLICY carefully.

3862A-G

BANKERS LIFE AND CASUALTY COMPANY
4444 West Lawrence Avenue, Chicago, Illinois 60630

OUTLINE OF COVERAGE

For Guaranteed Renewable For Life Hospital Confinement Indemnity Policy Form GR-74J
(Retain this for your records)

BENEFITS

The policy provides the following Hospital Indemnity for an insured family member for each day of hospital confinement, beginning after the applicable Elimination Period, if any, but not to exceed the Benefit Period for any one accident or any one sickness.

	Hospital Confinement Indemnity	Benefit Period	Elimination Period
Insured	$ 10 or $20 or $30 Daily	365	0 days
Insured's spouse	$10 or $20 or $30 Daily	365	0 days

EXCEPTIONS

The policy does not cover loss due to: Mental disturbance without demonstrable organic disease.
Conditions commencing within the six months prior to the effective date of coverage are not covered for a period of six months after the effective date of coverage.

RENEWAL CONDITIONS

The policy is renewable for life as long as premiums are paid on time. The Company may change the premium rates on a class basis.

You have a ten day right to examine the policy and return it for any reason for a full refund.

This is an outline of coverage and is not a contract. The policy itself sets forth the rights and obligations of both you and the insurance company. It is therefore imperative that you READ YOUR POLICY carefully.

BANKERS LIFE AND CASUALTY COMPANY
4444 W. Lawrence Ave., Chicago, Illinois 60630

OVER-65 HOSPITAL EXPENSE POLICY
REQUIRED DISCLOSURE STATEMENT

Form GR-764A

(1) *Read Your Policy Carefully*—This disclosure statement provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(2) *Medicare Supplement In-Hospital Expense Coverage*—Policies of this category are designed to provide, to persons insured, coverage for in-hospital expense incurred, as a result of a covered accident or sickness, which are not covered under Part A of Medicare subject to any limitations set forth in the policy. Coverage is *not* provided for physicians or surgeon fees. *Basic* hospital or *basic* medical insurance coverage is not provided.

(3) The Over-65 Hospital Expense policy provides Supplementary Hospital Benefits which are based upon the Federal Medicare Program. As of *January 1, 1978* the GR-764A provides the following supplementary benefits, during each benefit period, when you are confined in a hospital as a result of injury or sickness.

The initial Medicare deductible—$ 144.00

$ 36 per day from the 61st through the 90th day of hospital confinement.

$ 72 per day from the 91st through the 150th day of hospital confinement (or as long as Lifetime Reserve under Medicare is available).

From the 151st day (or when Lifetime Reserve is exhausted), 100% of all usual and customary expense for hospital services and medical supplies, including semi-private room and board (or Private, if such facility was medically necessary and used during the period of Medicare coverage). However, this would NOT cover medical or surgical services provided by a physician or surgeon. Nor would it cover the services of a Private Duty Nurse except as provided below.

After the 60th day of hospital confinement, the GR-764A pays the expense incurred for the services of a Private Duty Nurse (other than a member of your family) up to $20.00 per day as long as you are hospitalized—UP TO A MAXIMUM OF 100 DAYS.

AUTOMATIC BENEFIT EXTENSION—If the hospital benefits provided by the Federal Medicare Program change, then the benefits provided by the GR-764A policy shall also change to supplement the new hospital benefits provided by Medicare. Any premium adjustment that may be necessary will be explained on the first premium notice following such change.

(4) The GR-764A does not cover you during the first 60 days from date of issue, for any hospital confinement caused by a condition for which you've been medically treated or advised prior to policy issue. It does not cover loss due to mental illness, without organic disease; services rendered by any agency of Federal Government, including Veterans Administration; services rendered by a State Government agency, unless you are legally obligated to pay for the service.

(5) The Over-65 Hospital Expense Policy is renewable for life or until the aggregate benefits paid or payable equal $25,000 as long as premiums are paid on time. The Company may change premium rates on a class basis.

Appendix 4

STATEMENTS AND LETTERS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT OF MARY M. BACH, STAFF ATTORNEY, CENTER FOR PUBLIC REPRESENTATION, MADISON, WIS.

The Center for Public Representation is a public interest law firm engaged in issues impacting on the elderly. For the past several years, the Center has been actively involved in the Medicare supplement area. In addition to conducting advocacy training on the problems of Medicare and private health insurance, the Center has pushed for more administrative control over sales and advertising practices, greater disclosure to consumers and minimum standards.

Access for Senior Citizens, a project of the Center for Public Representation, is a new direct services program providing advocacy for the elderly in ten Wisconsin counties. The project is staffed by benefit specialists working under attorney supervision who provide assistance in the broad area of government benefits. ASC has found, to its surprise, that after six months of operation, private health insurance problems constitute the largest single issue affecting our clients and account for almost one-fourth of the total caseload. Related issues in the Medicare and Medical Assistance program bring the total to well over one-half. Attached is a Service Summary which provides a breakdown of the ASC caseload from September 15, 1977 through February 28, 1978.[1]

Also attached is a comment written by the ASC benefit specialist in Grant County which describes in some detail the types of issues we are encountering.

The Center for Public Representation and Access for Senior Citizens are particularly concerned about the sale of limited insurance such as cancer insurance and the sale of Medicare supplement and other health insurance to Medical Assistance-eligible people. Attached are copies of correspondence related to these two issues.

We are most pleased that the Committee is beginning to investigate this matter of grave concern to the elderly, and we would welcome the opportunity to provide the Committee with additional information.

ITEM 2. STATEMENT OF JO PEBWORTH, BENEFIT SPECIALIST, ACCESS FOR SENIOR CITIZENS PROJECT, CENTER FOR PUBLIC REPRESENTATION, MADISON, WIS.

The majority of people over 65 and on Medicare have different requirements for private health insurance than the rest of the population. Because they are on a fixed income, usually Social Security benefits—often supplemented with interest or dividends on their "life's savings"—their biggest concern is the possible reduction of income or assets. Adequate health insurance is essential in case of a catastrophic illness or accident to protect income and assets and the income assets produce. However, because a retired person's income is not affected by illness or injury beyond hospital, medical and nursing home expenses, indemnity plans are not necessary.

Medicare is a tremendous help for the elderly. Part A insures a person against the average hospitalization with only $144 deductible. Part B covers a major part of surgical and medical expenses. However, expenses incurred for catastrophic illness and accident will not be adequately covered by Medicare alone. Additional insurance is essential for most elderly people. Even adequately insured persons face many extra charges not covered by either Medicare or by private health insurance.

[1] Retained in committee files.

In the past seven months, in my work as Benefit Specialist in Grant County, I've worked with 191 individuals over 60. One hundred three of these clients had problems concerning insurance. All 103 were confused about how Medicare and private health and nursing home insurance pay. Some of my clients simply wanted their coverage reviewed and explained to them. Others needed advice on what to buy. Some had too much insurance. Some had inadequate coverage. Many needed help submitting claims. In the following report I'll explain the problems I've encountered in each area.

TOO MUCH INSURANCE—24 CLIENTS

People over 65 often have too much insurance because they:

(1) Don't understand Medicare.

(2) Don't know what they need, but know Medicare won't pay everything.

(3) Are afraid of cancer and accidents.

(4) Are worried about going to a nursing home some day.

(5) Are disoriented, forgetful and confused. Some don't realize that they have existing policies in force. Others won't show an agent what policies they do already have.

(6) Have run into sales people who neglected to explain coverage adequately or who sold more coverage than a person needed, or who didn't check to see if a person was on Medical Assistance (but some elderly people I've met didn't realize they were on Medical Assistance or how it paid).

(7) Often find it very hard to turn down a salesman.

The clients I have worked with who had too much insurance usually have at least one adequate Medicare supplement and perhaps a skilled nursing home policy. Their additional coverage usually includes two to five accident indemnities and a cancer plan. A few have had two or three Medicare supplements and some have been sold intensive care plans. They are often paying $200 to $600 or more annually for unnecessary coverage. Through explaining and listing a client's policies and premiums, the policy holder realizes how much he actually is spending on insurance and that he or she can cut down his or her insurance costs drastically and still maintain very adequate coverage. The amount people spend on insurance for simply adequate comprehensive coverage is very high. Medicare Part B costs $89.40 and a Medicare supplement from $200 to $500. Add a skilled nursing home plan and the cost per individual can run over $800 a year for health insurance. Counseling is essential to explain how private insurance works with Medicare and to show how a person can reduce their insurance costs.

HELP WITH INSURANCE CLAIMS—17 CLIENTS

Once an elderly person has been in the hospital, even with adequate insurance and Medicare, coping with Medicare and private insurance claims can be a nightmare.

(1) Often one hospitalization results in bills from four of five doctors each having different "rules" for the patient to follow in submitting claims to Medicare and private insurance.

(2) After claims are submitted many people don't understand how the benefits are determined. The confusion usually arises over the difference in the amount billed and the amount allowed by Medicare.

(3) Many people don't submit claims when they are eligible for benefits. One client with insurance covering prescription drugs had never submitted a claim. She is eighty-six and has been on set medication for years. Other clients have stopped submitting claims when the process became too lengthy and confusing.

(4) A few clients were completely confused by the claims processes and couldn't submit a claim without help.

(5) Once a hospital would not take the extra step necessary to resubmit claims for eligible benefits.

(6) Some insurance companies send classic letters of confusing information, understandable only if a person has a complete past record of correspondence and billing at their disposal, i.e. the insurance company knows what they are talking about; the client has no idea.

(7) Elderly people often lose Explanation of Medicare Benefits, riders to policies, and sometimes even checks.

For many of the 17 people I've helped with insurance claims, an explanation of how their claims were paid—checking amounts against bills—was all that was necessary. We pore over Explanation of Medicare Benefits, the Medicare Handbook, insurance policies, explanation of benefit letters, and usually it all

comes clear and no mistakes have been made. This is a confusing, frustrating experience, even for me, and I've seen lot of bills, Explanation of Medicare Benefits and insurance settlements. It is a frightening thing for an elderly person to think that (s)he may have been cheated, or that (s)he may have not made a claim correctly, or (s)he should have gotten more money and (s)he can't understand why or what or who or how. Medicare and one Medicare supplement paying on a single hospital stay can be a nightmare of confusion for an elderly person. A few cases have been very complicated. The client and I just cry together and keep on trying.

INADEQUATE INSURANCE COVERAGE—8 CLIENTS

Clients who have inadequate coverave may:

(1) Believe Medicare is sufficient. Since Medicare alone pays as well or better than lots of insurance people may have had before reaching 65, they believe they don't need further coverage. Usually they are not prepared financially to co-insure with Medicare.

(2) Think an indemnity plan or disease plan is sufficient. Unfortunately insurance agents often sell a policy with a daily hospital indemnity and a surgery schedule and imply (or mistakenly think themselves) that this is all a person needs to supplement Medicare.

(3) Have purchased packages of insurance which may be incomplete. The AARP plans are an example of this, and there are others sold in Grant County.

I've had eight clients with private insurance that did not adequately supplement Medicare. Most of these had indemnity plans, some with surgical schedules. Sometimes the plans were limited, i.e. accident or cancer policies. It requires a knowledge of all the health plans available to residents of Grant County to be able to counsel people on how to supplement existing insurance. Fortunately with the new rules for Medicare supplements in Wisconsin, a lot of the "guess work" is taken care of in this area.

NEED ADVICE ON WHAT TO PURCHASE—16 CLIENTS

Shopping for a Medicare supplement is somewhat easier now in Wisconsin with the new state rules enacted by the Commissioner of Insurance. However:

(1) There are presently problems with prices of qualifying plans. As of today only one plan can be honestly recommended.

(2) Because most companies don't have a qualifying Medicare supplement to market right now—many people will buy indemnities and surgery schedules to supplement Medicare.

(3) People approaching eligibility for Medicare don't understand how it pays. The Medicare Handbook is excellent but still confusing to some elderly people.

(4) People with existing coverage don't realize they can often convert to a Medicare supplement with the same company for a lower premium.

(5) Some people refuse to purchase Medicare Part B.

(6) People don't understand pre-existing condition clauses.

I've advised 16 people on what to purchase. As of May 1, there was only one Medicare supplement in Wisconsin I could advise a client to purchase, because of its rating (2) and cost ($17 less than any other plan regardless of rating). I use the Insurance Commissioner's booklet, "Health Insurance Advice for Senator Citizens" 1978, to explain Medicare supplements and find it a valuable tool.

NURSING HOME COVERAGE—EVERY CLIENT

Because one out of five elderly people in the U.S. will spend some time in a nursing home during a lifetime, nursing home bills pose a real threat to a person with a limited income and assets to protect. In Wisconsin at this time there is no adequate insurance for all types of nursing home care. There is "Nursing Home" insurance available and it is marketed widely in Grant County. The policies themselves are adequate for two to four years of skilled nursing care in a state-approved nursing home. As nursing homes are used more and more as a recuperative step between the hospital and final recovery at home, skilled nursing home policies can be an important part of an elderly person's total insurance coverage (depending on a person's asset level and possible eligibility for Medical Assistance). These policies, the nursing home coverage in many Medicare supplements, and the coverage Medicare provides are often confusing to elderly people because:

(1) They don't understand the difference between Skilled and Custodial Care, and therefore don't realize a nursing home plan won't pay on all nursing home bills.

(2) Most nursing homes are not covered by Medicare.

(3) They don't realize that Medicare rarely pays for nursing home care because of strict regulations in Medicare-approved homes for care to meet Medicare standards for payment.

(4) Many Medicare supplements and nursing home riders and policies only pay when Medicare pays in a Medicare-approved home.

(5) Strict requirements must be met before any skilled nursing home will pay.

I spend time with each client explaining custodial and skilled care and where and how Medicare pays for care in Grant County nursing homes. Recently I've developed a speech to give to senior citizen groups on nursing home coverage—it takes a good 15 to 20 minutes to explain nursing home insurance. Emphasis must be placed on the inadequacies of Medicare in this area and also how a person should examine his or her own financial situation to determine whether a nursing home policy is advisable in his or her case. A nursing home stay is often devastating financially because often income-producing assets must be dispersed to pay for care. The tragic situations are: a wife or husband outside the nursing home depleting life's savings until the nursing home resident is eligible for Medical Assistance, or the single person, returning home to a reduced income after depleting income-producing assets to pay for a lengthy nursing home stay.

SUMMARY

The problems I've encountered concerning insurance to supplement Medicare are caused by ignorance on the part of people selling insurance and of people buying insurance and of people collecting insurance claims. Ignorance on the part of elderly consumers is understandable because this is a very confusing area. Unfortunately published statements often add to the confusion.

"Insurance to supplement Medicare and Medicaid" when Medicaid needs no supplement.

"Medicare pays for the first 20 days in the nursing home" when very few nursing homes are Medicare approved. Medicare, in fact, pays for only around 3% of the nation's nursing home bill.

There is a lot of education necessary in all segments of the health care system from consumers, to insurance salespeople, to doctors, to Medicare clerks, to hospital social workers, to Social Security Claims Representatives. Many of these people are excellent in their ability to counsel on Medicare and insurance; some aren't. Unfortunately for the person 65 or older it's difficult to become knowledgeable on all the facets of health care and insurance. Getting advice from someone not well acquainted with the health care financing picture in his or her town or county can be disastrous.

The answer to most complaints is education and someone to call for help RIGHT NOW when things are going wrong. I want to see more health care financial management counseling done on a local level. The health insurance counseling and help with claims that I provide is inadequate for the number of elderly people in the area I serve. From my work so far I believe the great majority of people over 60 in Grant County need information and/or advice on insurance. Many need help submitting and understanding insurance claims.

Presently I provide group counseling through speaking on Medicare and Medicare supplements and nursing home insurance at senior citizen clubs or on the radio. I provide individual counseling at a client's home or other location (office, nutrition site, senior citizen club). This counseling includes an explanation of existing policies and Medicare, and discussion of the client's unique problems (including financial situation if necessary). If help with claims is necessary, this is provided. In all cases the client is encouraged to take necessary action once (s)he understands what must be done. Otherwise I help with claims. In all cases follow-up is provided.

The attached letter describes a case I'm working on with a couple which has become a short course on insurance counseling and filing claims. I'm not only concerned with this couple's latest hospitalization, but with past medical care as well. They had too many policies: a group health plan, AARP plans, three Medicare supplements, a nursing home plan, cancer plan, and accident plans.

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They had no knowledge of which policies were in force. Before I started working with them they had many doctors and hospitals submit claims on policies that were not in force at the time. Even now when they receive benefits, they are reluctant to apply them to their medical bills, and they are reluctant to drop any policies that are in force. They have no family in the immediate area to assist them in filing claims. I have been able to recover about $475 for this couple so far. They illustrate practically all the problems elderly are apt to encounter with Medicare and private insurance. And because of their nursing home bill (in a Medicare-approved skilled nursing home no less!) all the money I can collect from every one of their policies still won't come close to paying for their health care in 1977.

ITEM 3. LETTER TO RICHARD AUDETAT, GRANT COUNTY COMMISSION ON AGING, LANCASTER, WIS., FROM DENISE HILL, PLATTEVLLE MUNICIPAL NURSING HOME, PLATTEVILLE, WIS., DATED MAY 1, 1978

DEAR MR. AUDETAT: I would like to comment on the recently developed position of Benefit Specialist for Grant County. I am the social worker at the Platteville Municipal Hospital and Nursing Home, and I am approached often by patients, residents, and families with questions regarding Medicare and insurance. My knowledge of such matters is limited, and in one case in particular I called upon Jo Pebworth for help. The case involved a married couple who had been in our nursing home for several months. They were about 90 years old, and had been handling their own financial affairs. Their children lived out of town, and they were not willing to let their friends and neighbors get very involved in their business. During their stay in the nursing home, I had many discussions with them regarding their financial resources, Medicare, and their insurance coverage. They were not eligible for Title XIX, and had minimal coverage in the nursing home by Medicare Extended Care. They had limited financial resources, and were very concerned about the cost of their nursing home care. During the course of our discussions I discovered that they had numerous insurance policies, (at least 8 or 9 each), some of which they thought covered nursing home care. Unfortunately, they had no copies of the policies with them, and their records at home were incomplete and disorganized. I worked closely with the couple and with our nursing home insurance clerk to try to uncover the facts about their insurance coverage. It was quite time-consuming for the insurance clerk and myself, and very frustrating and worrisome for the couple. When the couple was discharged to their home in October 1977, we were still awaiting replies from several insurance companies, and their bills were still pending. At this point, I explained the situation to Jo Pebworth, and asked her to help us. Since I have neither the time nor the expertise to do the amount of follow-up that would have been necessary after their discharge, the availability of a Benefit Specialist proved to be an invaluable resource. I have spoken with this couple several times since their discharge, as well as with Jo. It has been a very time-consuming case for her, also, and they have told me how grateful and relieved they are for her assistance. By corresponding with insurance companies, identifying overlapping policies, and advising them as to which policies are necessary, she has enabled them to significantly reduce their premiums. By working with me and with our insurance clerk, she is gradually straightening out their nursing home bills. In addition to saving them money, Jo has been able to save them countless hours of worry and frustration. Had there been no Benefit Specialist to call on, I honestly do not think the outcome would have been nearly as favorable.

This rather lengthy narrative is just one example of an instance in which a Benefit Specialist was a valuable resource. I hope that such an involved case won't come up again, but I have learned that the lack of information regarding Medicare and insurance is widespread, especially among the elderly. The accessibility of knowledge and skilled intervention in this area is a necessity for Grant County.

Sincerely,

DENISE HILL.

Appendix 5

"WHAT YOU SHOULD KNOW ABOUT HEALTH INSURANCE WHEN YOU RETIRE," PUBLICATION OF HEALTH INSURANCE INSTITUTE, WASHINGTON, D.C.

Introduction

This short booklet is designed to give you the practical information you need to know about Medicare and about the use of private insurance after you retire to help you avoid the costly expenses associated with periods of illness requiring hospitalization and surgery.

Because the gaps in Medicare can add up to considerable expense, private insurance companies have developed a number of gap-filling coverages.

In the following pages, we will introduce you to the meaning of some common health insurance practices; we'll analyze how Medicare works in practical terms and we'll show you how supplementary policies can fill in the gaps.

Obviously this little booklet won't turn you into a health insurance expert. But we hope we can give you enough understanding of these important government and private health programs to enable you to deal more confidently with the choices available to you.

On the next few pages are plain language definitions of health insurance terms. Once you have read through them, the rest of the booklet should be easy to understand.

4

Some common health insurance practices

Health insurance policies can appear confusing. Because they are legal contracts, they employ precise legal language. We won't try to tell you what all the terms mean. But we can describe in everyday language the concepts those words spell out legally. The concepts employed by both the Medicare program and by private insurers are marked with an asterisk.

***Deductible:** An initial amount of health expenses for which you are not compensated.

***Co-insurance:** A percentage of a health expense for which you are responsible after paying the deductible amount. A policy that uses co-insurance typically would pay up to 80 percent of a given expense, and you would pay the remaining 20 percent.

Pre-existing Condition: A current health problem which you had prior to becoming insured.

Exclusion — In connection with a pre-existing condition, it means that the policy will not pay benefits for illness arising from that condition.

Waiting Period — It means benefits will not be paid for a pre-existing condition until after you have had the policy for a specified period of time.

Elimination Period: This applies to a certain type of plan called a "hospital income policy", in which benefits may not be paid under the elimination period for the first several days of hospitalization. Elimination periods vary from policy to policy and from company to company. The result is their length can be selected: the longer the elimination period, the lower the cost of insurance. But you are less likely to receive benefits for a short period of illness.

***Benefit Maximum:** The limit a policy will pay for a given benefit. A benefit can be expressed either as a length of time (for example, 60 days of semi-private hospital room charges), or as a dollar amount (for example, $350 for a certain procedure).

Lifetime Maximum: Most plans have an upper limit on the total benefits they will ever pay. This lifetime maximum is commonly quite high.

Reinstated Benefits: Some policies will restore the lifetime maximum according to a specified schedule during periods when you are not drawing benefits.

Entrance Age: The age up to which the company will sell you a policy. Entrance ages vary considerably from company to company and some policies can be bought at any age.

Guaranteed Renewable: The company agrees to continue insuring you up to a certain age as long as you pay the premium; and it cannot raise your premium unless it raises premiums for a particular class, such as everyone in your geographical area with the same kind of policy. Some policies are guaranteed renewable for life.

Conditionally Renewable: The company will continue insuring you as long as it continues to insure people in your state with the same kind of policy.

Renewable at Company Option: The company reserves the right to stop insuring you as an individual. However, you cannot be cut off from receiving benefits under the policy in the midst of an illness.

6

Medicare

Medicare was never meant to be an all-inclusive health insurance program. It is designed mainly to relieve people aged 65 and older of the major part of medical costs associated with hospitalization, surgery and lengthy periods of recovery.

Local Social Security offices keep a booklet on hand which describes in detail how it all works. Deductibles and co-payments are periodically changed and it is sound practice to keep a current copy handy.

The summary that follows shows how Medicare works and what it does not cover.

Medicare Part A *(Hospital Insurance)*

The first part of Medicare (Part A) is primarily a hospital insurance program. After you pay a deductible amount of $144,* Medicare pays for 60 days of full hospital care for each spell of illness, including all of the charges customarily associated with a hospital bill, such as the semi-private room rate, meals, regular nursing services, laboratory and X-ray fees, intensive care costs, operating and recovery room, drugs, casts, dressings, splints and in-hospital therapy services.

If a spell of illness goes beyond 60 hospital days, you become responsible for a $36* daily co-payment, up through the 90th day.

In effect, the program provides for most of the cost of 90 days of hospitalization each spell of illness.

In addition, the program provides a 60-day "lifetime reserve" of hospital days against which you can draw, should any spell of illness extend beyond 90 days. You must pay $72* for each day you use the "reserve."

Medicare Part A also pays toward extended care in a skilled nursing home, as well as part-time skilled nursing care at home. It works this way:

After a hospital stay of at least three consecutive days, Medicare helps pay for up to 100 days of extended care in a skilled

nursing facility, provided the nursing is certified as being connected with the illness that put you in the hospital. As with the hospital coverage, the nursing home benefit pays the charges normally associated with these facilities. The first 20 days of nursing home care are paid in full; the next 80 days of care requires an $18* daily co-payment from you. Your eligibility depends upon your need for skilled medical services. The program does not cover custodial care in a nursing home.

Medicare Part A also provides for 100 home nursing visits by skilled paramedical personnel. These benefits can include therapy, skilled medical services, and supplies and equipment provided by home health care agencies.

Medicare Part B *(Medical Insurance)*

The second part of Medicare, the one you pay premiums for, helps pay for physician and surgeon services both in and out of a hospital.

It works this way:

After you have paid a $60 deductible amount, the program will pay for 80 percent of reasonable medical charges; you are responsible for 20 percent of those charges.

The key word here is "reasonable" and Medicare determines what is a reasonable charge. It could be considerably below a physician's normal fee. Some physicians accept that figure but others do not.

So the basic question to ask when seeking medical services is: Will your physician or surgeon accept Medicare "assignment" — that is, accept only what Medicare will pay the doctor?

If so, your out-of-pocket expenses are limited to the deductible amount of $60, plus 20 percent of the doctor's charges. If not, your out-of-pocket expense will be (1) the deductible amount, (2) the 20 percent co-insurance and (3) that part of the doctor's charges in excess of Medicare's definition of a "reasonable" charge.

Aside from physician and surgeon benefits, Medicare Part B has a number of other benefits — most of them subject to the

*Deductibles and co-payments cited were those in effect as of January 1, 1978.

deductible and 20 percent co-insurance features. Remember, you do not pay the deductible every time you use one of these services. Once it is paid for — it is done with for the calendar year.

Other Medicare Part B benefits pay toward diagnostic tests, prosthetic devices, medical supplies, independent laboratory tests, certain ambulance services, radiology and pathology services, and administration of drugs that you cannot administer yourself, physical and speech therapy services and limited out-patient psychiatric, chiropractic and dental surgical care. Emergency room and out-patient clinical benefits are also included.

The Part B program, like Part A, includes 100 home visits by skilled paramedical personnel. These can be used after the 100 visits of the Part A program are exhausted, or independent of a stay in a hospital, provided your illness is covered under Part B of Medicare.

A close look at the gaps

Medicare Part A (the hospital part) does not provide for all costs, but the gaps usually do not create big out-of-pocket hospital costs if you are ill for only a short while. The $144 deductible, which you pay, can usually be met by people living on a retirement income and the co-payments do not start until the 61st day.

However, a long illness and recovery period could mean some sizable costs. Your co-payments of $36 a day from the 61st to 90th day could run up your part of a hospital bill to more than $1,000. And if you had to use the "lifetime reserve" each day would cost you $72 in co-payments.

A working knowledge of Medicare can sometimes reduce this potential expense. If your illness looks as if it may last a long time, you and your physician should discuss whether the latter part of your treatment can be managed in a skilled nursing facility

instead of the hospital. From a cost point of view, this transfer should be made before you would have to begin co-payments. If you are eligible, the first 20 days in a nursing facility are paid by Medicare and the remaining 80 require daily co-payments by you of $18—substantially smaller than the $36 hospital co-payments.

And if the remainder of your recovery can be managed at home, you can also cut costs. Part A provides for 100 home health care visits per benefit period in connection with an illness that required hospitalization, while Part B provides another 100 visits.

This brings us to the gaps in the Part B program (the professional service part). These are less well-defined in dollar terms. You will recall that with Part B you would have to pay a $60 yearly deductible amount. But the rest of the gaps are expressed not in dollars, but in percentages of the bills. Since Part B pays for 80 percent of reasonable charges, bear in mind that important word "reasonable." If, for example, your doctor bills are higher than Medicare allows as reasonable, you become responsible for not only the 20 percent co-payment, but for everything over the allowable charge as well.

Furthermore, private duty nursing, which is sometimes required, is not covered. Nor are prescription drugs that you might require after you leave the hospital.

So, taken together, there is a sizable risk of incurring some substantial out-of-pocket costs under Medicare.

Closing the gaps

First let's face the uncomfortable realities. As people age and become more prone to illness, the cost of insuring against illness goes up. Also, the longer you put things off, your choices of insurance policies become fewer.

So, assuming you've got several years before you reach age 65, let's examine what's available beforehand.

Before age 65 . . . Group insurance

The first thing to do is to check your group health insurance plan where you work, or in your professional or fraternal organization.

There has been a trend among new group plans to continue some coverage after retirement, with some employers paying part or all of the costs.

If that's the case with your plan, examine the benefits with your employee benefit personnel to see if those benefits cover the gaps we've discussed. If they do, take advantage of the privilege of continuing your health insurance when you retire, because group insurance benefits are often less expensive than what you can buy as an individual. You still may find it advantageous to continue a group plan that doesn't fill in all the Medicare gaps, and purchase an individual plan for those that remain.

Another point on your group insurance: Find out if there is a Health Maintenance Organization (HMO) in your area which accepts Medicare enrollees. If there is, your group health insurance in most cases automatically gives you the option of joining it.

An HMO is a community medical service plan. Its annual fee entitles you to its health facilities, professional services and supplies. HMOs which accept Medicare members compute the dollar-value of your Medicare benefits, plus the value of your supplementary group coverage, and charge you in dollars what it takes to meet their annual fee.

There is a reasonable chance your current group insurance, if it can be carried over into retirement, will serve as an adequate supplement to Medicare. There's also a chance that you don't have a group plan, or that your present plan is either inadequate or won't carry over. In that case you must then consider . . .

. . . Individual insurance

Let's next explore a couple of approaches you can consider prior to retirement.

Major Medical. This is a policy which individuals sometimes add to their basic group health insurance coverage, if it's not

provided by the group. It carries a deductible amount, which you pay, but which often can be met by the basic group plan. Major medical insurance has a co-insurance feature, for example 20 percent of expenses, which you pay; the insurance company pays 80 percent. Lifetime maximums under major medical insurance are quite high.

If your individual major medical policy is guaranteed renewable for life, it can extend the range of Medicare for you (since you can continue it into retirement) and it may cover hospital co-payments and some of your out-of-hospital, out-of-pocket costs. But you must check with the insurance company that issued it to determine precisely what benefits are available when you reach age 65.

It may be worthwhile to continue your policy into retirement, because almost all individual policies bought after age 65 include a waiting period, during which a prior health problem is not covered by the insurance. Here you would be vulnerable to out-of-pocket expenses from an ailment you were treated for beforehand.

There is another type of policy which you may want to consider buying prior to age 65.

Hospital Income Policy. This is a limited policy but has wide uses. Its benefits are paid only when you are hospitalized, but these benefits are in cash, which can be used for any purpose — filling Medicare gaps, extending Medicare's range, paying for anything that Medicare and other supplementary insurance doesn't pay for, including prescriptions at home, private duty nursing, out-of-pocket physician's charges and for building up a health cost reserve against future illness.

There are many types of hospital income policies. They are available either through agents or directly from insurance companies by mail. Like any product line that offers many choices, these policies require care in matching the plan to the need. They will also require periodic updating because their benefits are in dollars and health care costs continue to rise. And, as in the case of most individual major medical policies, hospital income policies contain a waiting period if you are presently ill, or have been recently ill, which is a reason for making your purchase before age 65.

If you are carrying over some health insurance into retirement, a hospital income policy can be useful in filling small gaps in an overall health insurance plan before age 65. How this type of policy can be used after age 65 will be discussed in the next section of this booklet.

After retirement . . .

If you've carried no private health insurance over into your retirement, there are choices available to you when you become eligible for Medicare. Two basic types of policies are available — the aforementioned hospital income policy, and the so-called wrap-around policy. And there are different ways to buy them — through agents, directly from companies by mail or through associations of retired individuals.

The big difference between the "wrap-around policy" and the hospital income policy is the type of benefits they pay. Each can serve as a satisfactory way to fill in the gaps that Medicare does not pay.

The wrap-around policy . . . This policy typically pays a high proportion of health expenditures Medicare doesn't pay for: First-day hospital deductible amount of Medicare Part A and the co-payments that begin on the 61st hospital day. Such a policy may also pay the $60 deductible amount associated with Medicare Part B and the 20 percent co-payment on physician and medical services you would ordinarily be responsible for.

Wrap-around policies typically will pay for a substantial part of a number of other health services not fully covered or not covered at all by Medicare, such as out-of-hospital prescription drugs, medical appliances and equipment.

Often these policies in effect, extend the number of hospital days covered under Medicare and they may also pay for the co-payments involved in a skilled nursing home stay.

Wrap-around policies vary somewhat from one another, but generally they fulfill their definition — that is, they wrap around and fill in the gaps of Medicare.

Wrap-around policies are available through agents of a number of insurance companies; through Blue Cross-Blue Shield organizations; and through at least two major retirement associations.

The hospital income policy . . . As noted, this kind of policy pays its benefits in cash on a daily basis when you are hospitalized. Because Medicare covers most of the cost of up to two months of hospitalization, many people set aside the early benefits of these policies against out-of-pocket costs that develop later in a spell of illness.

If a hospital stay doesn't generate big out-of-pocket costs, the benefits that are paid in cash under a hospital income policy can be banked to establish a health cost reserve against future illness.

To review, these plans deliver cash. It's up to you to pay the out-of-pocket costs as they arise.

In purchasing one or more of these policies, these are the elements to take note of as you match plan to need:

Pre-existing condition clause: This clause varies from policy to policy. Such a condition may delay the start of coverage for the condition from one to two years, or for as little as three months. The longer the period, usually the lower the premium — but also the longer your vulnerability to out-of-pocket costs if a pre-existing health condition requires treatment.

Daily benefit amount: Hospital income plans provide benefits ranging from a low of $10 a day to $80 a day. Some plans increase the daily cash benefit when hospitalization goes beyond a stated length of time.

Elimination period (sometimes called benefit waiting period): Some policies begin paying on the first day of hospitalization; others have different waiting periods. The longer the waiting period, generally, the lower the premium, and the likelier you will receive no benefits during a short illness.

Duration of benefits: Most of these policies pay their cash benefits from one to two years, as long as you are hospitalized. Some pay for less than one year; some for an unlimited duration of

a hospital stay. Some include benefits — usually at half the hospitalization benefit rate — for skilled nursing home stays which follow a period of hospitalization.

Entrance age: Many of these policies are written for retirees and can be purchased by people in their middle 60s, or 70s, and 80s. Some have no entrance age limit.

Renewability: It comes in three forms:

- Guaranteed renewable for life.
- Conditionally renewable, which means the company can't drop you as an individual policyholder, but it can cease to renew that particular policy in a given geographical area.
- Optionally renewable, which means the company has the option of ending your policy, at the end of a policy year, or when a premium falls due. You cannot, however, be cut off from benefits that are already begun during a covered hospitalization period.

Licensing: If the company is licensed to sell insurance in your state you will have recourse to your state insurance commissioner should a dispute arise.

Retirement associations . . . There are several associations of retired individuals that offer supplementary insurance. Membership fees in these associations are nominal and, in addition to offering insurance plans, they provide other programs of interest to retirees.

Typically, the health insurance plans they offer are wide ranging, permit enrollment regardless of previous health history and have fairly short waiting periods for pre-existing conditions.

15

Talking it out

The following hypothetical conversation was developed from questions people frequently ask about supplementing Medicare.

Q. What is the first contact I should make?

A. Your local Social Security office. And do this at least several months *before* you reach 65. At work, contact your employee benefits person to find out if your group health insurance can be continued after 65 as a supplement to Medicare.

Q. What if it can be continued?

A. Check the benefits carefully to be sure there are no big gaps in insurance protection left between your plan and Medicare. If there aren't, most of the problem is non-existent.

Q. Most of the problem?

A. Remember that even with the major health protection gaps covered, there will be out-of-pocket expenditures. Sometimes these can be financed from current income or savings. But if it looks like these may be a burden, you should consider an individual policy to cover the extras.

Q. What if I can't continue my group coverage — or if continuing it doesn't seem advantageous?

A. There are basically two kinds of individual supplementary insurance plans you can buy: A "wrap-around policy" (described on Page 12) and a hospital income policy (described on Page 13).

Q. Where are they available?

A. Wrap-around policies are available through agents of some insurance companies; through at least two retirement associations; and at several of the area Blue Cross-Blue Shield organizations. Hospital income policies are available from insurance companies, either through agents or directly by mail, and from retirement associations.

Q. Hospital income policies pay only when you are hospitalized. Wouldn't this duplicate Medicare coverage?

A. True, they pay benefits only upon hospitalization. But they pay their benefits in cash, which you in turn can use to pay for any out-of-pocket costs that develop.

Q. Which is better?

A. Each has its strengths. Wrap-around policies generally try to do the job for you by covering the obvious gaps in Medicare, and by extending benefits beyond Medicare levels. Also because they pay their benefits as a percentage of the actual costs, these policies tend to respond automatically to inflation with higher benefits. This, in turn, is naturally reflected in periodic premium rises.

Hospital income policies pay their benefits in the cash you need to pay what Medicare does not, but you have to keep an eye on rising health costs. If they outrun your coverage, you might have to buy an additional policy — supplementing the supplement, so to speak.

Q. If that happens should I drop one policy for another with higher benefits?

A. Not necessarily. Often it's more advantageous to buy another policy for its additional cash benefits. A new policy will probably not cover a pre-existing health condition for a time, but this is usually not the case with a policy you already own.

Q. What about the "elimination period" where benefits are not payable immediately? Is it best to get first day coverage in the policy I buy?

A. Again, not necessarily. Decide if you can balance the benefits you want against the premiums you can afford. You may, for example, be able to pay for a short stay in a hospital out of your own pocket. If you think you can weather the first week without supplementary health insurance benefits, you could buy a policy with an eight-day elimination period and cut your premium by half. Also, some policies are specifically written to pay costs associated with Medicare co-insurance, which begins on the 61st day of a hospital stay and rises only after the 90th day. While premiums for such a policy are relatively low, the plan might not provide any cash for you to put aside against co-payments under Medicare Part B, or for health expenses you might have after leaving the hospital. A policy with a shorter elimination period would do this. For this reason, many retired people use the less expensive, long-elimination period policies as an extra supplement.

Q. If I've got ample supplementary coverage, should I consider dropping the Part B section of Medicare?

A. Never. Part B Medicare premiums are subsidized by the government, which means you get more for your dollar than through any other approach. Private health insurance is designed to dovetail with the Medicare program, not compete with it.

Q. Are nursing home benefits included in supplementary health insurance policies?

A. *Skilled* nursing home benefits may be. Custodial nursing home benefits, no. The general rule is if the patient requires professional nursing services in connection with an illness, it's covered. If it is custodial, it's not covered.

Q. What about nursing care at home?

A. Medicare provides for specified types of home nursing care. Some private health insurance policies also do this.

Q. Is private duty nursing in the hospital included in any policies I might buy?

A. Yes.

Q. Can I buy more than one such policy and have them both pay me?

A. That depends. Two hospital income policies will each pay their benefits, but generally, it's in your own interest to avoid over-insurance. A "wrap-around policy", and a hospital income policy often will both pay. But two wrap-around policies could cause problems, because the benefits likely would exceed the actual charges. It doesn't make sense to profit from an illness, and insurance companies usually follow this rule.

Some final tips

• As you can see, both the Medicare program and many private supplementary health insurance plans are designed to keep you from going broke because of medical bills. So you have a continuing stake in not over using expensive health facilities.

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• Start a health emergency fund of your own. There will always be some out-of-pocket expenses associated with a period of illness, even with Medicare and a sound supplementary health insurance plan. If possible keep your emergency fund in a joint savings account so someone else can get to it when it's needed, if you can't.

• Skilled nursing services, either in a nursing facility or at home are made available — if you meet the qualifications — to help you avoid the higher costs of long periods of hospitalization.

• Your choice of physicians and surgeons should depend on your confidence in their skills. But don't hesitate to ask them about their fees and how they are to be paid.

• Your choice of supplementary health insurance should be made very carefully. Investigate, weigh benefits, compare, ask questions and don't be satisfied until you get plain-language answers.

• Claim forms should be made out carefully and fully. If they're not, delays may result, costing you money and concern.

• Check your bills and watch for deductible amounts which you must pay first.

• Don't overinsure. There are a lot better things to do with money in retirement than to pay premiums that duplicate or overlap other insurance coverage.

• Keep your health insurance up to date. Some policies adjust to inflation better than others. But health cost inflation is particularly virulent. So make sure the benefits of your policies have not been outdistanced. Review them annually.

• Don't drop one policy and buy another with similar benefits merely because the second one looks a little better, or is a little less expensive. You could delay benefits under a brand new policy.

• Use your health emergency fund to cover small expenses.

• Keep your health insurance policies in one place that is readily accessible and tell those close to you where they are. Then make a list of the policy numbers and the companies that issued them in case the originals are lost or misplaced.

Appendix 6

DECISION BY CALIFORNIA DEPARTMENT OF INSURANCE REGARDING AMENDMENTS AND ADDITIONS TO REGULATIONS RELATING TO INDIVIDUAL DISABILITY POLICIES DESIGNED TO SUPPLEMENT MEDICARE, DATED MARCH 21, 1978

STATE OF CALIFORNIA,
DEPARTMENT OF INSURANCE,
San Francisco, Calif.

In the Matter of the Proposed Amendments and Additions to the Regulations of the Insurance Commissioner Relating to Individual Disability Policies Designed To Supplement Medicare

Ruling No. 221; File No. RH-191

DECISION

The attached Proposed Decision of Peter Groom, Deputy Insurance Commissioner, is hereby adopted by the Insurance Commissioner of the State of California as his Decision in the above-entitled matter.

IT IS SO ORDERED this 21st day of March, 1978.

ROGER L. MCNITT,
Chief Deputy Insurance Commissioner.

PROPOSED DECISION

The above-entitled matter came on regularly for hearing in accordance with Notice published and disseminated pursuant to law before Peter Groom, Deputy Insurance Commissioner, in San Francisco, California, on November 1, 1977, in Los Angeles, California, on November 2, 1977, and in San Diego, California, on November 3, 1977, at which times exhibits, statements, arguments and contentions, both written and oral, were received. At the conclusion of the hearing the matter was submitted for decision, subject to the record being continued open until the close of business on December 7, 1977, to allow the filing of further statements and exhibits with respect to the matters covered by the hearing.

The matter having been duly heard and considered, the following PROPOSED DECISION and ORDER are hereby made.

HISTORY

California Insurance Code § 10293(a) authorizes the Insurance Commissioner to withdraw his authorization for issue of individual hospital, medical and surgical policies if he finds that the benefits such policies provide are unreasonable in relation to the premiums charged therefor. The regulations promulgated pursuant to the cited section (Title 10, California Administrative Code, Chapter 5, Subchapter 2, Article 1.9) establish a 50 percent "benchmark" loss ratio (subject to certain corrections) as the minimum which a policy may attain and still be deemed to provide reasonable benefits relative to premiums. The regulations require that loss ratios for policies subject thereto be separately reported in a supplemental exhibit attached to insurers' Annual Statements.

Late in 1976, this Department's attention was drawn to the fact that a number of individual Medicare supplement policies issued in California did not appear to be attaining loss ratios of at least 50 percent. A list was then developed of all

such policies and the loss ratios therefor, pursuant to Title 10, California Administrative Code § 2222.13, which provides that the Commissioner may review the loss ratios of any policy ". . . at any time that he determines such review to be advisable or necessary". This list confirmed that numerous individual Medicare supplement policies were attaining loss ratios below 50 percent.

Medicare supplement policies differ from other types of hospital, medical and surgical policies in several respects. Basic benefits payable under such policies have changed almost annually since the inception of Medicare because of increases in Medicare deductible and co-payment amounts. Although claim amounts are usually modest, claim frequencies are high, which suggests high claims expense ratios. However, Medicare fiscal intermediaries perform the basic claims adjustment, which tends to balance the high claim frequencies when determining final expense ratios. In view of these and other factors, it was decided to hold public Investigative Hearings to gather information about the economics of Medicare supplement insurance, with a view toward determining whether the 50% benchmark loss ratio, established before the advent of Medicare, was appropriate for Medicare supplement policies. These Investigative Hearings were conducted on January 4, 5 and 6, 1977, in San Francisco, Los Angeles and San Diego respectively, before Joseph P. Powers, Deputy Insurance Commissioner. A representative group of insurers active in the marketing of Medicare supplement policies was requested to attend the hearing and present pertinent data. Members of the public were also invited to testify.

No information received during the Investigative Hearings suggested that individual Medicare supplement policies should be subject to any less stringent loss ratio requirements than any other type of hospital, medical or surgical coverage. Indeed, the "High Level" individual Medicare supplement plans offered by Northern California Blue Cross and Southern California Blue Cross attained loss ratios in the range of 75% to 90%, and representatives of these organizations felt comfortable with loss ratios in that range.

Generally, public witnesses were less concerned about the cost of Medicare supplement policies than with their design and solicitation. Many witnesses told of purchasing policies which they thought provided broad protection and then finding, at time of claim, that they were covered for only a small portion of the expenses not paid by Medicare. Others complained that the policies were so complicated that they were unable to determine what was covered. Finally, numerous instances of questionable solicitation practices were brought to light. The new and amended regulations proposed in the Notice of Hearing in this matter, dated September 29, 1977, addressed these problems.

EXPLANATION

The testimony and the statements received at the hearings on the proposed regulations having been considered, the following actions are taken regarding the numbered items in the Exhibit attached to the Notice of Hearing in this matter dated September 29, 1977. The amended regulations appear in the Exhibit attached to this Proposed Decision.

(1) The "follow-up form", set forth in the proposed Article 8, was intended to enable insurers to monitor the actions of their producers more effectively so as to reduce the incidence of misrepresentation, replacement of existing policies with new ones upon which higher commissions are paid, and "loading-up" of insureds with many duplicating policies. The forms were also intended to provide a direct line of communication between the insured and the insurer independent of the producer soliciting the policy. The proposed Article 8 of Subchapter 1 is not adopted.

The proposed "follow-up form" received little support from public witnesses or industry representatives. Several witnesses criticized the form as adding to the proliferation of pieces of paper which accompanies the delivery of most insurance policies today and noted that the form overlapped the already required Supplemental Disclosure Form, thus contributing to possible confusion of insureds. It was also stated that insurers have difficulty in getting insureds to respond to mail communications, even where a response is to the insured's personal advantage. One witness stated that a response ratio of 50 percent was seldom achieved in the best of circumstances. With such a low probable response, the usefulness of the form in monitoring producers' activities would be doubtful. Also, most industry representatives objected to the additional administrative

expense which use of the forms would entail, which expense would be passed along to insureds in increased premiums. It should be noted that although several of these representatives were requested to submit expense projections after the hearings, no such information was ever received. Finally, several industry representatives felt that the required offer of rescission was inconsistent with Insurance Code § 10276 and that the proposed article provided insurers with too little guidance as to what was to be done with the information which would be collected from the returned follow-up forms.

Several witnesses stated that the Supplemental Disclosure Forms, use of which had become mandatory only six months before the Investigative Hearings in this matter, appeared to be working well. Indeed, most of the public testimony concerning insureds who were confused about what they had purchased involved policies issued before use of such Forms had become mandatory. There was considerable agreement among the witnesses that establishment of independent lines of communication between insurers and insureds had some merit and it was suggested that the Disclosure Forms could be modified to provide for it. This suggestion has been incorporated in the amended Disclosure Forms Regulations discussed below.

(2) The amendments proposed to § 2220.29 were to increase the minimum hospital indemnity benefit to $15 per day and to prohibit the labeling of policies subject to that Section as Medicare Supplement Policies. The proposed amendments are adopted. (See Item 1 in the attached Exhibit.)

The increased hospital indemnity benefit was opposed by industry on the grounds that the necessary increased premium might prevent some less-affluent prospective insureds from purchasing any type of coverage. Although this is a primary consideration whenever a minimum benefit is increased, it seems unlikely that an appreciable number of persons would be prevented from buying this product. On the other hand, the expenses for which such coverage is generally purchased have increased substantially in the five years since the previous $10 per day minimum benefit was established. Also, the $15 per day minimum benefit is consistent with Insurance Code § 10291.5(b)(9), which prohibits reductions on account of age exceeding 50% and the minimum $30 per day minimum benefit for those under 65.

There was no opposition to the proscription against labeling a hospital indemnity policy as being supplemental to Medicare, it being accepted that this type of policy is not a true Medicare supplement coverage.

(3) The principal amendments proposed to § 2220.30 were to require that both Parts of Medicare be supplemented by any "Medicare Supplement Policy", but with a proviso that coverage could be limited to expenses incurred while hospital confined. The proposed amendments also posited a "Catastrophic Medicare Supplement" policy which would provide supplemental benefits on a "blanket" basis subject to a "corridor deductible." The proposed amendments, further modified as discussed below, are ADOPTED. (See Item 2 in the attached Exhibit.)

Several witnesses pointed out that requiring coverage of the Part A Medicare deductible perpetuated the "dollar trading" situation that the proposed subparagraph (c) was intended to eliminate. Therefore, coverage of the Part A deductible will remain optional with the insurer, as provided in the prior regulations.

Industry representatives expressed considerable opposition to the requirement that both Parts of Medicare be supplemented by a Medicare supplement policy. Several insurers stated that their Part A-only supplemental policies were their best sellers and were concerned that the addition of Part B coverage would increase premiums to the extent that fewer persons would purchase supplemental policies. Some insurers seemed to believe that, so long as the premium-benefit ratio was reasonable for a policy, the philosophy of the Minimum Benefit Law was respected, even though the benefits provided were quite modest. However, Insurance Code § 10291.5(b)(7), pursuant to which Minimum Benefit Standards are promulgated, specifically excepts consideration of premium from the determination of what constitutes a benefit of "real economic value". The principal benefits provided by most Part A-only supplemental policies are for the initial deductible and for the co-payments for days of hospitalization after the 60th day of confinement during a Medicare benefit period. As the average hospital stay for a person over 65 years of age is approximately 12 days (American Hospital Association, 1974), the principal benefit payable under most Part A coverages will be that for the initial deductible. Since the premium for that benefit is in the

range of one-third of the deductible amount, there is some doubt that the initial deductible should be insured at all. In 1974, Medicare paid less than 40% of the overall health costs of Medicare beneficiaries, but Part A of Medicare covered over 60% of all the expenses covered by it. (Private Health Insurance Supplementary to Medicare—A Working Paper—Special Committee on Aging, U.S. Senate, December, 1974.) Therefore, it is concluded that, for most persons, the need is greater to supplement Part B of Medicare than to supplement Part A, and Part B coverage is made mandatory in the amended regulation. Much of the concern over the high premiums which would be required to supplement both Parts of Medicare was in the context of the initial proposal that Part A initial deductibles be covered. The deletion of required coverage for the Part A deductible should ameliorate to some extent the premium impact of the mandatory Part B coverage.

There was no testimony opposing the restrictions on coverage for the Part B annual deductible as the annual premium for unrestricted coverage of said deductible exceeds one-half of the deductible amount itself. Such "dollar-trading" is not economic insurance, since it amounts to the insured and the insurer merely exchanging dollars with one another to cover a type of loss which most insureds will incur with considerable regularity. Furthermore, it is an unequal exchange because of the relatively high proportion of expense to the benefit paid.

Considerable public testimony was received objecting to permitting any restriction on coverage for pre-existing conditions, as Medicare covers all pre-existing conditions. Industry representatives were quite concerned about "anti-selection", since the coverage in question is voluntary. In recognition of the public concern over coverage for pre-existing conditions and the existence of many policies which contain six-month pre-existing conditions provisions, the proposed regulation has been amended to provide a six-month waiting period for coverage of conditions treated during the six months preceding the policy date.

It was pointed out that Part B of Medicare pays benefits on a calendar year basis, rather than a "per cause" basis, and subparagraph (b) has been amended accordingly. No testimony was received concerning the $1,000 minimum benefit per calendar year for Part B.

"*Grading of Policies*". At the Investigative Hearing of January, 1977, considerable support was expressed for a system by which Medicare supplement policies would be categorized or "graded" depending upon the coverage they provided. This Department carefully considered such an approach and examined the regulations then being proposed in Wisconsin, which established five different types of policies, ranging from a Part A-only supplement to one which covered virtually all expenses not paid by Medicare. However, such a system necessarily assumes something akin to a set of standardized forms, as relative grades would mean little if one policy provided more ancillary benefits (such as extensive nursing benefits) than another, but did not provide one of the required basic coverages for a particular grade. Furthermore, there is such a vast range of possible supplemental benefits to Medicare that it would be difficult to consider them all properly in a comprehensive grading system. Finally, Insurance Code § 10291.5(g) prohibits the Commissioner from prescribing standard forms of disability policies, while his authority under Insurance Code § 10291.5(b)(7) is limited to the setting of *minimum* benefit levels.

Nevertheless, the amended Supplemental Disclosure Form regulations (discussed below), recognize three basic categories of Medicare supplement policies, which categories are named descriptively, rather than by "grade", so as to avoid implications that one category is necessarily inferior to another relative to the needs of the prospective insured. These categories are "in-hospital", "in-and-out-of-hospital" and "catastrophic" Medicare supplement policies and are reflected in the amended § 2220.30.

"*Catastrophic Coverage*". There was call from some public witnesses for a policy which would "cover everything", but those witnesses gave little consideration to the premium consequences of requiring such coverage. Related to this was the consistent complaint that Medicare characteristically underpays its portion of coverages under Part B, on grounds that the charges made by providers of services are excessive. As traditional Medicare supplement policies provide benefits based upon Medicare's determination of proper charges (e.g., pay 25% of what Medicare pays under Part B for a particular service), the insured may still be faced with a substantial liability after exhausting Medicare

and supplemental policy benefits. In response to this problem and the call for broadly based supplemental coverage, the amended regulations establish guidelines for "Catastrophic Medicare Supplement Coverage", which, in essence, would be administered in much the same way as a comprehensive group major medical plan. Based upon the *insurer's* latest standards of what constitutes "usual, customary and reasonable" charges for the services rendered, such a policy would pay the difference between such charges and what Medicare pays. An annual "corridor deductible" is permitted to enable premiums to be kept at a reasonable level. Of course, the Commissioner has no authority to require that such a coverage be made available, although we understand that some group supplemental plans are set up along these lines. It is hoped that carriers will offer coverage of this type on an individual basis, thereby filling most of the gaps in Medicare coverage.

"Special Medicare Supplement Policies". The final paragraph of § 2220.30 recognizes the Commissioner's authority to approve limited Medicare supplement policies such as those providing nursing home benefits. However, the Commissioner does not contemplate approving Part A-only or Part B-only Medicare supplement policies under this exception.

"Skilled Nursing Benefits". Meaningful testimony was received concerning the value of and the need for substantial supplementation of Medicare's skilled nursing facility coverage. One insurer representative testified that almost one-half of the benefits paid under his company's broad coverage Medicare supplement policy were under the private duty nurse and nurse-at-home benefit. As considerable reservations were expressed concerning the impact on premiums of requiring that Part B of Medicare be supplemented in all policies, it was decided not to require at this time that extended care facility and home health visits be supplemented. However, the amended Standard Supplemental Disclosure Forms for in-hospital and in-and-out-of-hospital policies now specifically reflect whether such coverage is provided.

(4) The amendment proposed to § 2222.12 was to establish a separate loss ratio category for Medicare supplement policies and to set a minimum "benchmark" loss ratio for that category at 60%. The amendment, modified to require a 55% loss ratio, is ADOPTED. (See Item 3 in the attached Exhibit.)

Strong insurer opposition was encountered to any increase in the present "benchmark" loss ratio of 50%. Insurers made the point that, to be assured of attaining a 60% loss ratio, they would have to aim for a 65% or a 70% loss ratio, which might make such coverages unprofitable, especially for agency companies. This argument was urged, however, in the context of the now withdrawn proposal that loss ratios be based upon California-only experience, which would not be credible for many companies.

A producer complained that agents would perhaps bear an unfair portion of the burden imposed by the proposal because an increase in the loss ratio benchmark would result in a reduction in commissions, which are already modest because of the relatively low premiums charged for most Medicare supplement policies. This was corroborated by several insurer representatives. Although it was generally admitted that sales through individual agents may not be the most economical method by which to market Medicare supplement coverages, it was accepted that the personal contact and service provided by individual agents is very important to many consumers.

Those opposing the increased loss ratio requirement did not believe that any jurisdiction required more than a 50% loss ratio. However, several states including Nevada and Florida, have regulations or guidelines requiring loss ratios in excess of 50%. Florida, like California, has a large number of senior citizens, and we understand that the Insurance Commissioner of that State is reviewing the loss ratios being attained by individual Medicare supplement policies issued to citizens of his state. (Florida has the highest percentage of persons 65 and over of any state. Administration on Aging, U.S. Department of Health, Education, and Welfare, 1973.)

Most senior citizens are on fixed, low incomes. In 1975, the average income of those over age 65 was $4,800, compared to an average income for the age group of 18–64 of $12,400. Additionally, one out of every six seniors is existing at the poverty level, versus one out of every ten persons in all other age groups. (U.S. Department of Commerce statistics quoted in Lamb and Duffy, *The Retirement Threat*, J. P. Tarcher, Inc., Los Angeles, CA 1977). In view of the characteristically low and shrinking disposable income of the elderly, we find that they

constitute a proper separate class for the purposes of determining appropriate loss ratios. However, because of the concern expressed by many about the impact of a 60% benchmark loss ratio on the availability of individually solicited policies, the required loss ratio is hereby set at 55%. This Department will not monitor the reaction of the insurance industry to the increased loss ratio "benchmark" to see if it affects the number of companies marketing Medicare supplement coverage.

(5) The amendment proposed to § 2222.19 was to require that the loss ratio requirement of § 2222.12 be based upon California loss experience and to require explicitly that experience for Medicare supplement policies be reported in the supplement to the Annual Statement. The proposed amendment is ADOPTED, amended to delete the requirement for California-only experience and to require that individual Medicare supplement policies be specifically identified in the supplement to the Annual Statement. (See Item 4 in the attached Exhibit.)

Most industry representatives opposed the requirement that loss ratios, for the purpose of Article 1.9 of Subchapter 2, be based on California experience only, because the resulting premium volume for many insurers would be so small as to lack actuarial credibility. They pointed out that loss ratios on small premium volumes tend to vary widely from year to year, so that, to be sure of exceeding the benchmark loss ratio, higher target loss ratios must be established, thereby compounding the reduction in the margin for profit and expenses resulting from the increased loss ratio requirements of § 2222.12, as amended. No testimony was received regarding the explicit requirement that Medicare supplement policy loss ratio experience be reported.

The industry's opposition to requiring California-only experience is well-taken. No regulatory purpose is served by acting upon statistics which may not be credible and the amendment, as adopted, leaves it to the discretion of the insurer whether to report California or nation-wide experience.

This Department's review of loss ratios in conjunction with our Investigative Hearings of January, 1977, was considerably complicated by the failure of many Annual Statement Supplemental Exhibits to identify those policies providing Medicare supplement coverage. The new requirement that such policies be identified is consistent with the establishment of a separate loss ratio class for them in § 2222.12.

(6) The proposed amendment to § 2536.8 was intended to draw prospective insureds' attention to the fact that out-of-state group plans might not be subject to California laws. However, several witnesses pointed out that the proposed requirement would tend to suggest to California consumers that complaints concerning such plans be referred to the Insurance Commissioner of the state in which the master policy was delivered, whereas this Department has a strong interest in receiving all complaints about insurers doing business in this State. Also, this requirement would have impacted many legitimate group insurance plans based on out-of-state master policies and would have tended to place them at a competitive disadvantage compared to domestic group plans. For these reasons, the proposed amendment is NOT ADOPTED.

(7) The proposed amendment to § 2540.4(b) makes it consistent with the requirement stated in § 2540.5(k) that paragraph [2] be included in Supplemental Disclosure Forms for use with Medicare supplement policies and is ADOPTED. (See Item 5 in the attached Exhibit.)

(8 and 9) The proposed amendments correct an ambiguity in Ruling No. 200A of November 24, 1975, are technical in nature and are ADOPTED. (See Items 6 and 7 of the attached Exhibit.)

(10, 11, and 12) The amendments proposed to the Standard Supplemental Disclosure Forms for use with Medicare supplement policies responded to the interest expressed by many public witnesses in some means to categorize or "grade" such policies. (See "Grading of Policies", in paragraph 3, above.) The proposed amendments also reflected the amended minimum benefit requirements. Those amendments, further modified as discussed below, are ADOPTED. (See Items 8 through 11 in the attached Exhibit.)

Although the follow-up form discussed in paragraph 1, above, was not adopted, several witnesses expressed their belief that opening up a line of communication directly between insureds and insurers was a valuable concept. It was suggested that this could be accomplished by incorporating the effect of the originally proposed § 2192.3(e) in the Disclosure Forms for Medicare supplement policies, and this has been done in the adopted amendment, along with appropriate in-

structions. To make doubly sure that Disclosure Forms are properly delivered, so that this direct line of communication will be established, the regulation is further amended to require that insurers establish affirmative procedures for ensuring such delivery. Although the modified amendment describes, by example, several acceptable affirmative procedures for ensuring such delivery, insurers are allowed discretion to develop other reasonable procedures.

As discussed previously (paragraph 1, "Skilled Nursing Benefits"), considerable testimony regarding the importance of skilled nursing facility coverage was received. Although such coverage is not required at this time, the amended Disclosure Forms state whether or not it is provided.

Several witnesses pointed out that paragraph [2] for the "in-hospital" and the "in-and-out-of-hospital" policy Disclosure Forms was much less readable than the same paragraph in the "catastrophic" policy Disclosure Form. Those paragraphs have been re-drafted to make them more readable. The statement of the computation of the co-payment benefit for Part B was modified to recognize that some insurers provide benefits therefor in different ways.

READABILITY

Many complaints were received concerning the difficulty of understanding Medicare supplement policies. Most are complicated in design and abstruse and legalistic in text. Complicated design will always be a problem with Medicare supplement policies because of the complexity of Medicare, but it is obvious that most insurers have made little effort to simplify the text of such policies. Although Insurance Code § 10291.5(a) (2) (added in 1974) directs the Commissioner to ensure ". . . that the language of all (individual disability) insurance policies can be readily understood and interpreted", the Commissioner is given no authority to promulgate standards for evaluating the readability of policies. However, pursuant to this Bulletin No. 78–7, dated March 1, 1978, the Commissioner now requires that Flesch Readability Test Scores accompany all submissions of individual disability policies and benefit riders. It is hoped that this requirement will draw insurers' attention to the lack of readability of many of their products. One major insurer has already submitted an "easy-to-read" in-and-out-of-hospital Medicare supplement policy to this Department for approval. Using the "sampling" approach of Flesch Test scoring, the policy achieved a score of 73, which is considered to be a sixth grade reading level which would be attained by approximately 90% of the United States population. By contrast, another widely marketed broad-coverage Medicare supplement policy attained a score of 40, which is considered to be a "high school or some college" reading level which would be attained by approximately 33% of the United States population. (Flesch, Rudolph. *How to Test Readability*; Harper & Brothers, New York, N.Y. 1951.)

Some insurers have stated that they have not attempted to improve the readability of their disability policies because of required and hard-to-read statutory language, primarily the Compulsory Uniform Policy Provisions (Insurance Code § 10350, *et seq.*). Indeed, one of these provisions attains a Flesch Test score of 16, which is considered to be "very difficult" and which is typical of scientific or professional writing. However, Insurance Code §§ 10350 and 10369.1 permit the Commissioner to approve language in lieu of the statutory Uniform Provisions so long as such language is not less favorable in effect to the insurance than the statutory language.

EFFECTIVE DATES

In order that insurers will have adequate "lead time" in which to comply with these amendments and in order that new policies and disclosure forms may be introduced coincidentally with the expected revision of Medicare benefits, the amendments set forth in the attached Exhibit will be effective on January 1, 1979, except for those pertaining to Minimum Benefits Standards (§§ 2220.29 and 2220.30) which shall be effective on May 1, 1978. However, insurers are encouraged to comply with the amended Standard Supplemental Disclosure Forms set forth in the attached Exhibit (Subchapter 3, Article 12.2, §§ 2540.5(k) through (n)) for policies complying with the amended Minimum Benefit Standards as soon as possible.

Insurers should note that, pursuant to Insurance Code § 10291.5(d), this Department intends to withdraw authorization of all Medicare supplement policies

authorized prior to May 1, 1978, to be effective December 31, 1978. Formal notification of such withdrawal of authorization will be sent to insurers later this year.

ORDER

Wherefore, It Is Hereby Ordered, by virtue of the authority vested in the Insurance Commissioner by §§ 790.10, 10291.5(c), 10293(a) and 10608 of the Insurance Code of the State of California that the proposed additions and amendments to Chapter 5 of Title 10 of the California Administrative Code be hereby made a part thereof.

CERTIFICATION

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter as a result of the Hearings held before me, as the duly authorized Deputy of the Insurance Commissioner on November 1, 1977, at San Francisco, California, November 2, 1977, at Los Angeles, California, and November 3, 1977, at San Diego, California, and I hereby recommend its adoption as the Decision of the Insurance Commissioner.

Dated: March 6, 1978.

PETER GROOM,
Deputy Insurance Commissioner.

EXHIBIT.—CALIFORNIA ADMINISTRATIVE CODE, TITLE 10, CHAPTER 5

1. Amend Subchapter 2, Article 1.5, Section 2220.29 to read: "Insurance Issued to Persons Eligible for Benefits Under Medicare."

2220.29. *Hospital Indemnity Policies.* A daily hospital benefit, provided on other than an expense incurred basis and issued to a person eligible for benefits under Medicare, shall be deemed not sufficient to be of real economic value to the person insured if:

(a) It provides a daily hospital benefit of less than $15, payable for less than 60 days, or if it is a hospital benefit for mental disorders, and the period of time the benefit is payable is less than 30 days; or

(b) The elimination period, if any, exceeds one day for sickness benefits and one day for accident benefits; or

(c) The benefit is subject to any waiting period other than a waiting period for conditions specified in § 2220.10(b); or

(d) It excludes coverages or provides reduced benefits for exceptions, limitations or reductions other than those specified in § 2220.8; or

(e) It contains a pre-existing condition provision other than as specified in § 2220.30(d).

A hospital indemnity policy conforming to this Section may not be labeled or described as a Medicare Supplement Policy.

2. Amend Subchapter 2, Article 1.5, Section 2220.30 to read:

2220.30. *Medicare Supplement Expense Policies.* A policy designed to supplement Medicare shall be deemed not sufficient to be of real economic value to the person insured if:

(a) It fails to provide supplemental benefits to Part A of Medicare in the amounts of the co-insurance payment required for the 61st through the 90th day of hospital confinement and the co-insurance payment required for the lifetime reserve; and

(b) It fails to provide a supplemental benefit in the amount of the co-insurance payment required by Part B of Medicare of at least $1,000 per calendar year payable either while the insured is hospital confined, or payable regardless of whether the insured is hospital confined; or

(c) It provides a supplemental benefit to the Part B deductible for a calendar year during which the insured is not hospital confined; or

(d) It contains a pre-existing condition provision less favorable to the insured than one which excludes coverage for more than six months after the effective date of the policy for a condition for which medical advice or treatment was recommended by a physician or received from a physician within six months before the effective date of the policy; or

(e) It is subject to any exceptions, limitations or reductions (other than as specified in this Section) which are not consistent with the exceptions, limitations or reductions permissible under Medicare, other than a provision which

provides that coverage is not provided for any expenses to the extent that any benefit is available to the insured person under Medicare; or

(f) It indemnifies losses resulting from sickness on a different basis than losses resulting from accident; or

(g) It is designed in such a manner that the benefits will not be increased automatically to coincide with any changes in the deductible amounts and co-insurance percentage factors of Medicare coverage.

(h) This Section does not prohibit "Catastrophic Medicare Supplement Coverage" which provides benefits on a "blanket basis" for all expenses deemed by the insurer to be usual, customary and reasonable in the treatment of conditions covered in whole or in part by Medicare and which provides a maximum lifetime benefit of at least $25,000, subject to a deductible amount not to exceed $1,000. Such coverage may be subject to reasonable internal limits relating to psychiatric treatment and prescription drugs.

A policy issued to provide coverage for persons not eligible for benefits under Medicare which continues in force and provides coverage on a reduced basis for such persons when they become eligible for benefits under Medicare and provides benefits not less than the benefits required by this section, shall be deemed to meet the requirements of this section if the reductions relate to reducing or eliminating coverages to the extent that such coverages are provided or are available to the insured persons under either Part A or Part B of Medicare.

The Commissioner shall not approve any policy or rider benefit under this section when the payment of any item of expense or any benefit are subject to unreasonable conditions precedent to eligibility for and payment of such benefits. The Commissioner shall apply all applicable sections of the Insurance Code and this Article when making a determination pursuant to Section 2220.7 of this Article, that a policy or rider designed to supplement Medicare benefits will be of real economic value to persons insured thereunder. This section shall be construed to provide regulatory protection to the residents of California eligible for Federal Medicare benefits.

3. Amend Subchapter 2, Article 1.9, Section 2222.12, to read: . . . (ii) 35 per cent if the premium is at a lesser rate or (iii) 55 percent if the policy is designed to supplement Medicare.

4. Add a new paragraph to Subchapter 2, Article 1.9. Section 2222.19 to read: Policies designed to supplement Medicare shall be identified as such.

5. Amend Subchapter 3, Article 12.2, Section 25540.4(b) to read as follows: (b) *Drafting Instructions for Paragraph* [2]. Each benefit enumerated in the prototype description of the category of coverage shall be stated, regardless of whether the policy with which the disclosure form is to be used provides that benefit. Unless provided otherwise, this paragraph may be omitted if the optional text appearing in parentheses in Paragraph [4] is used in that paragraph. This paragraph may also be omitted if no such optional text appears in Paragraph [4] of the appropriate prototype form.

6. Amend Subchapter 3, Article 12.2, Section 2540.5(e)[4] to read as follows: [4] *Exceptions, Reductions and Limitations of This (Policy)*. (Benefits are not provided for physicians' or surgeons' fees nor for miscellaneous hospital services.) [The foregoing sentence may be modified to reflect the benefits provided by the policy.]

7. Amend Subchapter 3, Article 12.2, Section 2540.5(h) [4] to read as follows: [4] *Exceptions, Reductions and Limitations of This (Policy)*. (No benefits are provided for any loss resulting from sickness.) [The foregoing sentence may be modified to reflect the benefits provided by the policy.]

8. Repeal Subchapter 3, Article 12.2, Section 2540.5(k) and add a new Section 2540.5(k) to read as follows:

(k) *Disclosure Forms for Medicare Supplement Policies: Additional Instructions.* The following Prototype Standard Supplemental Disclosure Forms shall not be used with policies issued to persons eligible for Medicare which do not supplement Medicare on an expense-incurred basis.

Paragraph [2] shall not be omitted from the following Prototype Standard Supplemental Disclosure Forms. The name, address and telephone number of a representative of the insurer or the General Agent shall be inserted in the blank in the sentence following Paragraph [6]. (Such representative may not be the agent, if any, who solicited or delivered the policy.) Such representative shall be located in this State unless a toll-free "800" telephone number is specified.

Insurers shall establish affirmative procedures for ensuring that Medicare Supplement Policy Disclosure Forms are properly delivered pursuant to Insur-

ance Code § 10601(e) and 10605, where solicitation is made on an other-than-direct response basis. Such procedures could include physically attaching disclosure forms to field-issued policies; requiring return to the insurer of copies of disclosure forms signed by prospective insureds; or requiring separately signed acknowledgements of receipts on applications for insurance when such applications are returned to the insurer. (This requirement shall not be interpreted to mean that insurers need not establish reasonable procedures for ensuring that other categories of disclosure forms are properly delivered to prospective insureds.)

9. Add Subsection (1) to Subchapter 3, Article 12.2, Section 2540.5, to read as follows:

(1) *Prototype Standard Supplemental Disclosure Form for Policies Providing In-Hospital Medicare Supplement Coverage.* "In-Hospital Medicare Supplement Coverage" provides benefits, principally on an expense-incurred basis, to supplement the coverage provided under both Parts of Medicare for hospital-confined beneficiaries.

[COMPANY NAME]

IN-HOSPITAL MEDICARE SUPPLEMENT COVERAGE

OUTLINE OF COVERAGE

For (Policies) Issued in [insert year]

[1] *Read Your (Policy) Carefully.* This outline of coverage provides a very brief description of some important features of your (policy). This is not the insurance contract and only the actual (policy) provisions will control. The (policy) itself sets forth, in detail, the rights and obligations of both you and (your insurance company). It is, therefore, important that you Read Your (Policy) Carefully!

[2] *In-Hospital Medicare Supplement Coverage.* This type of coverage is mainly designed to supplement your Medicare coverage while you are in the hospital. It will pay some of the dollar deductibles and percentage co-payment charges which you would have to pay without it. In general, it will not help pay your share of expenses for treatment outside the hospital.

[3] *Benefits of This (Policy).* [Alternate text in parentheses in this paragraph shall be selected depending upon the coverage provided by the policy. The Medicare deductible and co-payment charges for the year of policy issue shall be inserted in the blanks.]

To Supplement Medicare Part A Hospital Insurance, this (policy)

(a) (Pays) (Does not pay) the initial deductible amount for hospitalization during a Medicare Benefit Period. This year that amount is $——.[1] [The preceding sentence may be omitted where the initial deductible is not paid.]

(b) (Pays) (Does not pay) benefits for the first sixty days of hospitalization during a Medicare Benefit Period. [Disclose benefit, if any].

(c) Pays the co-payment charges for the 61st through the 90th day of hospitalization during a Medicare Benefit Period. This year, that charge is $—— per day of hospitalization.[1]

(d) Pays the co-payment charges for the "lifetime reserve" of 60 days of hospitalization. This year, that charge is $—— per day of hospitalization.[1]

(e) (Pays) (Does not pay) the co-payment charges for the 21st through the 100th day of confinement in a skilled nursing facility. This year, that charge is $—— per day of confinement.[1] [The preceding sentence may be omitted where skilled nursing facility confinement is not covered.]

[(f) Other benefits to supplement Medicare Part A Hospital Insurance.]

To supplement Medicare Part B Medical Insurance, this (policy):

(a) (Pays the calendar year deductible amount for any year during which you are hospitalized. This year, that amount is $——.[1])
(Does not pay the calendar year deductible amount.)

(b) Pays the co-payment charges for medical services provided while you are hospitalized. These charges are 25% of the benefits paid by Medicare Part B Medical Insurance. This (policy) will not pay more than $—— per calendar year for these co-payment charges. [If co-payment charges for medical services are

Footnotes at end of article.

computed on some basis other than the benefits paid by Medicare, the preceding sentence shall be replaced by a brief explanation of that basis.]

[(c) Other benefits to supplement Medicare Part B Medical Insurance.]

[4] *Exceptions, Reductions and Limitations of This (Policy).* This (policy) does not pay benefits if you are not confined in a hospital or a skilled nursing facility. [The preceding sentence may be modified to reflect the coverage provided by the policy. In addition to the requirements of Section 2540.4(d), this paragraph shall state that benefits are not payable for custodial care, for expenses deemed by Medicare not to be reasonable or necessary nor for convenience items. Other items excluded from coverage by Medicare need not be stated unless they relate directly to benefits provided by the policy.]

[5] *Renewability of This (Policy).*

[6] *Premium for This (Policy).*

If you have questions about this (policy), please write or call ————————.

10. Add Subsection (m) to Subchapter 3, Article 12.2, Section 2540.5, to read as follows:

(m) *Prototype Standard Supplemental Disclosure Form for Policies Providing In-Hospital and Out-of-Hospital Medicare Supplement Coverage.* "In-Hospital and Out-of-Hospital Medicare Supplement Coverage" provides benefits, principally on an expense-incurred basis, to supplement the coverage provided under Medicare, whether or not treatment is received while hospitalized.

[COMPANY NAME]

IN-HOSPITAL AND OUT-OF-HOSPITAL MEDICARE SUPPLEMENT COVERAGE

OUTLINE OF COVERAGE

For (Policies) Issued in [insert year]

[1] *Read your (Policy) Carefully.* This outline of coverage provides a very brief description of some important features of your (policy). This is not the insurance contract and only the actual (policy) provisions will control. The (policy) itself sets forth, in detail, the rights and obligations of both you and (your insurance company). It is, therefore, important that you Read Your (Policy) Carefully!

[2] *In-Hospital and Out-of-Hospital Medicare Supplement Coverage.* This type of coverage is designed to supplement your Medicare coverage regardless of whether you are in the hospital. It will pay some of the dollar deductibles and percentage co-payment charges which you would have to pay without it. However, it may not pay all your share of expenses for treatment.

[3] *Benefits of This (Policy).* [Alternate text is parenthesis in this paragraph shall be selected depending upon the coverage provided by the policy. The Medicare deductible and co-payment charges for the year of policy issue shall be inserted in the blanks.]

To Supplement Medicare Part A Hospital Insurance, this (policy):

(a) (Pays) (Does not pay) the initial deductible amount for hospitalization during a Medicare Benefit Period. This year that amount is $——.[1] [The preceding sentence may be omitted where the initial deductible is not paid.]

(b) (Pays) (Does not pay) benefits for the first sixty days of hospitalization during a Medicare Benefit Period. [Disclose benefit, if any.]

(c) Pays the co-payment charges for the 61st through the 90th day of hospitalization during a Medicare Benefit Period. This year, that charge is $—— per day of hospitalization.[1]

(d) Pays the co-payment charges for the "lifetime reserve" of 60 days of hospitalization. This year, that charge is $—— per day of hospitalization.[1]

(e) (Pays) (Does not pay) the co-payment charges for the 21st through the 100th day of confinement in a skilled nursing facility. This year, that charge is $—— per day of confinement.[1] [The preceding sentence may be omitted where skilled nursing facility confinement is not covered.]

[(f) Other benefits to supplement Medicare Part A Hospital Insurance.]

Footnotes at end of article.

To supplement Medicare Part B Medical Insurance this (policy):

(a) (Pays the calendar year deductible amount for any year that you are hospitalized. This year that amount is $——[1])

(Does not pay the calendar year deductible amount.)

(b) Pays the co-payment charges which are 25 percent of the benefits paid by Medicare Part B Medical Insurance. This (policy) will not pay more than $2 per calendar year for these co-payment charges. [If co-payment charges for medical services are computed on some basis other than the benefits paid by Medicare, the preceding sentence shall be replaced by a brief explanation of that basis.]

[(c) Other benefits to supplement Medicare Part B Medical Insurance.]

(4) *Exceptions, Reductions and Limitations of This (Policy).* [In addition to the requirements of Section 2540.4(d), this paragraph shall state that benefits are not payable for custodial care, for expenses deemed by Medicare not to be reasonable or necessary nor for convenience items. Other items excluded from coverage by Medicare need not be stated unless they relate directly to benefits provided by the policy.]

(5) *Renewability of This (Policy).*

(6) *Premium for This (Policy).*

If you have questions about this policy, please write or call ————————

11. Add Subsection (n) to Subchapter 3, Article 12.2, Section 2540.5, to read as follows:

(n) *Prototype Standard Supplemental Disclosure Form for Policies Providing Catastrophic Medicare Supplement Coverage.* "Catastrophic Medicare Supplement Coverage" provides benefits to supplement Medicare on a "blanket" basis for all expenses deemed by the insurer to be usual, customary and reasonable in the treatment of conditions covered in whole or in part by Medicare. Benefits may be subject to lifetime maximum of no less than $25,000. Coverage for psychiatric treatment and prescription drugs may be subject to reasonable internal limits.

[COMPANY NAME]

CATASTROPHIC MEDICARE SUPPLEMENT COVERAGE

OUTLINE OF COVERAGE

(1) *Read Your (Policy) Carefully.* This outline of coverage provides a very brief description of some important features of your (policy). This is not the insurance contract and only the actual (policy) provisions will control. The (policy) itself sets forth, in detail, the rights and obligations of both you and (your insurance company). It is therefore, important that you Read Your (Policy) Carefully!

(2) *Catastrophic Medicare Supplement Coverage.* This type of coverage is designed to pay the difference between what Medicare pays and the usual, customary and reasonable expenses of treatment of any medical condition covered at least partly by Medicare. However, benefits may be reduced by a deductible amount and only limited benefits may be payable for psychiatric treatment and prescription drugs.

(3) *Benefits of This (Policy).* [This paragraph shall briefly describe the operation of the policy in accord with Section 2540.4(c), above.]

(4) *Exceptions, Reductions and Limitations of This (Policy).* [In addition to the requirements of Section 2540.4(d), this paragraph shall state that benefits are not payable for custodial care, for conditions not covered at least in part by Medicare, nor for convenience items. Other items excluded from coverage by Medicare need not be stated unless they relate directly to benefits provided by this policy.]

(5) *Renewability of This (Policy).*

(6) *Premium for This (Policy).*

You should not purchase this policy unless you can afford to pay the deductible of $ [insert deductible amount] before receiving benefits under this (policy). [The preceding sentence may be omitted if the policy does not provide for a deductible amount.]

If you have questions about this policy, please write or call ————————

[1] These benefits will be increased to match any increases in Medicare deductible amounts or co-payment charges.

Appendix 7

ITEM 1. "PUBLIC REGULATION OF PRIVATE SUPPLEMENTS TO MEDICARE AND MEDICAID IN OREGON," BY RON WYDEN,* EXCERPT FROM CONNECTICUT LAW REVIEW, VOL. 9, NO. 3, SPRING 1977

The rise of "consumer power," while transforming political life in many states, has largely bypassed the elderly, one of America's most vulnerable and exploited consumer groups. Even in Oregon, whose citizens have shown great enthusiasm for innovative legislation in many fields,[1] entrenched business groups and state agencies refused, until recently, to recognize the special problems of the elderly. The difficulties of the elderly have been particularly acute in the field of health insurance.[2] Older consumers, ill informed about medicare and medicaid often make poor decisions about private supplemental insurance. Many insurance salesmen take unfair advantage. Yet the Oregon Insurance Department failed to act.

But in 1976 a coalition of senior citizens' rights activists confronted Oregon's insurance commissioner. After a state-wide publicity campaign, the coalition secured the adoption of administrative rules which require insurance agents to distribute forms outlining medicare-medicaid benefits to prospective purchasers of supplemental policies. The senior citizen husbanding a fixed income no longer has

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* J. D. University of Oregon School of Law; Member Iowa State Bar, Ron Wyden is now the Legal Services Developer for the Elderly for the State of Oregon. Title III of the Older Americans Act provides federal funds for this position, which involves statewide coordination of public legal services for the elderly. Title III, Older Americans Act of 1965, 42 U.S.C. §§ 3001-3055 (Supp. 1975).

1. Oregon has traditionally been regarded as a state receptive to political change. M. BARONE, D. MATTHEWS, G. UJIFUSA, THE ALMANAC OF AMERICAN POLITICS, 706-08 (1975). The Oregon legislature has passed innovative laws dealing with subjects such as land use planning (*see, e.g.*, Fuller, *Oregon's New State Land Use Planning Act—Two Views*, 54 ORE. L. REV. 203 (1974); *Symposium: Land Use Planning in Washington and Oregon*, 10 WILLAMETTE L.J. 320 (1974)), nondisposable bottles (*see Note, The Oregon Bottle Bill*, 54 ORE. L. REV. 175 (1974)), and aerosol sprays (*see* Kadera, *Oregon Asks Nationwide Ban on Aerosol Sprays*, The Oregonian, Dec. 24, 1975, at A9, col. 3 (Portland, Oregon); *Straub Signs Bill Banning Cans Using Fluorocarbon Propellant*, The Oregonian, June 17, 1975, at A16, col. 6 (Portland, Oregon).

2. The Oregon insurance industry has been described as slow to take the reform spirit. *See generally* M. DOTTEN, OREGON HEALTH INSURANCE POLICIES: SOME FINDINGS AND RECOMMENDATIONS (1973) (available from the Consumer Research Center, University of Oregon, Eugene, Oregon).

to guess the value of each extra dollar spent on insurance. The successful campaign to change Oregon's regulation of supplementary health insurance has shown that the elderly can effectively pressure state agencies. Positive results may follow in other areas subject to state regulation.

For millions of Americans who are no longer covered by employer-paid health insurance plans and cannot afford complete private coverage, health care is only possible through medicare and/or medicaid. However, medicare pays for only a share of the health costs of the elderly, and this share has steadily diminished since the inception of the program.[3] For this reason, a significant proportion of the elderly purchase one or more private health insurance policies, dubbed "medigaps," in the hope that they will cover those health care expenses not covered by medicare.[4] Elderly persons who purchase these policies take a calculated risk. Medigap premiums take a significant bite out of a fixed income; paying them can be a hardship. Yet a large medical bill not covered by insurance is a disaster which can wipe out the lifetime savings of those unprotected by insurance.

Before the adoption of the new regulation in Oregon, the purchase of medigap policies was made even more risky by poor drafting and unprofessional salesmanship. Fine print and 150 word sentences were common.[5] The unstandardized policies often proved of little value because they were so filled with contractual "gobbledygook"[6] that many elderly could not comprehend them.[7] Many insurance agents employed scare tactics[8] to persuade some seniors[9] to

3. The Chairman of the Senate Special Committee on Aging, Senator Frank Church of Idaho, has stated that medicare now covers only about 38 percent of the average medical costs of persons 65 and up. *Future Directions in Social Security: Hearings Before the Senate Special Comm. on Aging*, 94th Cong., 1st Sess. 1814 (November 24, 1975).

4. The elderly spend over half a billion dollars on premiums for private health insurance policies each year. SENATE SPECIAL COMM. ON AGING, 93D CONG., 2D SESS., A WORKING PAPER, PRIVATE HEALTH INSURANCE SUPPLEMENTARY TO MEDICARE, 1 (1974) [hereinafter cited as SENATE SPECIAL COMM. ON AGING, WORKING PAPER].

5. M. DOTTEN, *supra* note 2, at 7-10.

6. H. SHAPIRO, HOW TO KEEP THEM HONEST 126 (1974).

7. R. GUARINO & R. TRUBO, THE GREAT AMERICAN INSURANCE HOAX 88 (1974); *Health Insurance for Older People: Filling the Gaps in Medicare*, 41 CONSUMER REP. 27-34 (Jan. 1976).

8. *Deceptive or Misleading Methods in Health Insurance Sales: Hearing Before the Subcomm. on Frauds and Misrepresentations Affecting the Elderly of the Senate Special Comm. on Aging*, 88th Cong., 2d Sess. (May 4, 1964).

9. The term "seniors," referring to the group variously called "the elderly," or "senior citizens," is not a word of art, but seniors prefer it to other forms.

purchase as many as four or five supplemental policies that extended the same basic coverage.[10]

This situation cried out for regulation, and a statutory framework existed to provide it. Since Congress, under the McCarran Act,[11] has firmly committed insurance regulation to the states, every state has an insurance department, an insurance code, and a system of regulation for the sales practices of private health insurance companies.[12] State legislatures normally delegate vast discretion to their insurance commissions to govern insurance transactions "in the public interest."[13] In practice the commissions may rubberstamp the whims and wishes of the insurance industry.[14] Like most state regulatory agencies, these commissions invariably have small budgets and smaller staffs, and a reputation of sympathy toward the industry they are supposed to be regulating.[15] Nevertheless, in some states, such as Massachusetts and Pennsylvania, the insurance commissioners have used their discretionary power to publish educational forms—"buyer guides"—that offer informational tools to help consumers make more intelligent choices about health insurance.[16]

The passivity of the Oregon Insurance Commission, which had never published any buyer guides, had always disturbed consumer activists. Several public interest groups and their lawyers decided that their clients needed educational information on health insurance and on May 14, 1976, they petitioned the Insurance Commissioner to adopt new administrative rules to cure the deficiency.[17] The pro-

10. Medigap policies often either fail to cover what the purchaser assumed was being covered, or duplicate existing benefits. *See* SENATE SPECIAL COMM. ON AGING, WORKING PAPER, *supra* note 4, at 24-27. Insurance agents can sell such policies by taking advantage of the seniors' legitimate fear that illness means financial ruin. R. BUTLER, WHY SURVIVE? BEING OLD IN AMERICA 312-13 (1975); *see* Bernard, *Why People Become the Victims of Medical Quackery*, 55 AM. J. OF PUB. HEALTH 1142 (1965).

11. 15 U.S.C. §§ 1011-1012 (1971).

12. Hanson, *The Private Insurance Industry and State Regulatory Activities as Alternatives to Federally Enacted Comprehensive National Health Insurance Legislation*, 6 TOL. L. REV. 677, 696 (1975).

13. J. GREGG, THE HEALTH INSURANCE RACKET AND HOW TO BEAT IT 140 (1973).

14. Shapiro, *supra* note 6, at 2.

15. K. DAVIS, ADMINISTRATIVE LAW 37 (3d ed. 1972).

16. Letter from Roy V. Proctor, Deputy Commissioner, Oregon Department of Commerce, Insurance Division, to Sandra Blischke, Legal Intern and Assistant to Steve Goldberg, Marion-Polk Legal Aid Service, Inc. (June 8, 1976) (on file at the Marion-Polk Legal Aid Service, Inc., Salem, Oregon).

17. The petition was filed on behalf of five organizations (the Marion County Home Health Agency, the Mid-Willamette Valley Council of Governments, the Area Agency on Aging, the Gray Panthers, and the Salem Area Seniors) and two individuals. The

posed rules required insurance agents selling or attempting to sell health insurance supplementing medicare to hand out a form outlining the senior's medicare coverage, and to inquire of the prospective policyholder whether he or she is, or is about to be, eligible for medicaid.[18] In cases of such eligibility, the proposed rules required the agent to give out a second form outlining the coverage available under medicaid before accepting any application for insurance supplementing medicaid.[19] These handouts were not intended to be abstract explanations of federal health insurance. Instead, each form was to contain blank spaces which the insurance agent would be required to fill in with information showing how the policy to be sold covered one or more of the gaps in medicare or medicaid.[20]

The petitioners asserted that the Insurance Commissioner had ample authority to promulgate the rules under existing Oregon law. One Oregon statute gives the Commissioner general rulemaking authority,[21] and a second statute provides that "[t]he Commissioner, by rule, may require any agent who sells, or attempts to sell insurance to provide each prospective insured such information as the Commissioner considers necessary to adequately inform the prospective insured regarding the insurance transaction. . . ."[22] The petitioners requested a hearing so they could present these views orally. In written testimony they argued that the adoption of the rules would allow elderly consumers to understand their medicare and/or medicaid coverage, to detect any gaps in that coverage, and to select the proper supplemental insurance, thus avoiding duplication of benefits afforded by the medicare and medicaid statutes.[23]

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individuals, elderly clients of Marion-Polk Legal Aid Service, Inc., had had bad experiences with medigap insurance salesmen.

18. Described as Form A, this one-page factsheet outlined the senior's medicare benefits.

19. Described as Form B, this one-page factsheet outlined the senior's medicaid benefits.

20. Written Testimony in Support of Petition to Propose Rule (May, 1976) (on file at the office of the Oregon Insurance Commissioner, Salem, Oregon). (The proposed rule required health insurance companies to disclose certain information to purchasers of health insurance policies supplemental to medicare and medicaid, and was codified as ORE. ADMIN. RULES 836-52-105, 836-52-110) (Insurance Division).

21. "In accordance with the applicable provisions of ORS 183.310 to ORS 183.500 the Commissioner may make reasonable rules necessary for or as an aid to the effectuation of the Insurance Code. . . ." ORE. REV. STAT. § 731.244 (1975).

22. ORE. REV. STAT. § 743.021 (1973).

23. *See Petition to Propose Rule* (June 25, 1976). This is the rule referred to in note 20 *supra*.

When the petition to propose the rules was filed, the petitioners informed the state's major newspapers of their action, expecting a news feature that would publicize their proposals.[24] Initially, all of the papers declined to write stories. Perhaps they thought that health insurance for the elderly was a topic of little interest to their readers, but some senior activists have suggested that the press rated the petition's chance of success against the Oregon insurance companies as too low to justify press coverage.[25]

On June 8, 1976, the request for a hearing was denied and thus legal channels for the activist groups were blocked. But Deputy Commissioner Roy V. Proctor's letter on behalf of Insurance Commissioner Lester Rawls unlocked a more effective approach—publicity. Proctor wrote that "we do not feel that conducting a hearing on the subject [of supplementary medical insurance] will accomplish your objective."[26] He made it clear that the Insurance Commissioner felt that the elderly did not need additional assistance with their supplementary medical insurance by stating that "[existing rules give us the authority to] restrict policy forms . . . and analyze the difficulties of senior citizens in clearly understanding the policies they intend to purchase."[27] This objection could not counter the petitioners' arguments, for regardless of the potential of existing rules, they were ineffective as applied. Furthermore, by concluding his letter with the assertion that "these [existing] rules do not permit us . . . to advise each purchaser as to the need for advisability of purchasing a specific policy,"[28] Proctor showed either that he failed to understand the thrust of the petition, or that he wished to avoid the entire provision by misreading the proposals.

The seniors coalition quickly responded. They informed the media, the Governor and the Insurance Commissioner that the function of regulatory agencies was not to give advice to individuals.[29] They

24. Among the papers contacted were *The Oregonian*, of Portland, *The Oregon Statesman*, of Salem, and *The Eugene Register-Guard*, affiliated with the University of Oregon in Eugene. The seniors coalition issued a standard press release, which they expected the newspapers to pick up as a matter of course.

25. Interview with Gray Panther member Elizabeth Fink, Eugene, Oregon (June 2, 1976).

26. *See* letter from Roy V. Proctor, *supra* note 16.

27. *Id.*

28. *Id.*

29. Letter from Hugh M. Hanna, Program Chairman, Mid-Willamette Valley Council on Governments, Area Agency on Aging, Salem, Oregon, to the Honorable Robert Straub, Governor, State of Oregon (June 24, 1976) (on file at the Marion-Polk Legal Aid Service, Inc., Salem, Oregon).

repeated again that they only wished the Commissioner to give generalized informational resources to the elderly to permit them to make intelligent choices about private health insurance coverage.[30] This time they found that their advocacy paid off. Proctor's letter received extensive publicity; the Portland *Oregonian*, the state's largest paper, covered their story,[31] and the wire services and other newspapers soon followed. On July 8, 1976, the petitioners received a letter from Governor Robert Staub stating that he had been "in touch" with the Insurance Commissioner [whom Staub had the legal authority to replace] and that the rulemaking hearing so doggedly sought by the petitioners would be scheduled soon.[32]

On July 20, 1976, notice was filed with the Secretary of State of a public hearing to be held September 1, 1976, to consider proposed administrative rules 836-52-105 and 836-52-110.[33] The notice declared that the purpose of the rules "is to prescribe information that any agent, who sells or attempts to sell health insurance providing benefits that supplement Medicare and Medicaid, must furnish to inform such persons adequately regarding the insurance transaction."[34] From July until September 1, 1976, senior citizen groups around the state publicized the upcoming hearing at food distribution centers, churches, senior citizen centers, and other places frequented by elderly persons.[35] The results of their efforts were stunning: on September 1st between four and five hundred seniors journeyed to the state capital in Salem and overflowed the largest hearing room.[36] Those who could not sit on a table or on the floor inside listened to the proceedings from loudspeakers in the hallway.

The seniors coalition carefully staged the hearing as a theatrical

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30. *Senior Citizens Win Hearing on Health Insurance*, The Oregonian, July 17, 1975, at A12., col. 5 (Portland, Oregon).

31. *Id. The Oregonian* has the widest circulation of any paper in the state: 200,000 daily. The state's other major newspapers and both major wire services also filed stories at this point.

32. Letter from The Honorable Robert Straub, Governor, State of Oregon, to Hugh M. Hanna, Program Chairman, Mid-Willamette Valley Council On Governments, Area Agency on Aging, Salem, Oregon (July 19, 1976) (on file at the Marion-Polk Legal Aid Service, Inc., Salem, Oregon).

33. ORE. REV. STAT. § 183.335 (1975) lists the prerequisites for the adoption of administrative rules.

34. ORE. ADMIN. RULES 836-52-105 (Insurance Division).

35. *See* Press Release, Marion-Polk Legal Aid Service, Inc. (Aug. 20, 1976) (on file at that office in Salem, Oregon).

36. *Senior Citizens Want Plain-Talk Insurance*, The Oregon Statesman, Sept. 2, 1976, at 1, col. 2.

event, with dramatic testimony and appropriate props. Several seniors were supplied with magnifying glasses symbolizing their opposition to the tiny print in medigap policies. Thirty seniors testified in favor of the proposed rule at the all-day hearing.[37] Grace Lepray, eighty-six years old, testified that she had purchased four policies with identical coverage from the same agency:[38]

> I said to him [the agent who came to her door], "why are you writing out that policy?" and he said, "Never mind; it will help you." He kept coming back and selling me policies.
>
> "The same agent?" she was asked.
>
> No, . . . The first agent came twice, then he got a heart attack and another guy took his place and wrote another couple policies. . . .

Mrs. Lepray concluded her testimony by saying that although she was confused, she felt that the two agents who dealt with her had her best interests in mind: "They just said, 'Trust me.' "[39]

After the seniors had spoken, opponents of the proposed rules testified. Most of the nation's biggest insurance companies sent representatives to the hearing or transmitted written testimony on the proposed rules.[40] But not every representative testified, and few of those who did spoke against the proposed rules. Most sought to calm the sea of seniors which surrounded them by telling stories about their own aged parents living on fixed incomes back home in Middle America.[41] No one seemed willing to challenge the general concept of the proposed rules. As one company spokesman said of the hearing, "It seems inappropriate to attack any proposal which seeks to better inform prospective insureds about their coverage. . . ."[42] Only

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37. *Oldsters Ask for Help in Buying Medical Insurance*, The Eugene Register-Guard, Sept. 2, 1976, at 11, col. 3. Those testifying included Chet Arterburn, spokesman for several retired insurance salesmen.

38. *Insurance Gobbledygook Scored*, The Oregonian, Sept. 2, 1976, at B1, col. 4.

39. *Elderly Jam Capitol, Ask Simple Form*, The Oregon Journal, Sept. 1, 1976, at 3, col. 4.

40. Written testimony on the proposed rules is on file in the office of the Oregon Insurance Commissioner, Salem, Oregon.

41. *Insurance Gobbledygook Scored*, *supra* note 38.

42. Letter from Gerald F. Bevan, Vice President, National Home Life Assurance Company, Liberty Park, Pennsylvania, to the Honorable Lester L. Rawls, Commissioner

John P. Hanna, a lawyer with the Health Insurance Association of America, a Chicago-based organization of the nation's largest health carriers, dared to mention caveat emptor. In his view, "[T]he burden is on the buyer to decide what he or she wants."[43]

More substantial criticisms were made in written testimony submitted after the public hearing.[44] Pacific Northwest Life of Portland, Oregon, argued that the responsibility for informing elderly citizens of their medicare and medicaid positions properly rested with the Department of Health, Education, and Welfare, not with private insurers: "You are imposing requirements on agents that should be imposed on the Social Security Administration. . . ."[45] Other insurers thought that the rules would be ineffective, or even counterproductive. Wabash Life Insurance Company of Indianapolis, Indiana, wrote: "The only persons who will comply with the spirit and intent of this proposed regulation are those who are already serving the public in a conscientious manner."[46] Mutual of Omaha of Omaha, Nebraska, stated that with "a signed disclosure statement of the type proposed . . . it will be almost impossible to successfully prosecute an agent charged with misrepresentation if he can produce an applicant's signature acknowledging [that the proper information had been supplied]."[47] Nationwide Mutual Insurance Company of Columbus, Ohio, admitted that the proposed rules had some merit, but argued that group, blanket, franchise, and group conversion policies should be exempt from the requirements, because these policies are usually sold to groups that are more insurance conscious.[48]

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of Insurance, State of Oregon, Salem, Oregon (Aug. 9, 1976) (on file at the Commissioner's office).

43. *Insurance Gobbledygook Scored*, *supra* note 38.

44. Many insurance companies wrote to the Commissioner. The statements cited in the text are representative.

45. This letter is on file at the Office of the Insurance Commissioner, Salem, Oregon.

46. This letter is on file at the Office of the Insurance Commissioner, Salem, Oregon.

47. This letter is on file at the Office of the Insurance Commissioner, Salem, Oregon.

48. This letter is on file at the Office of the Insurance Commissioner, Salem, Oregon. The theory that groups are wise insurance shoppers seems to have been shattered by recent reports showing that the seven million members of the American Association of Retired People have not been well served by their health insurer, Colonial Penn Group of Philadelphia. *See generally Health Insurance for Older People: Filling the Gaps in Medicare*, *supra* note 7; *Colonial Penn Alleges Errors in CU report*, 41 CONSUMER REP. 185 (April 1976); *Colonial Penn Group and the American Association*

After the seniors' impressive showing at the hearing, and Governor Straub's message, the battle for adoption of new rules was as good as won. Another important struggle, involving the ultimate shape of the regulations, took place behind the scenes. After the hearing the senior citizen groups heard rumors that the Commissioner's staff had prepared alternate responses for the Commissioner to adopt on the disclosure issue—and had shown them to the insurance carriers, but not to the petitioners.[49] The seniors thought this unfair and wanted to protest publicly until one of their attorneys introduced them to the facts of life in the regulatory arena: agency staff has the power to make ex parte contacts with those on one side of a disputed issue, without affording the same privilege to other parties—even those who introduced the proposal.[50] The seniors concluded that protest might tip the hidden power struggle against them.

On December 21st—over three and a half months after the hearing—Insurance Commissioner Rawls announced at a press conference that he had filed Administrative Rules 836-52-105 and 836-52-110 with the Oregon Secretary of State. Since March 1, 1977, all insurance companies selling medigap supplementary coverage have had to comply with the disclosure requirements set forth in these rules.[51] Though senior rights groups generally praised Commissioner Rawls for his decision,[52] the forms required by the new administrative rules were a watered-down version of those originally drafted by the elderly petitioners. First, the adopted forms are not printed in large type, as the seniors repeatedly urged at the public hearing.[53] Second, they do not include information about the average

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for Retired Persons Have an Unusual Relationship: You Might Even Call it Incestuous, FORBES, April 1976 at 185.

49. Interview with Steven Goldberg, Attorney for the Petitioners, in Salem, Oregon (Dec. 3, 1976).

50. F. COOPER, 1 STATE ADMINISTRATIVE LAW 198-99 (1965).

51. *See Supplemental Policies Clarified*, The Oregonian, Dec. 22, 1976, at 1, col. 5 (Portland, Oregon).

The proposed forms were designed by Attorney Goldberg and the author. Forms issued by Herbert Devenberg, former Pennsylvania Insurance Commissioner, were used as models. In our view no consumer pamphlet could have solved the medigap problem in Oregon. An effective solution had to involve requiring the insurance companies, through state regulation of sales practices, to be responsible for providing customers with more information.

52. *See Elderly's Insurance Forms Clarified*, The Oregon Journal, Dec. 21, 1976, at 2, col. 2.

53. The public hearing was taped, and this tape can be heard in the Office of the Insurance Commissioner, Salem, Oregon.

length of an elderly person's stay in an Oregon hospital, data the petitioners had argued was necessary for low-income seniors attempting to balance a policy's cost against the likelihood that it would be needed.[54]

Commissioner Rawls' rejection of the proposed enforcement provision is a third major weakness of the new rules. The clause proposed by the seniors provided for rescission at the option of the insured, at any time, if the informational forms were not distributed. Within fifteen days of notice of rescission, the insurance company would have been required to return all money paid by the insured, regardless of whether the company had made payments on the policy.[55] This stringent clause would have given enforcement power to the seniors themselves. In practice, enforcement may be difficult without such a provision.[56]

The most important failure of the rules adopted by the Commissioner, and one which has drawn vocal and organized criticism from Oregon seniors groups,[57] is their misleading statement of a crucial distinction in medicare coverage. For the first twenty days of the medicare benefit period the older person in a *skilled nursing facility* pays nothing. Medicare pays for the whole cost. However, the same person in an *intermediate care facility*, providing less intensive care than the skilled nursing facility, pays the entire expense. While Ad-

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54. The material sought to be included by the petitioners was provided by the Professional Activities Studies Group at the University of Michigan. The material stated that for individuals 65 years of age or older, the average length of stay in a hospital was 9.2 days in 1974.

55. The enforcement provision proposed by the petitioners contained a "penalty" clause:

> If an insurance agent fails to fully complete the prescribed disclosure form at the time of the sale of the policy the insured may rescind his or her purchase of the policy at any time. The letter of rescission shall be in writing and mailed to the insurance agent. Within fifteen (15) days of the mailing of the letter, all money paid by the insured shall be returned, irregardless of whether any payments were made by the company under the policy. Disputes as to whether or not the disclosure form was fully complete should be resolved by the Insurance Commissioner.

Letter from Steven Goldberg, Attorney for the Petitioners, to Ruth Shepherd, Executive Officer, Governor's Commission on Aging (Dec. 13, 1976) (on file at Ms. Shepherd's office, 315 Public Service Bldg., Salem, Oregon).

56. Interview with Steven Goldberg, Attorney for the Petitioners, in Salem, Oregon (Dec. 15, 1976).

57. Letter from Hugh M. Hanna, Program Chairman, Mid-Willamette Valley Council On Governments, Area Agency on Aging, Salem, Oregon, to Lester Rawls, Insurance Commissioner, State of Oregon (Jan. 10, 1977) (on file at the Marion-Polk Legal Aid Service, Inc., Salem, Oregon).

ministrative Rule 836-52-110 gives the rule for skilled nursing facilities, it does not mention intermediate care facilities.[58] The form only hints at the differences with a small print caveat: "Caution: You should check whether nursing facility qualifies for Medicare." Elderly consumers, ignorant of the distinction, often purchase supplementary policies that do not fill the crucial gap. One Salem, Oregon, social worker has stated, "I spend about 50 percent of my day trying to explain it . . . . [T]heir policies do not cover what Medicare does not cover—intermediate care."[59] Of course, a careful insurance purchaser would buy both kinds of coverage, but elderly consumers are not provided with information to aid them in making that choice.

Whatever the value of the rules actually adopted when compared to those proposed, they will mean little if they are not used. Though some newspapers printed stories, the Insurance Department has never publicized the rules. Senior activists, who have long understood how hard it is to communicate with the hard-to-reach elderly,[60] believe that without extensive publicity Oregon seniors will have little awareness of their newly won rights.

On balance, however, Oregon's senior activists have achieved a meaningful reform. No other state has provided the elderly with such a valuable source of information to aid in the purchase of health insurance. The efforts of the citizens paid off—the Commissioner had little choice but to act when confronted with such a showing of senior political muscle.

The Oregon experience with supplementary medical insurance demonstrates that state regulatory agencies can be fertile ground for seniors and their advocates interested in government reform. While the federal government operates many significant programs for the aged, such as social security and medicare, many other services important to seniors such as insurance,[61] nursing homes,[62] and utili-

58. *See Form Aims to Cut Confusion on Health Policies*, The Oregon Statesman, Dec. 22, 1976, at 7A, col. 1 (Salem, Oregon). Although most patients are placed in intermediate care facilities, medicare pays none of the cost. *See* Letter from Hugh M. Hanna, *supra* note 57; *see generally* SOC. SEC. ADMIN., YOUR MEDICARE HANDBOOK; HEALTH INSURANCE UNDER SOCIAL SECURITY (1970) (available free from the Social Security Administration, Washington, D.C.).

59. *Form Aims to Cut Confusion on Health Policies*, The Oregon Statesman, Dec. 22, 1976, at 7A, col. 1 (Salem, Oregon).

60. *See generally* Zborowski & Eyde, *Aging and Social Participation*, 17 J. GERONTOLOGY 424 (1962).

61. *See* note 11 and accompanying text *supra*.

62. *See, e.g.*, Brown, *An Appraisal of the Nursing Home Enforcement Process*, 17 ARIZ. L. REV. 304, 321-22 (1975); *Staff Report, What To Do About Nursing Homes*, 6

ties,[63] are dominated by the states. Most state regulatory agencies are created by enabling statutes that vest them with wide discretion to act in the public interest—discretion that can be used, as it was by Commissioner Rawls, to implement new methods of serving the elderly. The political support necessary for the enactment and enforcement of administrative rules is often easier to generate at the state level than at the federal level. Many seniors have time to visit the state capital for agency meetings, but they do not have the health and finances to travel to Washington, D.C. Greater participation by seniors and their advocates might also be a valuable antidote to industry lobbyists, and might possibly reduce agency favoritism to industries that serve the elderly, such as hearing aid and prescription drug manufacturers. There can be no doubt, after the Oregon experience with supplementary health insurance, that senior citizens have the power to bring "buyers guides," "hotlines," and consumer complaint centers into existence.

JURIS DOCTOR 30 (1976). See Hackler, *Expansion of Health Care Providers' Liability: An Application of Darling to Long-Term Health Care Facilities*, 9 CONN. L. REV. 462 (1977) for discussion of *federal* regulation of nursing homes.

63. *See, e.g.*, Mello, *Public Utility Rate Increases: A Practice Manual for Administrative Litigation*, 8 CLEARINGHOUSE REV. 411 (1974).

ITEM 2. DECISION BY OREGON DIVISION OF INSURANCE REGARDING INFORMATION INSURERS MUST DISCLOSE TO PROSPECTIVE PURCHASERS OF HEALTH INSURANCE TO SUPPLEMENT MEDICARE AND MEDICAID, DATED DECEMBER 21, 1976

In the Matter of the Adoption of Oregon Administrative Rules chapter 836, section 52-105 and 52-110, relating to information insurers must disclose to prospective purchasers of health insurance to supplement Medicare and Medicaid.	ORDER OF ADOPTION IC-72

ORDER

The attached Proposed Decision of Wilfred W. Fritz, Executive Assistant, is hereby adopted by the Insurance Commissioner of the State of Oregon as his Decision in the above-entitled matter.

IT IS SO ORDERED this 21st day of December, 1976.

Lester L. Rawls
Insurance Commissioner

* Proposed Decision not attached

OREGON ADMINISTRATIVE RULES
Chapter 836. Insurance Division

INSURANCE POLICIES

Division 52. Health Insurance

836-52-105 STATUTORY AUTHORITY; PURPOSE; EFFECTIVE DATE.
(1) OAR 836-52-105 to 836-52-110 are adopted pursuant to the general rulemaking authority of the Commissioner in ORS 731.244 and the specific authority in ORS 743.021 for the Commissioner to issue rules regarding information that must be furnished to prospective insureds.

(2) The purpose of the rules is to prescribe the information that an agent or insurer who effects a sale of health insurance that is supplemental to federal Medicare insurance must furnish to adequately inform the prospective insured regarding the insurance transaction.

(3) The effective date of OAR 836-52-105 to 836-52-110 is March 1, 1977.

836-52-110 INFORMATION TO BE FURNISHED PROSPECTIVE INSURED. An agent or insurer effecting a sale of health insurance providing benefits that supplement federal Medicare insurance benefits shall deliver the form set forth as Exhibit I to OAR 836-52-105 to 836-52-110 to the insured not later than the time of delivery of the policy. The agent or insurer shall complete and sign the prescribed form.

SUMMARY OF MEDICARE BENEFITS AND INSURANCE

The State of Oregon requires an insurance company selling health insurance to an individual covered by Medicare to provide the following information. Future changes in federal law may change Medicare benefits, with resulting changes in the insurance policy benefits.

	MEDICARE	INSURANCE POLICY PAYS
In-patient Hospital Benefits		
First 60 days of Medicare benefit period	You pay 1st $_____. Medicare pays balance.	_____
Next 30 days of continuous confinement (61st - 90th day)	You pay 1st $_____ per day. Medicare pays balance.	_____
Next 60 days, while one-time reserve lasts (91st - 150th day)	You pay $_____ per day. Medicare pays balance.	_____
After 150 days of continuous confinement	You pay full amount. Medicare pays nothing.	_____
Skilled Nursing Facility Benefits*		
(*Caution - you should check whether nursing facility qualified for Medicare.)		
First 20 days of Medicare benefit period	You pay nothing. Medicare pays 100%	_____
Next 30 days of continuous confinement (21st - 100th day)	You pay $_____ per day. Medicare pays balance.	_____
Medical Service Benefits		
Physician services, medical supplies, ambulance, prosthetic devises and other covered services	You pay 1st $_____ each calendar year. Medicare then pays 80% of further Medicare approved charges and you pay the balance of charges.	_____

(The space below may be used to describe insurance benefits not related to Medicare.)

More information:

1. This policy has been approved for sale in Oregon as required by law. Such approval is in no way a recommendation or endorsement.

2. Physician fees and other medical service charges may exceed charges approved by Medicare. In such instances, you are obligated for the difference.

3. (a) If the policy is labeled "Guaranteed Renewable" the insurance company must continue the policy as long as you pay the premium. The company has the right to increase the premium, but not to make any changes in the policy.

   (b) If the policy is labeled "Renewable at the Option of the Company," the insurance company may terminate the policy on any premium due date. (Check your policy for details.)

4. Generally speaking, if the application you completed for your policy asks medical questions, pre-existing conditions are covered from the date the policy is issued. If no medical questions are asked, medical conditions you had prior to the application are not covered until the policy has been in force for the time required by the policy. (Check your policy for details.)

5. Generally, neither Medicare nor private insurance will pay for convenience items not necessary in the treatment of your medical condition.

The Insurance Commissioner makes the following recommendations:

1. That you check with your local Social Security office to obtain more specific details of your Medicare benefits, if you have further questions about Medicare. The other side shows only a summary of the basic Medicare benefits. Some Medicare benefits are available that are not shown.

2. That you buy one policy for your health insurance needs. You will generally save money by doing this rather than buying several limited policies.

3. If you are eligible for Medicaid, insurance to supplement Medicaid is not recommended.

4. After you receive your policy, make sure you have the coverage you thought you bought. If not satisfied, return the policy to the company within 10 days for a full refund of premium directly from the company. Companies are required to make immediate refunds directly and not through their agents.

This form is required by the Insurance Commissioner of the State of Oregon to be delivered with any health insurance policy designed to supplement Medicare benefits.

Date Summary Prepared:_____
Policy Form NO.:_____
Insurance Company Issuing Policy:_____
Summary Delivered by:_____
(Agent of Above Company)

HEALTH CARE FOR OLDER AMERICANS: THE "ALTERNATIVES" ISSUE

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 8—WASHINGTON, D.C.

Standards in Home Care and the Home Care Services Act

APRIL 17, 1978

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Health Care for Older Americans: The "Alternatives" Issue:
Part 1. Washington, D.C., May 16, 1977.
Part 2. Washington, D.C., May 17, 1977.
Part 3. Washington, D.C., June 15, 1977.
Part 4. Cleveland, Ohio, July 6, 1977.
Part 5. Washington. D.C., September 21, 1977.
Part 6. Holyoke, Mass., October 12, 1977.
Part 7. Tallahassee, Fla., November 23, 1977.
Part 8. Washington, D.C., April 17, 1978.

(Additional hearings anticipated but not scheduled at time of this printing.)

CONTENTS

Page

Opening statement by Senator Pete V. Domenici, presiding 785
Statement by Senator Lawton Chiles 800

CHRONOLOGICAL LIST OF WITNESSES

Hall, Hadley D., executive director, San Francisco, Calif., Home Health Service; board member, National Council for Homemaker-Home Health Aide Services, Inc., accompanied by Florence Moore, executive director, National Council for Homemaker-Home Health Aide Services, Inc. ... 789
Caserta, Joan E., director, Division of Home Health Agencies and Community Health Services, National League for Nursing, New York, N.Y., accompanied by Leah Brock, consultant 791
Runnels, Hope, cochairman, Standards Committee, National Association of Home Health Agencies, and executive director, Visiting Nurse Association, Portland, Oreg., accompanied by John Byrne, president, National Association of Home Health Agencies, St. Louis, Mo 796
Rosenberg, Ronald E., Washington, D.C., chairman, Home Health Services Association; vice president for planning and development, Homemakers-Upjohn Co., accompanied by Berkeley Bennett, president, Home Health Services Association 801
Suzuki, Michael, Deputy Commissioner, Administration for Public Services, Office of Human Development Services, Department of Health, Education, and Welfare 803

APPENDIX

Material supplied by witnesses:

Item 1. Interpretation of standards for homemaker-home health aide services, submitted by Hadley D. Hall, National Council for Homemaker-Home Health Aide Services, Inc., New York, N.Y 821
Item 2. Letter and enclosures from Florence Moore, executive director, National Council for Homemaker-Home Health Aide Services, Inc., New York, N.Y., to Senator Pete V. Domenici, dated April 18, 1978 825
Item 3. Attachments to statement submitted by Joan E. Caserta, National League for Nursing, New York, N.Y 829
Item 4. Letter and enclosure from Joan E. Caserta, National League for Nursing, New York, N.Y., to Senator Pete V. Domenici, dated April 25, 1978 855
Item 5. Letter and enclosure from John P. Byrne, president, National Association of Home Health Agencies, St. Louis, Mo., to Kathleen Deignan, staff member, Senate Special Committee on Aging, dated April 10, 1978 857
Item 6. Letter and enclosure from Florence Moore, executive director, National Council for Homemaker-Home Health Aide Services, Inc., to Margaret S. Fayé, minority staff, Senate Special Committee on Aging, dated May 4, 1978 879

HEALTH CARE FOR OLDER AMERICANS: THE "ALTERNATIVES" ISSUE

MONDAY, APRIL 17, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met at 9 a.m., pursuant to notice, in room S128 of the Capitol, Hon. Pete V. Domenici, presiding.

Present: Senators Domenici, Chiles, and Percy.

Also present: William E. Oriol, staff director; Margaret S. Fayé, minority professional staff member; Kathleen M. Deignan, professional staff member; Alison Case, operations assistant; and Theresa M. Forster, fiscal assistant.

OPENING STATEMENT BY SENATOR PETE V. DOMENICI, PRESIDING

Senator DOMENICI. I apologize for being late. I expect Senator Chiles to be here in a few minutes, and we are going to try very hard to get through as much as we can this morning. There are so many conflicts, with every Senator having two or three hearings scheduled at the same time. We are going to ask the witnesses to be as brief as they can and make their prepared remarks part of the record.

I am sure you all know that the Special Committee on Aging is very concerned about alternative delivery systems of home health care. The need to expand in-home service for the elderly has become increasingly apparent across this country and is beginning to receive attention by Congress, by the agencies who work with our older people, and by the elderly themselves.

HOME CARE SERVICES ACT

We have a number of bills pending in the Congress. I myself have introduced Senate bill 2009, the Home Care Services Act, which would expand the reimbursement of these services under medicare, eliminating many of the restrictions in the current law and regulations.

The response to this bill across the Nation was extremely favorable as to its concept and its effect on the lives of the elderly who wish to remain independent and in their own homes for as long as possible. The bill was endorsed by a number of State agencies on aging, several national organizations, and many individuals.

We asked for recommendations for improving the bill, and the comment received most often recommended that language be included regarding standards and their enforcement in order to insure high

quality care, with the monitoring of agencies to prevent the possibility of fraud and abuse. The staff of this committee has been in contact with many professionals in the field, including those here today who have been in the forefront of the efforts to develop such standards.

The problem of who should develop standards and of how to devise uniform standards without making them unduly restrictive or rigid—which might work a hardship on rural areas without the resources available in urban areas—led the committee to hold this hearing today on standards in home care and the Home Care Services Act.

In the voluntary sector, much has been done through the accreditation process in which all aspects of agency operations are rigorously assessed by teams of their peers. This process, however, is purely voluntary. With the proliferation of the agencies giving some type of home care, from 1,700 programs in 1973 to 3,700 today—450 new agencies each year—we must be increasingly vigilant as to the quality of service rendered. With the number of home aides nearly doubling, to 82,000 today, we must be certain that they are carefully trained for the work they are doing. Moreover, these figures do not include the individual providers used by many States, under title XX in particular. This kind of provider, often hired by the client, is not accountable to any agency—only to the client.

We cannot expect comprehensive home care programs without a change in medicare. This we are attempting to accomplish through S. 2009. I plan to introduce modifications to this bill as a result of the many comments and suggestions I have received, as well as those resulting from this hearing, to make sure that the issue of standards is addressed in legislation.

It is my hope that this hearing can be informal enough to allow for an exchange of opinions between the witnesses, as well as between the Chair and the witnesses. Only as this problem is approached quite frankly and honestly can we perhaps come to a meeting of the minds in regard to standards, and establish and maintain a high quality of care for all older Americans.

Representative William S. Cohen of Maine wanted to be here today, but unfortunately he had a prior commitment. He has been in the forefront of efforts to develop uniform standards for home health care, and was instrumental in securing passage of the legislation, section 18 of Public Law 94–142, which mandated a study of home health services by HEW. His statement will be inserted into the record at this point.

[Representative Cohen's statement follows:]

PREPARED STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. Chairman, I regret not being able to attend your hearing on "Health Care for Older Americans: The 'Alternatives' Issue"—standards in home care and the Home Care Services Act. However, I appreciate the opportunity to submit a statement on an issue to which I have devoted much attention and energy over the past few years—the need for standards in home health care services.

I was the original author of legislation which resulted in the home health study mandated by section 18 of Public Law 94–142. My objective in drafting this bill was to create a set of uniform, enforceable standards of utilization control and quality care. Any provider of services who could meet these standards would then be eligible to participate in the Federal home health programs of medicare and medicaid or related in-home services of title XX.

It seems quite fitting to report to this body on developments in the area of standards for home care services, including the section 18 report, because it was at the joint hearing held by our two respective committees in October 1975, "Proprietary Home Health Care," that I first became interested in the issue.

In recounting the history of Government involvement in the issue of standards for home health care, let me begin with the issuance of the first and only HEW regulations released by former Secretary Matthews' new advanced rulemaking procedure, in August 1975. These regulations would have allowed greater participation in the medicaid program by proprietary and single service home health agencies. As I mentioned, that October our two committees held a joint hearing on the proposed regulations in which the lack of standards by which the quality of care offered by these agencies could be fostered, and fraud and abuse control was underlined.

Next, in February 1976, Senator Chiles held hearings in Florida on fraud and abusive practices in so-called private, nonprofit home health agencies. This hearing made it clear that generalizations about the quality of care provided in proprietary or nonprofit agencies were unfounded. Later that month, testimony was taken by our committee on the need for standards for all providers at our hearing entitled, "Comprehensive Home Health Care: Recommendations for Action."

The following April, Secretary Matthews withdrew the regulations pending further study. Just before and after this withdrawal, informal meetings between HEW and a variety for provider and consumer groups and individuals were held. No followup on the standards issue was taken, although it was widely recognized that this was a key issue to be resolved before steps could be taken to liberalize provider eligibility per se.

Fully 1 year after Matthews issued his first regulations, he released final revised regulations, without standards, saying he would hold hearings to resolve the more controversial issues raised by the originally proposed HEW regulations. At this point, I introduced home health standards legislation on August 26. In September 1976, the hearings were begun at regional offices across the country. By mid-October, a summary report of the hearings was released, but still no recommendations on the issue of standards were made. It was merely said that HEW would study the matter and make some recommendations in a year.

A discussion paper was circulated within HEW in December 1976 which supported using medicare standards as an acceptable minimum standard for all agencies. The paper contended the licensure requirements on top of meeting medicare standards adds little to quality of care or patient safety. To quote: "Since both proprietary and nonproprietary agencies are participating in medicare and medicaid, it seems appropriate that uniform standards should be applied to all agencies that deliver care to the home, including homemaker agencies."

As we entered this new Congress, more and more attention was paid to the matter of fraud and abuse in medicare and medicaid. As the Health Subcommittees of the House began considering this issue in earnest, it appeared that this legislation would be the vehicle to get something moving on home health standards. Congressman Waxman, a member of the Health Subcommitee of the House Interstate and Foreign Commerce Committee, was sympathetic to the goals of my legislation and in April 1977 amended my bill to H.R. 3, the medicare and medicaid antifraud and abuse bill.

During the legislative process, my legislation was somewhat modified, largely to accommodate concerns of the new Carter administration. Among other things, the issue of uniform provider standards was expanded to include a study of:

(1) The scope and definition of services to be offered under Federal programs;
(2) Requirements for eligibility in those programs;
(3) Methods for reimbursement; and
(4) Fraudulent and abusive practices.

While I believe these issues should be addressed, we must not lose sight of the fact that the primary intent of the Cohen/Waxman amendment was to facilitate establishment of a set of specific, enforceable standards to assure high quality home health services. Committee report language in both the House and Senate reiterates the intent of Congress that the Secretary is to come forth with regulatory changes he intends to make and to recommend appropriate statutory changes with respect to quality assurance and administrative efficiency. Furthermore, the standards for quality review should be suitable for application to all home health providers, regardless of sponsorship.

Since the need for such standards is so well documented, I believe that HEW does not need to wait until the full home health study is complete before standards are implemented. I pursued this issue with the Administrator of HEW's Health Care Financing Administration, Robert Derzon, who has been delegated responsibility for this study, when he testified before our Subcommittee on Health and Long-Term Care on February 22. He was reluctant to make any commitment to speed up the standards segment of the section 18 report. Instead, he promised to stick closely to a timetable calling for release of the report in October of this year.

It also became clear at that hearing that a major stumbling block will be the applicability of these standards to service providers operating under title XX. Although section 18 calls for uniform standards between titles 18, 19, and 20 of the Social Security Act, HCFA has no jurisdiction over title XX. Any recommendations for standards under that title would have to clear the Office of Human Development. Conversations my staff has had with those in OHD involved in the section 18 study suggest reluctance within OHD to endorsing Federal standards. This seems to stem from the adverse reception the Office received to child day care standards, the only other set of standards it has released.

Yet, the need for action is acute. Problems accompanying the lack of standards under title XX were highlighted at a hearing our committee held in New York City on February 6, where it was pointed out that needy elderly persons were deprived of the quality care they deserve because untrained aides were delivering health care services.

To complicate these issues, last November HCFA announced that HEW might accept surveys of the Joint Commission on Accreditation of Hospitals in place of those presently required by HEW for participation in Federal home health programs. The call for "deemed status" has been echoed by other organizations of home health providers who would much sooner use their own requirements to make their membership eligible to participate.

Aside from the fact that deeming is contrary to the congressional mandate in section 18 for a uniform set of standards, I would advise extreme caution for a process that would be nothing more than self-certification. To this end, I wrote the Director of HCFA's Bureau of Health Standards and Quality, Dr. Helen Smits, who will oversee the drafting of new survey and certification requirements for all health providers, requesting that any announcement of Federal policy on the subject of deeming be deferred, at least until the section 18 study is complete. I am pleased to report that Dr. Smits was willing to comply with that request.

As I see it, the problems which were presented to us 2½ years ago still exist. The first annual report of the Inspector General's Office released March 31, of this year reported that the largest number of convictions for defrauding medicare and medicaid were among nursing home and home health agencies. In short, the potential for home health care to develop the same reputation which has characterized the nursing home industry is obvious.

I believe that our present standards are inadequate, or at least not enforced, because abuse continues. I see no reason why any provider group should be arbitrarily excluded from participation in our Federal home health care programs merely on the basis of agency sponsorship. Finally, it is time to rationalize the home health programs of titles 18, 19, and 20. Requirements which are necessary in any home health program, despite its source of reimbursement, to assure quality care and control utilization should be uniform. I would suggest as a starting point that such requirements deal with the supervision and training of personnel, or audit and financial disclosure criteria.

We have no reasonable assurance that the public dollars for home health and in-home care services will be well spent until those matters are resolved.

Senator DOMENICI. I am pleased to welcome Michael Suzuki, Deputy Commissioner of Administration for Public Services, Office of Human Development Services, Department of Health, Education, and Welfare. He is here today as a reactor to the panel's testimony, specifically in regard to title XX. He is not here as a spokesman for the administration, and we understand that.

I might say to all of you who are here in attendance, the committee which is holding this hearing is the Special Committee on Aging, and as you know we are not a legislative committee in the sense of drafting the final bill. That will take place in the Finance Committee of the Senate.

Our committee has decided during the last 18 months that we are going to use our resources to get out front of an issue and take an active role in presenting before the Finance Committee our findings on serious issues affecting the elderly in our country.

Our first panel will be a panel of national associations of home care agencies. We have four panelists and Mr. Suzuki as a reactor. I will name the panelists, and as you each begin, you can tell everybody who you are. Florence Moore, executive director, National Council of Homemaker/Home Health Aide Services, Inc.; Joan Caserta, director, Division of Home Health Agencies and Community Health Services, National League for Nursing; John Byrne, president, National Association of Home Health Agencies, and executive director, Visiting Nurse Association; accompanied by Hope Runnels, cochairman, standards committee, National Association of Home Health Agencies, and executive director, Visiting Nurse Association; Ronald Rosenberg, chairman, Home Health Services Association, and vice president for corporate affairs, Homemakers-Upjohn.

We shall start with Florence, and if you will all keep your statements as brief as possible, then we will have time for an exchange of opinions for the remainder of the morning. Written statements will be made part of the record.

Let's get started.

Mrs. MOORE. I am glad Hadley Hall, a member of our board, is present. He will give our testimony.

STATEMENT OF HADLEY D. HALL, EXECUTIVE DIRECTOR, SAN FRANCISCO, CALIF., HOME HEALTH SERVICE; BOARD MEMBER, NATIONAL COUNCIL FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, INC., ACCOMPANIED BY FLORENCE MOORE, EXECUTIVE DIRECTOR, NATIONAL COUNCIL FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, INC.

Mr. HALL. I am Hadley Hall, a board member of the National Council for Homemaker-Home Health Aide Services—a national, voluntary section 501(c)(3) membership organization.

The national council started in 1962 with encouragement and support from HEW, with standard setting as a key mandate. The development of a code of standards was a first accomplishment. The standards have grown and been revised. They are now basic standards, not goal standards; that is, they are the floor below which an agency's performance cannot fall and be acceptable.

In 1969, the council was specified as a standard-setting body for homemaker service organized under the work incentive program. The following year the council was again named by the Social and Rehabilitation Service as a standard-setting body for homemaker service for the aged, blind, and disabled.

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Recognition brings responsibilities. The Federal requirements are that agencies be in reasonable conformity with the standards, along with support from Government and the field, the council was encouraged to take the next step—accreditation. An accreditation program helps agencies to prove that they are, indeed, in conformity with the standards—not just say, without verification, that they meet standards.

A copy of a document called "Interpretation of Standards" is attached to this testimony.[1] Funds to support the national council programs for accreditation were made available by HEW and recently by the W. K. Kellogg Foundation.

Emphasis Within Standards

In the years that have followed, the council has worked to make the review process more objective and more efficient. We now have an accreditation commission of 12 persons. They come from all over the country. They meet several times a year to make judgment on the conformity with standards of applicant agencies.

We use an index of compliance to check the objectivity of decisions by the commission. Several of the standards are weighted more heavily than others: Those requiring that the agency be responsible for basic orientation and training of the staff; that there be a professional assessment and plan of care, with periodic reassessments; and that the agency give all employees the protection of observing the minimum wage law and taking responsibility for paying social security, Workmen's Compensation, and other required fringe benefits.

A major impact of the standards has been that many States have used them as a model for the development of State standards. Other national organizations recognize these standards. Many local agencies are using the standards as a guide to developing new programs and upgrading existing ones.

The national council is working cooperatively with other organizations to coordinate accrediting processes such as the American Hospital Association, the National League for Nursing, and the National Association of Home Health Agencies.

In 1973, Federal requirements for standards were removed. Under title XX the Federal Government moved away from providing leadership or standards in health and social service programs. This included leaving standard-setting up to the States.

One result of leaving this up to the States is that local governments are setting up homemaker-home health aide workers who are called housekeepers, attendants, chore workers, personal care workers, or homemakers—frequently as self-employed providers. For this new class of worker, the critical protections of training, professional accountability for the patient, and agency responsibility for required wages, social security payments, income taxes, and other employer-paid benefits are abrogated.

Legislation for Basic National Standards

Both Federal and State governments are giving a lot of attention to expanding in-home services now. The council's greatest concern is that they are not paying as much attention to building protections into

[1] See appendix, item 1, p. 821.

those services. S. 2009, while including many needed changes, is a case in point. It does not stress enough the need for standards or provide the resources for their monitoring. We believe that Federal legislation should require that basic national standards be met and verified as being continually met.

In addition, we believe that Federal legislation should recognize and financially support the standards and monitoring programs of national voluntary accreditation programs.

No army of Federal employees can prevent the financial fraud and patient abuse as well as the people who know the providers in their own community.

Thank you, sir.

Senator DOMENICI. Now, just take your last two statements, that we need these standards set nationally, and then what was your last sentence?

Mr. HALL. I don't believe we can hire the army of Federal employees that would be necessary to police the providers, and it would be far more expensive to do that than it would be to support, financially, voluntary standard-setting organizations that are responsible to national standard-setting bodies.

Senator DOMENICI. At first it appeared inconsistent, but it isn't.

Joan, you are next.

STATEMENT OF JOAN E. CASERTA, DIRECTOR, DIVISION OF HOME HEALTH AGENCIES AND COMMUNITY HEALTH SERVICES, NATIONAL LEAGUE FOR NURSING, NEW YORK, N.Y., ACCOMPANIED BY LEAH BROCK, CONSULTANT

Ms. CASERTA. We are happy to be here. I am pleased to have Leah Brock with us, consultant for our group, who will respond also.

Our testimony [1] has been submitted for the record and we would like to include attachments [2] as well.

Senator DOMENICI. That will be done.

Ms. CASERTA. The Council of Home Health Agencies and Community Health Services of the National League for Nursing, I suppose, is the current-day generation of the national organization, the Council of Public Health Nursing established in 1902. That organization set forth a mandate that there must be standards in this industry for any service delivered into people's homes and in ambulatory settings so that the accreditation program and standard setting has been growing since the inception of that organization.

"STRUCTURE" VERSUS "OUTCOME" STANDARDS

In 1961, the first sets of industry standards were published and an accreditation program was established by NLN/APHA. We all know accreditation is a voluntary process by which agencies choose to meet standards set by the field. The standards are set by the field of agencies at large. They currently are structure standards in that they get to structure of an organization delivering services.

[1] See p. 793.
[2] See appendix, item 3, p. 829.

Implicit in those standards are processes by which an agency and its employees carry out their job to promote quality. So you can see evolution from 1961 in accreditation programs through the current day 1978 in which agencies go through site visits and peer review by a nine-member panel of experts.

Currently, we realize the weakness in the program of outcome standards for each of the disciplines operating in the organization. We have a proposal in for funding to HEW which would enable us to develop outcome standards that will be added to the existing standards in the program. Several of our distinguished panelists have agreed to participate in that proposal when and if it is funded. I think in the attachments it would be interesting for you to know that we have submitted the background information of the issues involving standards and accreditation and the development of standards which one of our staff people is conducting in Ontario. There is so much interest in standards and in accreditation that Canada has begun to look at home health and community nursing services much in the same way as we, and we are currently conducting workshop sessions there.

You will also note that, in light of your piece of legislation, S. 2009, we have introduced a set of criteria that can be used for the social support system of the home care service. There is a big debate about whether or not the health care services and social support services should be funded together. There is a big debate in Government about whether one piece of health legislation should support those services. This has to be resolved. To keep people home, there must be a combination of both health and social support services. We have learned from experience over the last 6 or 7 years to recognize about 10 or 11 key services that should be provided for to bring those two together. The current conditions for participation could serve as a baseline for those services conditions with expansion in the definitions, the continuing education requirements, and in supervision of the home health aide requirements.

Also, there needs to be an upgrading of the definition of the Administrator and manager of the Agencies which is not stipulated in the current conditions of participation. There needs also be a recognition in those conditions of the marketing performance of an Agency.

Some 2 years ago the social security amendments mandated that Agencies include a capital budget for 2 years. We believe that the same kind of marketing and program requirement plan has to be produced in those Agencies. We understand the concern of Government. We are as concerned, particularly with the fraud and abuse that this industry is susceptible to.

We concur with Hadley Hall's comment about the monitoring by Government and the army of people it takes to do that, so that we strongly believe voluntarily going through a standard-setting and accreditation process which says, "This is what I am going to do and now I am ready to be judged by a group of my peers."

Thank you, sir.

Senator DOMENICI. Thank you very much.

We are pleased to have Senator Percy with us.

Senator Percy, I have told the panel and the people here that there are many conflicts in our schedules today and we are going to try our

best to spend enough time to get all their testimony. I have also explained it was our position on the Special Committee on Aging that we wanted to have this hearing in order to begin to develop the evidence to present legislation to the Finance Committee for improving the home health care system over which they basically have jurisdiction in terms of funding.

The witnesses are genuinely concerned about standards if we do expand the program significantly. They are also concerned about the possibility for fraud and abuse, and you have heard the last witness in that regard.

I would be delighted to yield to you for comment at this point.

Senator PERCY. I am very pleased to be a cosponsor of S. 2009. We are all concerned about the same thing. We are aiming in the same direction, to determine what is the best way to do this. We welcome all of you.

Senator DOMENICI. Thank you, Senator.

I might say, Senator Percy has joined with a number of us—in fact, I think it is almost unanimous on the Special Committee on Aging—in addressing the broad general issue that I might categorize as finding real alternatives to institutional health care. The institutional health delivery system in our country, we think, quite by accident has been given the main thrust as far as the delivery of health services, because that was in existence when we developed the health plans. We are hopeful we can convince the Finance Committee that by adding significant resources and coverage to alternative systems, we are not necessarily adding many dollars. To the contrary, if we have a whole spectrum of services in existence, we are hopeful someone would review this over a 3- or 4-year period and conclude that this might be less costly because of the options available.

Senator PERCY. I don't know of any area where it is not the right and human thing to do. But no work could be more cost effective. Just look at the potential cost now for construction of new hospital beds and maintenance care. Return on investment is tremendous, and that potential is what we are really after. It is financially sound today. It makes a great deal of sense.

[The prepared statement of Joan E. Caserta follows:]

PREPARED STATEMENT OF JOAN E. CASERTA

I speak today on behalf of the Council of Home Health Agencies and Community Health Services of the National League for Nursing. The council, hereafter known as CHHA/CHS, is a membership organization of some 1,500 agencies which deliver ambulatory and home-based care to individuals for the restoration and maintenance of their optimum health, as well as the prevention of further illness or debilitation. We are pleased to discuss with the Senate Special Committee on Aging the issue of standards for these home care agencies which render services reimbursable under titles XVIII, XIX, and XX of the Social Security Act.

In 1961, the National League for Nursing developed and published the first edition of "Criteria for Evaluating the Administration of a Public Health Nursing Service." Close on its heels came the preliminary phase of a joint accreditation program of community nursing services cosponsored by NLN's then Council of Public Health Nursing and the American Public Health Association. This preliminary phase included a self-study, during which public health nursing agencies which participated developed a written report in response to the criteria guide. To digress for clarity, we define "criteria" as "variables that are used as

indicators of quality performance," the level of expected performance on each of these variables is the standard. Information and evidences of performance were stated in terms of absolute criteria or standards which the agencies met or did not meet in the area of (1) community health public identification; (2) organization and administration; (3) program development; (4) staffing; and (5) strategic future plans for the agency in light of its stated purpose for being.

In 1968, this accreditation program grew to involve an on-site visit to the agency by a peer team of visitors, as well as the self-study report, followed by the collective judgment of a peer board of review to grant or not grant accreditation.

We understand accreditation as a "process by which an agency or organization evaluates and recognizes a program of service as meeting certain predetermined qualifications or standards." The NLN/APHA accreditation program and process are illustrated and defined further in attachment 1.[1]

With the inception of the medicare program, public health nursing agencies began to evolve into multiservice home health agencies, a term coined by that piece of legislation. As the agencies changed, so that accreditation program changed. In 1970, the first representatives from health disciplines other than nursing were added to the Accreditation Standards Committee and, in 1973, the entire name of the program was changed to the NLN/APHA Accreditation Program for Home Health Agencies and Community Nursing Services.

Since that time, standards have been continually reviewed and updated to keep pace with changing industry and the complexities of organizations offering these services. In 1976, a conflict of interest and disclosure standard were adopted and, in 1977, an entire revision of the standards regarding financial management and control was initiated and is continuing today. These standards will ultimately be reviewed with all agencies at an open meeting of CHHA/CHS, at which time final modification and adoption will come from the field. This is the process that has been used over the years since the program's inception. In addition, the program is currently testing a weighting schema which will quantitatively determine the degree to which an agency meets the criteria. Work with this schema will give us the data to identify those standards which are most crucial in the demonstration of quality.

So you can see that we believe that the application of standards is absolutely necessary if we are to make final judgments about the quality of home care and if we are to be accountable to the client as well as third party payors of service.

For the committee's edification today, we were asked to address certain issues relating to standards for the home care industry, as well as issues directly relating to the functioning of the industry as a whole.

CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Foremost among these issues is the adequacy of current conditions of participation or Federal standards for home health agencies, as stated in HIRM subpart L, revision 8 (November 1973). CHHA/CHS believes these conditions are minimal for the accountability of any agency participating in the program. We believe further that these baseline conditions can be expanded to apply to those home health agencies which offer title XIX and XX services as well. In addition, we would recommend that where agencies offer home care services covered by title III of the Older Americans Act, that conditions not be different for agencies which deliver these services.

We hereby recommend the following changes in the current Federal conditions or standards:

"405.1202 (a) Administrator, Home Health Agency. A person also *is employed full-time for the purpose of organizing and managing the agencies programs and services*, and who . . . ."

Definitions of home health aide, homemaker, chore, and family care worker, etc., would have to be added here as expansions for title XIX and XX programs in particular. Such definitions as have been developed in Texas by the Visiting Nurse Association of Dallas seen in attachment 2[2] would apply.

"405.1204 Certification by State Agency. (b) *Add (1)* 'Following initial certification by the State agency, a home health agency which voluntarily applies to and meets the standards of the NLN/APHA accreditation program may be deemed as being in substantial compliance with the conditions. Such voluntary accreditation decisions will be subject to validation and periodic review by the Secretary and/or his designee.' "

[1] Retained in committee files.
[2] Retained in committee files.

A comparison of the existing federal conditions and the NLN/APHA standards can be analyzed in attachment 3.[1]

Conditions of noncompliance as discussed in section 405.1207 shall apply to the accreditation process as well.

QUALITY CONTROL

Certification and accreditation are both mechanisms of quality control in a home health agency. We believe that quality control programs must have the following components:

(1) The identification and vesting of administrative authority in an individual unit within the agency—with responsibility for ongoing agency, program, and service evaluation.

(2) Ongoing surveillance by agency management in all areas of operations with explicit attention to those factors which insure quality services. Factors such as

—The employment of qualified practitioner of health care. Individuals who meet those standards developed by their professional and/or national associations.

—Use of the prudent buyer concept in purchase of manpower and materials.

—Utilization of personnel to their highest level of performance.

—Development of pragmatic flexible but firm policies.

(3) The development of measurable program and/or service objectives. Objectives stated in patient population aggregates.

(4) Implementation of concurrent and retrospective multidisciplinary patient care audits through ongoing uniform clinical record review systems. This includes identification and periodic study of special problem cases.

(5) Development of process task for peer review audits by disciplines operating within the agency.

(6) Conducting of routine consumer evaluation of services provided, including needs met and unmet as perceived by the patient.

(7) Development of productivity and performance criteria and standards for all personnel.

(8) Routine correlation of findings from all the foregoing processes with concommitant changes, as appropriate, in agency programs, policies, practices, procedures, and manpower.

CERTIFICATE OF NEED

We believe that all newly established agencies and all proposals for extension of services should be subject to a certificate of need review. We believe that objective criteria should continue to be developed and validated to eliminate the possibility of a "certificate of need in name only." Following up on this belief, CHHA/CHS developed a formula for an estimate of home health needs. This formula is not yet validated because we have been unsuccessful in obtaining funding to do so. The formula is being used by many health systems agencies and several home health agencies. We are encouraging anyone who is using it to provide us with feedback on their experience as a beginning step toward validation of the formula. We recommend that this formula be reviewed in conjunction with existing formulas, e.g., those of the Western Pennsylvania Health Planning Association and the Kentucky Comprehensive Health Planning Council.

The CHHA/CHS formula is based upon current knowledge of population trends and utilization of home health within the mix of the seven services now being provided and funded: nursing, physical therapy, home health aide, speech pathology, occupational therapy, medical social work, medical supplies and equipment. No attempt is made to include homemaker and chore service, etc. The formula has to be adjusted and expanded to do so.

24-HOUR SERVICE

Historically, public health nursing and home health agencies were organized to provide a temporary intermittent health service to people in their own homes. When patients or families needed more hours of service than we were staffed to provide, patients were referred to another community agency or to an institution. In other words, we were telling the family that if the patient needed care at times during which we were not equipped to provide it, perhaps the patient shouldn't be cared for at home.

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[1] See appendix, item 3, p. 829.

This is no longer true today. Many home health agencies and community nursing services today are available and providing services 7 days a week and during a 24-hour period, and that movement is growing. CHHA/CHS believes that home care services of good quality must be available 24 hours a day to meet patient needs and to facilitate their maximum independence at home in their own environment.

SINGLE SERVICE AGENCIES

During 1973–74, a membership group of CHHA/CHS developed a proposed model for the delivery of home health services. In the introduction of that model, the group stated its basic premise that the availability of a broad scope of home health services to all segments of the population must be increased while, at the same time, maximizing manpower utilization, providing quality assurance, and promoting cost containment.

Ladies and gentlemen, we submit that home health services are an array of services which promote, restore, or maintain health or minimize the effects of illness and disability. Single service agencies cannot, by their very nature, meet those goals. The organizational model of services as seen in attachment 4 [1] has been used by community groups, health planning bodies, and the insurance industry to foster the availability of comprehensive, cost-effective home health services.

CHHA/CHS encourages all agencies to broaden their patient base so they are not dependent on one reimbursement source only. However, home health agencies are faced with the dilemma of inadequate reimbursement for services rendered as demonstrated by decreasing voluntary dollars, medicaid reimbursement below cost, reluctance of private insurance companies to cover home health benefits.

Until we have a national health insurance scheme with universal coverage—one in which home health care is a legitimate part of the delivery system—agencies will continue to render service under reimbursement plans that foster and support a financially sound base.

Single reimbursement source agencies are symptoms of this dilemma.

In closing, we congratulate you, Senator Domenici, for your bill S. 2009. As we wrote to you last August, Mr. Domenici, many of the changes proposed in your bill have long been needed to interrelate the health services needed by persons at home with the social support services needed to keep them there instead of within institutions. We think the issue of standards is especially important in light of S. 2009 and the possibility of serious congressional discussion of a national health insurance program.

We appreciate this opportunity to share our thoughts with you.

Senator DOMENICI. John Byrne, president of the National Association of Home Health Agencies, and Hope Runnels, executive director of the Visiting Nurse Association, Portland, Oreg.

Mr. BYRNE. I have asked Hope Runnels to make the presentation this morning.

STATEMENT OF HOPE RUNNELS, COCHAIRMAN, STANDARDS COMMITTEE, NATIONAL ASSOCIATION OF HOME HEALTH AGENCIES, AND EXECUTIVE DIRECTOR, VISITING NURSE ASSOCIATION, PORTLAND, OREG., ACCOMPANIED BY JOHN BYRNE, PRESIDENT, NATIONAL ASSOCIATION OF HOME HEALTH AGENCIES, ST. LOUIS, MO.

Ms. RUNNELS. I am Hope Runnels, executive director of the Visiting Nurse Association of Portland, Oreg. I am here speaking for the National Association of Home Health Agencies which we call NAHHA. We are grateful to the Senate Special Committee on Aging for convening this hearing and for your willingness to spend this time with us discussing the home health agencies. It certainly exemplifies the concern that you have displayed throughout this series of hearings.

[1] See appendix, item 3, p. 847.

and in the legislation you have introduced, for the millions of older Americans—and other Americans, as well—whose health needs can be met without institutionalization if alternative services are available in sufficient quantity and quality.

The issue of promoting quality care by home health agencies is one that has concerned NAHHA for some time. We believe that it can best be addressed—initially, at least—by prescribing uniform standards for all such agencies that wish to participate in federally supported health services programs.

Committee on Standards

To this end, NAHHA created a committee on standards nearly 2 years ago which set about drafting a set of standards for our member agencies. In the process, we examined standards that have been developed by various private organizations for home health agencies, and for other kinds of health services entities. Over time, we became increasingly dissatisfied with the approach of drafting our own standards, for two separate, but related, reasons.

First, it seemed unlikely that agencies which did not belong to NAHHA would adhere to standards developed by an organization in which they did not participate, yet it was evident that home health agency standards, to be of any real value, would have to be applied to all federally recognized agencies.

Second, of the approximately 2,300 home health agencies certified under the medicare program, probably less than half belong to one or more of the several organized professional groups concerned with standards. Therefore, it was clearly not feasible to seek to cover the field by obtaining HEW approval of the different sets of standards developed by these groups and enforced by them on a voluntary basis. Moreover, such an approach would obviously have departed from the principle of uniform standards for all agencies, which are believed to be an important goal.

Accordingly, we concluded that the only effective way to deal with the problem was to suggest that the requirements established by HEW for reimbursement under the medicare program, known as the conditions of participations, be amended to embody an acceptable set of standards. These medicare conditions are the one common denominator for nearly all agencies, since they are applied to agencies participating in State medicaid programs as well. They also could be expanded to cover providers of home health and homemaker services under title XX programs. They would thus have the virtue of being uniform for all agencies and, if properly constructed, they could be applied with equal force to both a small rural agency and one with a multimillion-dollar budget in a metropolitan area.

Having decided on this approach to the problem, we analyzed the conditions of participation, using the survey form approved for the purpose of reviewing home health agencies and certifying their eligibility to participate in medicare and medicaid. At the outset, we were faced with a fundamental question: What do we mean by standards?

A variety of definitions is available, but the one we felt best described the ends we were seeking is contained in "A Discursive Dictionary of Health Care," published by the Subcommittee on Health

and the Environment of the House Interstate and Foreign Commerce Committee February 1976. The definition given there states, in part, on page 155:

> Standards: generally, a measure set by competent authority as the rule for measuring quantity of quality. Conformity with standards is usually a condition of licensure, accreditation, or payment for services. Standards may be defined in relation to: The actual or predicted efforts of care; the performance or credentials of professional personnel; and the physical plant, governance, and administration of facilities and programs.

Note the emphasis in that definition on measurement. We believe very strongly that something purporting to be a standard fails if it does not give sufficient specific guidance so that a surveyor can assess levels of performance.

Deficiencies in Medicare Conditions of Participation

We then turned to an analysis of the present conditions of participation. We found that while they are sound in many respects, they are deficient to the extent that they merely describe what a home health agency must be, without setting out adequate standards for what it should be doing. Moreover, the conditions are muddled in some places, with separate concepts lumped together. Finally, there are areas in which substantive changes should be made—in a few cases necessitating statutory changes in the Social Security Act—and there are matters not covered which should be included.

Our preliminary conclusions are contained in a document [1] I have supplied to the committee, which is in two parts, which sets out our comments side by side with appropriate sections of the conditions of participation. We need to expand somewhat on these comments to provide a better statement of the reasons for our recommended changes, but I hope that this information will be helpful to the committee, even in its present state.

Here are a few samples of our critique:

First, planning and evaluation. The conditions of participation requirements for institutional planning are limited essentially to the preparation of an annual operating budget and a capital expenditures budget. There is a conspicuous lack of any requirement for the preparation of an overall plan which sets out the particular population to be served in a particular geographic area with services of a stated frequency and availability through specified resources of personnel, finances, equipment, and physical facilities.

In addition, there should be required a program plan which gives the details of how services are to be provided. Coupled with the planning should be a process of written evaluation to determine the extent to which planned objectives are being met and the levels of performance reached in doing so. In this connection, it would be advisable to have surveyors monitor a sample of home visits to assess the patient care being rendered.

Planning and evaluation requirements are of particular significance for use by health planning agencies in the certificate-of-need process to determine whether a need for proposed or existing services exists. A number of States currently cover home health agencies under their

[1] See app., item 5, p. 857.

certificate-of-need laws, and the extension of Health Planning Act authorities recently approved by the House Interstate and Foreign Commerce Committee would extend such coverage to all States.

Second, agency auspices. The present conditions recognize a distinction only as between nonprofit and proprietary—or for-profit—agencies. Information acquired at hearings of this and other committees of Congress has shown that in many instances this is a distinction without a difference. Some agencies organized ostensibly as nonprofit entities function more as individual entrepreneurships, with benefits for those in control that are clearly excessive. It may be that the development of adequate standards applicable to all agencies, regardless of their profit status, will obviate the need for such distinctions, but in the meantime they should be clarified.

Clarification of Non-Profit Agency Status

One indication of genuine nonprofit status is a disinterested board of directors, drawn from the community, to which agency administrators are answerable. Conversely, a board controlled by those having a direct interest in the agency's operations raises doubts about nonprofit status.

Another indicator would be the provision of services on a charitable basis, and the receipt of charitable contributions from voluntary organizations in the community.

Third, supervision. The current conditions require only that skilled nursing or other therapeutic services be provided under the supervision and direction of a physician or a registered nurse. Under this provision, the physician or nurse may be supervising the activities of 1 or 100 persons working under them. Some more measurable ratio should be provided of supervisor to staff personnel. In addition, the duties of supervision need to be spelled out more precisely.

Formal Training for Home Health Aides

Fourth, home health aides. The conditions now provide for the selection of home health aides "on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job." This is less than adequate. There should be a formal training program mandated for home health aides who, after all, most often work without direct supervision in the patient's own home.

These are only a few of the changes we believe are needed in the conditions of participation before they can serve as meaningful comprehensive standards for home health agencies. Others may disagree with the specifics of our recommendations, but we hope that there can be broad agreement on the approach we suggest of establishing the conditions of participation as uniform standards to promote high-quality patient care services by responsibly administered home health agencies. We recognize that these will be minimum standards; once they are established, there will be adequate opportunity for private accrediting organizations to set their own higher standards for those of their members who wish to attain the distinction of demonstrating

a higher level of performance. For now, however, let us take the first step.

NAHHA stands ready to assist in every way possible in the urgent needed process of converting the conditions of participation into adequate standards.

Senator DOMENICI. Thank you very much.

I want to recognize Senator Chiles of Florida. I don't think I have to tell anyone in this room of his genuine abiding interest in this area. He has participated in many hearings, and we are most appreciative that you are here.

Senator CHILES. Thank you, Mr. Chairman.

Senator DOMENICI. If you have some comments to make, please do so.

STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. Represented at this hearing this morning are four major national associations of home care agencies—all with a strong interest in the development of uniform standards for all forms of home care.

As a matter of fact, there are five associations. The Assembly of Outpatient and Home Care Institutions of the American Hospital Association, representing hospital-based home care agencies, has also worked with the committee and will submit testimony on home care standards.

The mere existence of five national organizations representing home care agencies attests to the growth of home care services during recent years.

This is growth that I know my good friend Pete Domenici and I both welcome, as we are both well aware of thousands of older Americans who still do not have access to competent, quality support for independent living.

At the same time, however, I know we are both concerned with just that—insuring the competence and quality of any services delivered in the home or other independent settings.

"MAJOR PROBLEMS LOOMING"

I took testimony at earlier hearings which makes it clear that this is not always the case, even now. There are indications of major problems looming in home care services supported by title XX and medicaid. Home attendants—underpaid, undertrained, overworked, and unsupervised—recently were the subject of extensive publicity in New York City. I received testimony last May which indicated that similar problems may be occurring in more than 25 States in title XX programs alone. Allegations included instances of patient abuse and fiscal irresponsibility.

We are all familiar with revelations of what can happen with the medicare program too—as complicated accounting arrangements mask inappropriate expenditures of home health funds.

We enter a challenging new era when we increase our support for services delivered in the home. I think many of us have decided that is how we should generally move.

But the very fact of services delivered in isolated settings, where adequate protections are difficult to apply, gives us added responsibility to insure thoughtful and careful program development.

That is why we are having this hearing on standards in home care. Our witnesses have all given a great deal of thought to this issue.

This week I am introducing a bill which would amend the Older Americans Act to encourage the development of coordinated systems of community home care. One feature of the bill is designed to encourage States to develop standards for all forms of home care.

I am not sure that the question of setting, monitoring, and enforcing standards is one that the Federal Government can take on in isolation, and I look forward to your comments this morning.

Senator DOMENICI. Our next witness is Ronald Rosenberg, chairman of the Home Health Services Association, and vice president for planning and development, Homemakers-Upjohn.

STATEMENT OF RONALD E. ROSENBERG, WASHINGTON, D.C., CHAIRMAN, HOME HEALTH SERVICES ASSOCIATION; VICE PRESIDENT FOR PLANNING AND DEVELOPMENT, HOMEMAKERS-UPJOHN CO., ACCOMPANIED BY BERKELEY BENNETT, PRESIDENT, HOME HEALTH SERVICES ASSOCIATION

Mr. ROSENBERG. Thank you, and good morning. Thank you for the opportunity to appear before this group and discuss what we feel is an important issue. I am accompanied by Berkeley Bennett who is president of our association.

Mr. Chairman, the Home Health Services Association was formed in recent weeks primarily to encourage and promote greater quality, efficiency, reliability, and safety in the delivery of home health care services and to improve the services of home health providers to the general public. Home Health Services Association members are national home health care provider groups representing over 500 taxpaying home health offices.

"STANDARDS . . . ARE NEEDED NOW"

Standards for home health care service delivery are needed now to guarantee the quality of care. Every panelist has spoken to that issue. The only Federal program that has established standards for home health is medicare. Unfortunately, these standards are not patient outcome oriented—they apply only to providers in the medicare program. Through complexities and interpretations in the social security amendments, medicaid providers, by regulation, must be medicare certified.

Neither title XX social services nor the Older Americans Act programs require that providers meet any such standards. Therefore, the only standards which apply to home health care in the private sector are those established by the licensure laws that exist in 20 States. In 30 States, there is no protection of the public because home health agencies are not required to be licensed.

The Home Health Services Association believes that standards for home health care providers ought to encompass three aspects of qual-

ity: The functional status and potential of the patient, the training and experience of the care givers, and the level of supervision of individual cases.

First, let's consider the patient. The patient care plan established by the agency to implement the physician's plan of treatment must take into account much more than the diagnosis.

Care must be aimed at assisting the patient to function at full potential, given his diagnosis and current capacity. The care plan must be developed in concert with the patient and family and should concentrate on providing the appropriate level of care. If patients are respected and if the agency properly assesses and monitors the patient, the patient ought to be able to reach his full potential. Currently there are no standards for patients' rights; there are no standards governing the agencies' patient assessment.

Second in the quality structure is delivery. The well-being of the patient is actually in the hands of the person giving the one-on-one care. In the home health field the actual care is given generally by a home health aide. If the home health aide is not trained or experienced, then the patient is not receiving quality care. There are no standards governing the training, experience, and proficiency of home health aides.

Third, the quality of service is dependent upon the level of supervision of individual cases. While medicare standards mandate that nonprofessional personnel be supervised by professionals, there is no standard governing case supervision. A supervisor could get so concerned with personnel management that he might not have time to actually manage the patient and his care plan.

Patient Accountability Missing in Government Standards

In each of these aspects of quality care, the meaningful standards are those established by agencies themselves in order to provide accountability to their patients. Most of the standards established by the Government assure proper accountability by the agency to its funding source.

In the private sector, Mr. Chairman, we are answerable to our patients.

The Home Health Services Association believes that this country must move rapidly to adopt, implement, and enforce industrywide standards for the delivery of home health services and for the individuals who provide such in-home services.

At the very least, Home Health Services Association believes that existing medicare standards ought to apply to all home health providers. As you know, the medicare law allows proprietary home health providers to participate in the medicare program only if they are licensed by individual States. Since the majority of States have not enacted home health agency licensure laws, proprietary providers—as well as nonprofit—are delivering health care to a large segment of the population without a license.

At the time of passage of the medicare and medicaid laws in 1966, the Congress stated in its respective committee reports:

> . . . Organizations providing home care on a profit basis are presently nonexistent. However, the language of the bill permits covering such agencies if they come into being, are licensed, and meet the high standards which the present nonprofit agencies offering organized care meet.

It seems apparent from this statement that the Congress fully expected States to enact home health licensure laws as the need arose. After all, the States license virtually every other segment of health as well as beauticians and barbers in the interest of the health and safety of their State residents. Nevertheless, the majority of the States still have not acted.

Why? In great part because of unspecified fears of the effect of the profit motive on an agency's actual delivery of care. Proprietaries who urge States to enact such laws are not asking for special treatment; to the contrary, they are asking for fair and equal treatment under the law. They are asking to be regulated and bound to perform within specified standards.

States Slow to Act on Licensure

Still, the States have been slow to act, and the net result has been that thousands of people are not receiving home health care because nonprofit agencies serving medicare in States without licensing laws simply lack the manpower to meet the need.

In its discussion paper following the national public hearings on home health care in the fall of 1976, HEW stated:

> Since both proprietary and nonproprietary agencies are participating in medicare and medicaid, it seems appropriate that uniform standards should be applied to all agencies that deliver care to the home, including homemaker agencies—

Adding that—

> the suitability of any provider may be more dependent on ability to comply with quality standards than on financial organization.

For these reasons, Mr. Chairman, we believe that your home health bill, S. 2009, should be revised to include a change in section 1861(o) that would put all agencies on the same footing. This action would immediately make services available to literally hundreds of thousands desperately in need of in-home care. There is a vast unmet need in this country: A need to keep people in their home surroundings; a need to keep costs down; and a need for people to care for the elderly. Coupled with implementation of industrywide standards, this 1861(o) change would end discrimination against a class of providers—nowhere else in the medicare program is anyone singled out—and make home health care services more accessible and more available to those in need. All providers should be equal under the law and answerable to a single set of standards.

Senator Domenici. I wonder if Mr. Suzuki would like to give some reactions at this point.

STATEMENT OF MICHAEL SUZUKI, DEPUTY COMMISSIONER, ADMINISTRATION FOR PUBLIC SERVICES, OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Suzuki. I appreciate the opportunity to come and hear the testimony that has been presented and to hear the concern this committee has expressed for title XX—the only program I can speak to specifically.

The title XX program is an interesting program in that, under Federal law, the 50 States and the District of Columbia can define their services program.

This, however, has created a problem in that States have come up with more than 1,300 definitions for services, many of which are not comparable. So we really have had to invent a new language in order to accommodate all of the ways that, for example, homemaker service has been described. We have done this.

Title XX—$300 Million for Homemaker Services

In the area of homemaker services, our estimates are that more than $300 million in title XX money is being spent annually. Such sums naturally keep raising the question of standards, and this is a question we have great concern about.

Here I would like to read off to you our top 10 services—in terms of title XX money spent by the States. Using the titles the States use, they are: (1) Day care services for children; (2) foster care services for children; (3) protective services for children; (4) education and training services; (5) counseling services; (6) chore services; (7) homemaker services; (8) health-related services; (9) employment services; and (10) residential care and treatment services.

The reason I wanted to share with you the major services funded under title XX is that the question of standards applies not only in the instance of homemaker services, but in terms of a wide range of services.

When the question comes up of what role the Federal Government should play regarding standards, I have to be very direct and point out that the only service the title XX law says we have the authority to deal with in terms of standards is day care for children. Although this authority has a long history, HEW is currently preparing a report on what the Federal role should be on these standards.

I want to put our dilemma into perspective. Not only are we concerned about chore services and homemaker services for the elderly, but we are offering such activities as the placement of children away from their own homes, and we have no authority to articulate standards in terms of the residential care and treatment these children will receive.

While this is an issue we don't want to ignore, nevertheless from our perspective—and this perspective covers a multitude of programs—whenever we raise the question of Federal standards, the question that invariably surfaces is: What is the proper Federal role?

We are examining in exquisite detail—with an investment of more dollars than I like to think about—the Federal day care standards upon which Congress has declared a moratorium three times. Some of the issues that concerned Congress were the appropriateness of the standards and the costs involved. In certain instances, when Federal funds are expended for services, the State government must develop standards in relation to such areas of activity carried out under title XX.

Today, four national associations discussed their views on this subject. Two of them called for voluntary, national standards, with voluntary accreditation. The other two advocated the use of the medicare conditions of participation. I have no answer as to which approach would be the best.

One of the places where standards are particularly needed is in the area of homemaker services, because here the client is caught in a real one-on-one situation. Thus, for this service, a system of protection needs to be built in—perhaps by licensure, perhaps by accreditation, perhaps by Federal standards.

"An Army of Monitors"

But again, it is all too easy for us to talk about Federal standards. Then the question arises as to whether an "army of monitors" is needed.

Senator Domenici. Do you agree with the statement made that a reasonable interpretation of the laws that exist would have contemplated State licensures for home health providers? If so, why? What would be your thinking that only 20 States have licensure laws and 30 don't?

Mr. Suzuki. That goes to the medicare and medicaid side.

Senator Domenici. Do you have any opinion on that?

Mr. Suzuki. One thing I would like to point out here gets back to the range of service definitions and to the series of services permitted under title XX. It deals with something that was discussed today: Home health aides and homemakers. When we began to talk about home health aides and homemakers, we looked at the wide range of services they could provide; that is, all the way from the extreme side—meaning the medical model of a specific health-related activity—to the middle ground—perhaps of a broad-gaged homemaker service which relates to personal care, personal services, and also the management of the home.

Another major service that States have undertaken is something called chore service. Perhaps in the extreme, some of the activities that fall under this rubric are definable. But there is a distinct blurring of definitions as you go across the list. As adopted by many States, chore services relate less to a personal kind of care than to some kind of assistance around the home. So, from our perspective, a proposal to bring together this whole range of services, including activities called chore services, is very complicated.

And when we talk about "conditions of participation" under medicare, my technical question becomes: Do we try to bring in this kind of activity under that umbrella?

Senator Domenici. Thank you very much.

Senator Chiles.

Senator Chiles. No questions.

Senator Domenici. Mr. Hall.

Mr. Hall. There is a misconception on this chore and homemaker situation. The patients are all the same. In California, for example, a chore worker can do bowel and bladder care, and it says so in their State regulations.

What we have is a set of bureaucratic words, if you will, that have developed because one program has failed to take care of the needs. When medicare and medicaid failed to deal with the chronically ill, long-term patient, title XX and title III of the Older Americans Act had to come into being in order to deal with the patients who were left out. We play a game of words. They are all the same people.

I cannot tell you, as the executive of an agency in business for 20 years, the difference between a chore worker, attendant, home health

aide, and all these others. There isn't any. What we have got is a mechanism to somehow deny care.

$180 Million in California for Title XX Homemaker-Chore Services

The second point I would like to underscore is that though there may not be any standard requirement in these programs—title XX, for example—the fact is that in California we will spend $180 million on homemaker-chore services this year under title XX, which are State and Federal funds. Eighty percent of that money is going to people delivering these services without minimum wage, without social security, income tax withholding, workers' compensation, or any other benefits—in violation of known Federal labor law or State labor law—because they control effective hiring and firing, the tasks assigned and the wages.

I cannot accept that there is nobody who has responsibility for this situation. That has got to be somebody's responsibility.

Last, through Federal regulations, published in the Federal Register, standards were required until 1973. It was done then. If it could have been done then, why can't it be done now?

I certainly don't mean this personally in terms of Mike Suzuki. We have worked well together for a long time, but there has been a history in HEW to deny and ignore these problems.

Senator Domenici. Did you want to comment on that?

Ms. Caserta. Absolutely. I refer to the definitions of the whole social support system that I addressed earlier, in which Texas, California, and New York are employing, I would think, a dozen different kinds of workers. These are called different kinds of workers who have functions that are so mixed up.

So, we not only deny care to people, but we abuse and overutilize these categories of workers. I could not agree more fully that there needs to be a concrete acceptance of a national definition of a chore worker.

There is also something that has not been addressed; I think that there is the need for a system of assessment, a national assessment strategy in agencies. There are several mechanisms that have been tested. I think you are familiar with the PACE tool. It has its problems in that it takes much too long. There needs to be some tailoring of that tool. That has not really been addressed. So I offer it to you for another piece of the package.

Senator Domenici. Senator Chiles.

Senator Chiles. In the 20 States that are licensing, Mr. Rosenberg, how many proprietary agencies are licensed—what percentage?

Mr. Rosenberg. A small percentage at this time. Most of these licensure laws have been enacted in the last few years. The percentage of them, I would not begin to guess. I would probably say in those States, maybe 50 to 60 agencies at this present time—more in Florida than in other places.

Licensure many times is defined or centered around the type of care that is provided. For instance, if you provide only intermittent care, which is usually meant to be 2 hours or less, then a license is required.

If you provide care that is around the clock—that is, longer than 2 hours—then many times a license is not provided. It is a system that varies in the 20 States. That is why our recommendation is that one set of standards, one set of regulations for all providers, be applied nationally.

Senator CHILES. That seems strange, that there is only a small percentage of proprietary agencies that meet the licensing requirements. Did they fail to meet the standards?

Mr. ROSENBERG. I am not sure that is the problem. I think the problem is the development of the proprietaries. The most recent rapid development has been really within the last 2 years. Homemakers-Upjohn is one of the older and larger ones. We have been in business for approximately 8 years, but the rapid development has only been within the last 1 to 2 years in many States. I think you will see in the future more activity toward licensure.

Ms. CASERTA. The licensure issue raises another one which has to do with rural and urban distribution of services—I think you might agree with that—in terms of what counties are still uncovered in the country where agencies will establish themselves. That is why there is a crying need also for national recognition for a need formula to establish an agency and for incorporation in health planning.

We are concerned—and I know in your opening comments you mentioned your concern—about the rural health system, and you will find that licensed proprietary agencies are not established in rural areas, and those are still largely uncovered.

Senator CHILES. How is that going? Proprietary agencies don't want to go into rural areas, primarily because there is not enough profit. A change in national standards as opposed to State licensing—the agency couldn't do anything about that.

Mr. ROSENBERG. Neither have the existing agencies who have been in business for 50 to 60 years in some places. Neither have they in many instances gone into rural areas.

Another problem that exists under licensure laws is that proprietaries cannot become licensed because of restricted certificate-of-need laws. At the present time there is no known formula that we know of to determine how many home health agencies are needed in a community. Everybody has a pet formula that they would love to try, but there has not been one formula, yet, out of HEW or anywhere else.

If a proprietary agency is going to become licensed in a State, it must get a certificate of need. If it can't get a certificate of need because there are already existing agencies, even though that agency may decide it won't provide services under titles XVIII or XIX but just wants to become licensed, it will be turned down for licensure if it is unable to get a certificate of need.

One of the things that is needed—and I hope HEW will address this some time in the future—is national standards. How many home agencies are required in a community? What is the number? Is it even?

Senator CHILES. Are you saying there should not be a requirement for a certificate of need?

Mr. ROSENBERG. At the present time; yes, sir.

Senator CHILES. There should not be that requirement?

Mr. ROSENBERG. Yes, sir, at the present time.

Senator CHILES. I held hearings in Florida a few years ago. One of the great problems there was the overabundance of home health agencies—not only overabundance, but what was happening because of the overabundance. They were paying doctors and nurses. They were overreferring and overtreating, and it convinced me if you didn't have a certificate of need, you would have overutilization tremendously, as we did there.

Mr. ROSENBERG. I am not sure in our findings so far that we have found that certificate of need regulates or controls overutilization. I am not sure that it controls pricing structure at this point in time. I think what is needed are strong regulations that are enforced. I am not sure certificate of need can do those things. There has been no demonstrated proof that it has.

Mrs. MOORE. On the subject of rural-urban, homemaker services started solely under voluntary agency auspices.

PUBLIC AGENCIES IN RURAL AREAS

I think it is interesting that our statistics in 1976–77, indicate that now 51.5 percent of all the agencies are under public auspices, and we find States like North Dakota and Iowa—rural States—have homemaker services in each county. This is because it is being done under public auspices. We find that increasingly the health departments, the social service departments, and in some instances the offices on aging, are working cooperatively to make these programs a reality.

Another point. I would like to be able to send from my office, for inclusion in the hearing record, a definition of chore services[1] which the national council has developed.

Third, it might be of interest to you that this year the national council has a contract with the Public Health Service to develop a new training manual for homemaker-home health aides. When this is completed, it should be of great use in the conditions of participation for the training of this paraprofessional level of worker. We hope it will be used that way, and I think that that is the Public Health Service's intent. We agree that there is a desperate need for a common approach to training of homemaker-home health aides across the country if for no other reason that they are, in terms of volume of service given, becoming the chief care givers in the home.

Senator PERCY. I would like to ask you to address yourself to a problem many volunteer home health service agencies have. If there is to be a viable substitute for—an institution does operate, presumably, 7 days a week, 24 hours a day. Some voluntary home services operate on an 8-hour day, 5 days per week basis, and we have certain Federal programs that are nutrition centers—essentially one meal, 5 days a week. It provides a limited service, but a much-needed service.

Our meals-on-wheels are home delivered meals, 5 days per week, essentially. Some communities have gone beyond that. Could you comment on how, if we are to have a viable substitute, what should be done or can be done about the 24-hour day, 7 days a week needs of those who are confined in their homes or prefer to stay in their homes but might have to be institutionalized because they can't be dependent on 8 hours a day, 5 ways a week?

Mr. BYRNE. I think that relates to one of our first areas of encouragement. It is easy to slip in this universal needs and not define terms.

[1] See appendix, item 2, p. 825.

In some previous public testimony, the voluntary sector has been taken to task by certain interest groups as to not having adequate services.

I am not defending the fact that we don't. I look at VNA affairs, St. Louis—although I have been there 5½ years, I can see great increases in services in staff. We are doing it the same way we did 5 or 10 years ago.

I think what we need to do more effectively is to do what John referred to. There is not only the need but you do have to evaluate the availability of staff. What do we mean? Some of the testimony gets confused as to 24-hour service. Are we really talking about, for instance, VNA of the District of Columbia sending a nurse out at 2 a.m. into 21st and Constitution to change a catheter, or are we talking about, because of need, the temporary homemaker or sitter who would be available around the clock for a brief period? These are things that we have to concern ourselves with in better planning. This is why we are encouraging that conditions be used as a monitor to establish what you are really in business for.

I think this is fairly common. Most businesses, at least—if they don't know what business they are in, they won't stay in long because they won't make a profit. In the voluntary sector we need a challenge as to demonstrate why we are in business, whether we have been around for 67 years or 6 months. If we are using public dollars, we should be ready to show why we are there, and then that we meet the services that are appropriate. We hear constantly home care services are cheaper than institutional care. It is a fallacious concept. It depends on what you are comparing and for how long. What is the length of stay and composition of what you are going to render? That gets back to the needs for planning. Within that the marketing ability to do something that is cost effective and the appropriate use of human resources, client, patient, and staff. These are some of the things we recommend be addressed.

Mr. ROSENBERG. One of the foundations for the proprietary industry, especially for the company I am associated with—Homemakers-Upjohn—was that we fill the void, in our early days, and we still do, and that our services were available and are available after 5 in the evening. They are available on weekends. We have found many, many of the people that we care for need services when some of the traditional agencies that have been available have not provided services during any hours, but only from 9 to 5, Monday through Friday.

We provide a large number of hours of service, particularly at those times after 5, on weekends when family members may not be present, and all that is needed is someone to be there. There is a need and there is a void in many parts of the country for these services.

Senator DOMENICI. Could I just narrow the issue for a minute and discuss this question of standards? I will then try to ask a few questions about what appears to me to be the need for pooling of resources. and for the flexibility of pooling resources at the local level.

NATIONAL COMMISSION ON HOME CARE SERVICES

Would the establishment of a national commission on home care services, with the freedom to set the standards, accreditation process, and the power to withhold funds for nonconforming agencies be one

way of approaching this field? Representative Cohen suggested this possibility in legislation he introduced in August 1976. If that seems possible, what would the makeup of that commission be? What language, in regard to standards, would you want included in legislation such as S. 2009? Does anyone want to address that?

Mr. HALL. I would support it, Senator. The only danger that I see is that it would be a little like in the Inspector General's Office in HEW which has not moved on two flagrant cases of fraud and abuse in the home health field exposed over a year ago, documented in chapter and verse, followed up with letters asking for reports on what has happened. It was laid out in detail.

Senator DOMENICI. In California?

Mr. HALL. Yes; the two happen to be in California. Still, so far as I can tell, nothing has been done either by the Inspector General's office, the Attorney General's office, or the attorney general's office, State of California. If the commission is going to set standards and then not be able to get the bad guys out, I don't think we are any further ahead, but the concept is appropriate and right.

Mr. ROSENBERG. I would agree that a commission could be useful, if it provides a representation that is varied, as varied as this group, and not be set in a vacuum. I would agree it would be helpful.

Ms. RUNNELS. I would hope we would have a voice in the standard setting. I think it is important. NAHHA would certainly endorse the concept of a commission.

Mrs. MOORE. I would like to endorse it, too. As I was thinking earlier this morning, we needed an ongoing vehicle of the kind we have today. It seems to me we need the voluntary sector, the providers, and consumers on the commission. It should be carefully established.

Mr. BYRNE. I think within that, just like the certificate of need, we are not starting de novo. We have lots of experience. We have lots of problems, but we are not starting without any knowledge. This does not necessarily have to be 10 years getting started. We have too much at risk going in with $2 billion or so that is being spent on home services to disregard this for a long time.

Ms. CASERTA. You said two things. You said setting standards by a national commission, and accreditation. Are you mixing those kinds of processes?

Senator DOMENICI. No.

Ms. CASERTA. Would you see setting standards as a major focus for such a commission?

Senator DOMENICI. Yes; I would. If I did not make that clear, it is basically what I was talking about.

EFFECT OF STANDARDS ON SERVICE COST

Senator PERCY. Let me ask one other question. What effect might uniform standards have on cost—national standards? There is some school of thought, obviously, that says all regulations, standards, rules, and regulations are costly. Another school of thought that says the lack of uniformity and lack of standards in home health really contributes to cost unnecessarily. You know more about it than we do. What is your feeling about it?

Senator DOMENICI. Let me say, Senator Percy, I think that Mr. Suzuki addressed that issue when he was speaking of day care, that we had an exact example in Congress. The States thought they were doing a reasonably good job and a simple standard was proposed from Congress that had to do with the number of adults for the number of children.

That cost was quickly estimated and a hue and cry arose from the States that they were going to get less coverage out of money they were spending. As a result, they got a moratorium. It almost caused a major bill to be vetoed. I think Chuck asked a good question. In this area it would be more difficult to measure at this stage.

Mr. BYRNE. I think, again, it is the chicken and the egg. It seems to me the role of Government is to be concerned with the common good, and if all men were interested in everyone else's good we would not have the need for laws. We have had enough testimony to show we have severe problems and the people who are getting hurt are those who have been taxpayers, or may currently be taxpayers, but are not recipients. It is a matter of where you are coming from now. We have hosts of evidence that we can't leave the thing alone and expect to get the value for the taxpayer and the benefits to the client.

Mr. ROSENBERG. That is a question that needs careful study. This system could be priced right out with overregulation, maybe, and overstandardization. It could be delivering the highest possible quality that nobody could afford, either the private consumer or the Federal Government. Somewhere in this there has to be a middle ground. I think that should be one of the charges to this commission that every standard not only be patient-effective and good for the patient, but also be very cost-effective. It must always look at—not only is the Federal Government or a third party payer going to pick up the price tab or somebody, but there are a lot of people out there who will be paying their own way and they deserve a fair chance and a fair shot.

ENFORCEMENT

Senator CHILES. That is the difficulty I see in how you are going to do that with a uniform set of standards, and you have not said who is going to enforce the standards. Is this commission going to enforce them? Is the Federal Government going to enforce them? Who will be the enforcing agency?

Senator DOMENICI. My question would enforce it only by the mechanism of withholding funds. That was included in the question I asked.

Senator CHILES. Who looks into the home and sees what is happening, whether these standards are working—who monitors the process?

Mr. SUZUKI. Hadley Hall referred to some concerns on specific issues. One of HEW's concerns is whether or not to establish national standards. Could we expect somehow, even with our regional operations, to get to the community level and monitor the offending or inadequate service? Perhaps to develop such standards would create a cumbersome mechanism. Yet national standards do not necessarily have to be enforced by Federal bureaucrats. In the day care standards, even where there are national standards, we expect State and local government to enforce these standards.

Senator DOMENICI. There was a suggestion made in someone's testimony that we have a local board of directors to act as a peer review mechanism. As I understand it, that is your testimony.

Mr. HALL. Voluntary agencies usually have a board of directors.

Ms. RUNNELS. If I may say, I think those of us who have been in this business for a long time do enforce our own standards. I would like to think that we are responsible enough to see to it that the quality of supervision insures the delivery of safe care to patients. We have United Ways who have been looking at us for years to be sure that we measure up to the standards that are important for that community. And our prices are competitive with other agencies. So I think that it is very possible to enforce standards without having to send out armies of Federal inspectors to be sure we are indeed providing services that are safe.

Mrs. MOORE. We think this point about the board of directors is so important that in our accreditation program, if the agency is not a voluntary one, that is, if it is a public or proprietary agency, we require that they have an advisory committee representative of the community. We think that is one of the factors that should be held to regardless of the auspice.

Mr. HALL. I would like to address Senator Percy's question regarding the cost of these things. No. 1, the two famous cases, in which you participated in the hearings, Senator, took 12 auditors 60 man-days in a van at one of the contractors to establish what everyone knew was going on. I hate to think of what we have spent in that monitoring. That cost would have paid for all of the agencies to have been accredited by all of the groups and would have put a stop to it much faster.

No. 2, I think there are three things that can be done very easily and very cheaply. First, is that whoever pays the bill should send a copy of that bill to the consumer. I don't know whether you know it or not, but an agency can bill medicare and the patient never sees it, never knows what those charges were.

Now, if we went to Macy's or some place else and they just sent the bill to the Government and the Goverment paid it, it would be a funny thing. But we do that in medicare and medicaid and title XX. The consumer never sees what has been billed. That is wrong.

In our agency, we have been sending the bills to the recipients. So, second, you would be amazed at some of the things that come out, both in terms of our quality and our services. The argument that these people are too old and too senile to know the difference does not hold water. We have been doing it for 20 years.

The third aspect of the cost containment thing is, if there were prospective budgeting, with the billing controlled by a simple list of employees—names, social security number, and function—there are computer programs all over the United States that can match those so that if you have a person who is listed as a nurse, who never shows up as having made a nursing visit, the computer could pick that up and say OK, what is it, a wife or daughter or somebody who isn't there.

The prospective budgeting process, the actual audit process, and the billing process, can be set up so that even the simple rural agencies

can do this by hand and it can be put into a system. One key punch operator could handle a whole city, and I am not sure two key punch operators could not handle the whole State of California.

We have not turned our attention, in the Government, to using some of the technology that is available to us. I think a copy of every bill for every hospital stay, for every drug, ought to go to the patient. I think we might find that constituents would be writing you and saying: "Senator, I did not get what they said I got."

Senator PERCY. I think there is no better argument. Could I ask one last question? This discussion has been fine for us and it is in tune with what we want to hear, but always the purpose of a public hearing is to bring better education. I have found in the 3 years I spent writing the book "Growing Old in the Country of the Young," a lot of people never knew of these services. I bet there are a lot of citizens in Portland, Oreg., who don't know how many services are being provided. Would you mind, Ms. Runnels, running through what services are available in Portland in home health care that any citizen would be eligible for or those who are just eligible at certain income levels?

AGENCY SERVICES

Ms. RUNNELS. The income level has nothing to do with it in my own particular agency. The services we provide are nursing, physical therapy, occupational therapy, speech therapy, medical social service, home health aides, and nutrition consultation.

Senator PERCY. That is available on what sort of a basis?

Ms. RUNNELS. It has to be medically indicated and we have to have authorization from the physician; that is the criteria. If this is what the patient needs, it is part of his plan of treatment, then this is what he gets.

Senator PERCY. Are there other cities represented here that could expand that list?

Mr. ROSENBERG. I am not sure I can expand the list much, except entry into the proprietary market or into the proprietary home health agency usually does not have some of the limitations that were just mentioned, such as the physician care or physician authorization that may be necessary.

I would like to go back, if I may, for two comments, Senator. on what you said. In the proprietary market the consumer or the client or the patient, whatever terminology you would like to use in the private portion of the market—not where the proprietary agency is providing services under titles XX and XVIII—that patient does sign a time slip every week for services rendered. There are some flaws in that system. Usually, the patient is asked for an evaluation of services that happens at the same time the patient also receives a bill weekly to be paid. There are some checks. It is an interesting point, Senator Chiles, in Florida where for many years we were delivering services nonlicensed, not certified, nonmedicare services.

The first question asked to us in the private-paying market when we went into a hospital to talk about our program was, "How much will it cost my patient? How much per hour is the service?" Now, we are medicare-certified and providing services under medicare. I

imagine that in all of our offices down there we could probably count the times on one hand that we have ever been asked how much does this service cost. It is just of no interest because somebody else is now paying for it.

Ms. CASERTA. May I add to that list of services, which I know in my home city of White Plains and the surrounding counties of New York, there are available meals-on-wheels, transportation, chore, physician services at home, and homemaker.

Mrs. MOORE. Friendly visitor, escort, and transportation.

Ms. RUNNELS. I was not trying to speak for the whole community, and all these services are available. One thing I would like to say in relation to looking at the conditions of participation. One of the recommendations that we are making is that agencies would show cause why they would not be providing all of the services which are allowable for reimbursement by medicare, rather than the current conditions which only require that there be nursing and one other service. We think this range of services should be available to those patients who need it and we feel this is an important addition.

Mrs. MOORE. I thought of another important service that I don't think was mentioned, telephone reassurance service—one person calling another person. I think perhaps it was Hope who mentioned need for assessment and reassessment. One of the ways to tell whether a service is a good one or not is whether they do assessment and reassessment and use a combination of some of these services.

For instance, maybe you need homemaker service Tuesday and Thursday, and telephone reassurance every other day, or you may need meals on wheels every day or intermittently, you may need transportation or escort service. And a way to tell if it is a good service—do they pay attention to getting the mix and match of services that people need and change them as needs change.

I heard Hadley testify several years ago when he said while his costs per hour had gone up, his cost per case had stayed the same. One reason was they were making better use of the less costly services, where appropriate, for the people served.

RESTRAINING COSTS

Senator CHILES. On that point—how do we generate any mechanism that would hold costs? Have you tried to hold those costs at some level by mixing the services? The biggest problem we have now is there is no mechanism to cause any restraint. The sky is the limit.

Mr. HALL. In San Francisco in 1976, for example, none of the proprietary agencies made a referral to meals-on-wheels. That community knew that. Yet those agencies that were 100 percenters, in one title or another, were allowed to continue.

It is impossible for them to have a number of patients and not use other community services. My impression about day health is that during 1975 and 1976, under the section 222 projects, not a single proprietary organization was referred for day health services. That appears to be an impossibility. They have a very large caseload. I don't know how you set it up on a national scale to monitor that kind of thing. I think it has to be done at the local level.

Senator CHILES. I don't see how that sets a mechanism on trying to hold prices down. Whether it is a voluntary agency—a proprietary agency, whatever it is—from the national funding level up here as we are trying to appropriate the money, as we are trying to write those programs, how do we try to put some cost restraints into those programs?

Ms. CASERTA. There are two States, California and New York, that legislated utilization review within home health agencies. Now, utilization review, not in the current context of that definition, but a review on a case-by-case basis of the mix and match of services in that case.

Not the length of stay, but what kind of professionals or support systems are being used—to what level, to what degree, what was needed, what was provided, was it overutilized, was it underutilized. To quote from a prior statement, "Was it a Cadillac instead of a Ford that was sent to an agency?" That process used in that way is one way.

Senator PERCY. Mr. Chairman, I have to leave, but I want to thank all of you for the tremendous help you have provided.

EFFICIENCY INCENTIVES

Mr. ROSENBERG. I have one comment. I think the present reimbursement system in many ways is unfair—unfair to the Federal Government and unfair to the taxpayer. There appear to be no rewards or no incentives for efficiency, for doing things in a more businesslike manner, and I put that in quotes. Many of the programs today reimburse on a cost-plus basis. It is almost whatever it costs you to deliver the service, you are going to get reimbursed for. That does not work in the private market. People shop for the service. I think there has to be something done with that reimbursement system.

Senator DOMENICI. That is not a problem exclusive to the home health delivery system, it is a problem with the entire health care system. How many of the private insurance carriers include home health care as an item covered by their insurance policies?

Mr. HALL. Very few.

Ms. RUNNELS. It depends on the particular policy and the group with which it is written. We are seeing, particularly under major medical coverage, more and more of home health benefits being included in these policies.

Mr. BYRNE. I think if you were to look at a typical agency where, if you compared its income base vis-a-vis a hospital base where you are running a ratio of, say, 30, or 35 percent medicare and the hospital with x percent of medicaid, the rest then falls into the Blue Cross or other reimbursement. This is not at all remotely the case in organized home care if you are looking at the medicare-certified agency, which is the 2,400 number you are dealing with. They have 2, 3 percent of health insurance, including Blue Cross participation, at the present time. It is very inadequate. It is very splintered, too, because in commercial insurances you will have some coverage for perhaps a registered nurse or a therapist, but it is very slow—or private duty will be included more often than anything.

Mr. ROSENBERG. Many companies today offer a home health care benefit. The problem is not many people are willing to buy a home

health care benefit or ask for that kind of coverage. I imagine in union demands, home health care benefits for a worker in a union factory is way down. More important is an eyeglass benefit or prescription benefit.

I think the home health care industry has a responsibility to sell the benefits of these programs so more and more people would ask for the coverage. But there is a lot of it available. It is just not being asked for by the people who purchase health insurance.

Mr. HALL. One of the real problems is we have done quite a bit of this. They—the insurance companies—unfortunately have followed the medicare model so they have all the restrictions built in that the medicare model has, so very few people qualify, to be honest.

Senator DOMENICI. Let me ask Mr. Suzuki a question. It seems to me that at the hearing that Senator Chiles and I attended here in Washington, a year and a half or 2 years ago, we were discussing the problem that has evolved because medicare had its genesis in the social security law and is an entitlement program. Since then, there has been an evolution of home health care, a program for health delivery for the poor. Medicaid is not an entitlement program to the same extent. Then we introduced title XX, in which specific kinds of activities are paid for with Federal and State funds. Thus, we have these three programs running independently, when, as a matter of fact, they should be very much related in the community.

It seems to me we were told that HEW was going to try a demonstration in which they would try to pool, without violating the law, the various moneys to see if we could demonstrate a much more effective delivery system without the difficulties being generated by what I just described. I know every time we try something like that, it has a bad time. It looks like we can't mix medicare with medicaid, and there are all kinds of reasons. Is anything occurring, such as I described? Has it been tried anywhere, and what do you think about that approach?

Mr. SUZUKI. I am not sure of the testimony to which you referred. Also, I know of no specific efforts in which title XX is currently involved. Something in medicaid and medicare may be going on, but I would not normally be involved in that unless some kind of research or demonstration project involving title XX was going on. But there is an issue that is being addressed. The Secretary has several task forces and planning mechanisms that are looking at how programs need to fit together, particularly with so much emphasis on deinstitutionalization through community-based services. Specific task forces under Secretary Califano are bringing titles XVIII, XIX, and XX and Older Americans Act staff together to examine the funding of these programs.

Again, each of these laws has its own specific, idiosyncratic "glitches." This creates difficulties because title XX is looked at, not in terms of health services, but in terms of social services.

Senator DOMENICI. It is even difficult for you to invent a word to describe it.

HEW IN "POOR POSITION" ON TITLE XX HOME ATTENDANTS

Senator CHILES. I want to ask Mr. Suzuki a question, if I could. In some testimony that we took earlier in the committee, we talked about, as we mentioned here, some emerging problems in the home

attendant-individual provider services under title XX. Especially we talked about some of the funds being expended in the States utilizing individual providers—New York and others. What is the Department doing to try to get a handle on that?

Mr. SUZUKI. We have struggled with home attendants. There is a statement in title XX which, in a sense, enjoins the Secretary from defining anything in terms of what is or is not a service. This clearly leaves HEW in a poor position, legally, to really attack this issue. I think our language goes to the language of the law and goes to the capacity of States to contract with organizations—proprietary, first of all—public agencies, nonprofits, and individuals. And in many services, this is done; day care, for example.

Senator CHILES. There are some arm's-length transactions between families and individuals. This is needed for two reasons. No. 1 is protection of the family, and No. 2 is protection of Government. We have situations we were hearing about in previous testimony where you just have outright fraud and you have people who are terrorized as individuals. They don't know how to fire this person who is providing this service. Who is checking that? I don't see anything in the law that prohibits HEW from setting some check on that.

Mr. SUZUKI. In response to the home health care issue, Secretary Califano and Under Secretary Champion identified seven major areas and asked the Inspector General and our program units to go out and make what were called service delivery assessments.

My own staff were involved in, first, family planning in relation to teenagers—one of the seven major areas. Then, in a service delivery assessment of home health delivery mechanisms. As I mentioned before, title XX is not a health program; but, because of the homemaker aspects in title XX, we participated in the assessment. We are now in the middle of this specific assessment.

The seven areas selected by the Secretary and the Under Secretary are viewed as critical areas of concern in terms of delivery, and the Inspector General is directing this project. Also involved are our program staff in multiple regions. At this time, a report on the assessment has not come in.

I believe that part of the reason why home health delivery was spotlighted by HEW is because of the kind of concern you expressed. We are aware of it; obviously, States are aware of it too.

Senator CHILES. We had testimony that 26 States are engaged in these services under title XX. Is that about what you have, or are there more than that?

Mr. SUZUKI. In terms of individual providers I would not be surprised. Obviously States would certainly argue against our saying that certain services could not be individually provided. I think you are suggesting that would be better than monitoring.

Senator CHILES. In some cases, it might make sense to have individual providers. There seems to be a desperate need for some control on those services and on who is going to be the provider. I don't think you can say, because there is nothing in the law that prohibits this, we are going to give a blank check.

Mr. SUZUKI. We are under criticism now. But we have said again and again, in every instance, no one complains when major contracts are written between a title XX agency and a major concern—whether nonprofit, home health agency, or a homemaker.

We have a set of regulations we have worked on; we are trying to refine them, which requires defining the conditions by which an individual provider operates. We are catching continuous flack from States because they see that as busy work—paperwork—and an attempt to overview from the Federal perspective. Again, we are now in a position to say that, even if an individual provider is involved, specific things have to be written out.

It does not have to be a formal contract, but there must be some document that governs the delivery of services. This is an area in which we have been working with the States. We have been visiting States. And the States tend to feel that what we are asking for means added paperwork for them in terms of spelling out the provisions for individual providers. The experience of some of these individual providers obviously is of concern. However, that is the one area in which we probably will be able to make some headway—that conditions of the service being rendered by the individual provider are spelled out for reimbursement as well as what is to be covered.

Mr. HALL. These people are employees. There is proof of the employer. If the Government is trying to determine what the hours are, what the tasks are, what effective hiring and firing is, that is proof that the Government is the employer. That is the test of the labor code.

Mrs. MOORE. We haven't exact statistics, but we know there are about 82,000 homemaker-home health aides today working for an agency where the agency is accountable, whether proprietary, public, or voluntary. We estimate there are at least as many of these individual providers now and I think it is the fastest growing form of homemaker-home health aid service. Where the service is delivered by an agency, the proprietary and not-for-profit volunteers are the fastest growing agencies.

Senator DOMENICI. Did you have a comment you wanted to make?

Ms. BROCK. In relation to the earlier discussion on private insurance, we would like to submit for the record, as soon as it is completed, a study conducted by the Council of Home Health Agencies and Community Health Services, which shows the distribution of income for voluntary home health agencies.

Senator DOMENICI. How long will it be before you have that?

Ms. BROCK. A matter of a few weeks.

Senator DOMENICI. We will be glad to receive it.

Let me thank all of you and assure you that your detailed statements will be made a part of the record. I do hope that as we move in the Senate in this area—and I know I am speaking for Senator Church, our chairman—that we are going to attempt to take very strong positions and urge that the Finance Committee devote serious attention to the problem we are talking about here today in its broadest sense.

Our committee will work toward this end. I certainly urge that you, as informed people representing broad-based involvement, continue your genuine interest as these kinds of hearings are held by the committees with legislative jurisdiction. I want to thank you and all of those in attendance for being with us this morning. It would be helpful if the panelists would submit for the record, at their earliest

convenience, statistics on your agency membership, commenting on what proportion of your agency membership provides a full range of services; that is, how many of your agencies provide homemaker-home health aid, chore services, as well as medicare-reimbursed home health care.[1] We would like to have that so, as we analyze your suggestions, we are able to relate them to what your principal involvement is.

If there is nothing further, we are going to close this part of our hearings on home health care. I regret to tell you I am not optimistic that we will get major legislation in this field this year. As you know, the shopping list of legislative mandates in the Senate is growing and time is running out.

I do hope we will continue to keep the pressure on to try to do a better job legislatively with this particular part of the health delivery system. I appreciate Senator Church's calling the hearing. He could not be here today, since he is the principal floor manager on the Panama Canal bill.

Thank you very much.

[Whereupon, at 11:10 a.m., the hearing adjourned.]

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[1] See appendix, items 2 and 4, pp. 825 and 855.

APPENDIX

MATERIAL SUPPLIED BY WITNESSES

ITEM 1. INTERPRETATION OF STANDARDS FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, SUBMITTED BY HADLEY D. HALL,[1] NATIONAL COUNCIL FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, INC., NEW YORK, N.Y.

INTRODUCTION

To protect consumers, providers, and those who pay for homemaker-home health aide services, the National Council for Homemaker-Home Health Aide Services developed a program of basic standards through which an agency could measure its conformity with the components needed to deliver satisfactory homemaker-home health aide service. These standards were developed by community leaders, agency administrators, and professional staff of the council. The standards apply to any agency operating under any auspice which provides homemaker-home health aide service. Only those agencies which employ and pay their homemaker-home health aides may apply to the national council for assessment of the conformity to standards of their homemaker-home health aide service. Applicant agencies use a self-study document in which the standards and the criteria for demonstrating conformity with them are detailed. Need for a less detailed document exists; hence this paper, in which the nucleus of each standard is discussed briefly. No one standard stands alone; all are interrelated.

STANDARDS

I. The agency shall have legal authorization to operate

An agency is required to have one of several types of legal authorization to operate—a certificate of incorporation, a charter, a license or a relevant portion of a State law. In its broadest sense, this document should outline the purposes for which the agency is organized. In many instances, homemaker-home health aide service will be defined specifically in the agency's legal document.

II. There shall be an appropriate duly constituted authority in which ultimate responsibility and accountability are lodged

Those responsible for governing the agency should be identified and there should be participation by members of the community served. In a voluntary agency, traditionally this has been a function of the board of directors. However, to insure that representatives of the community served may assist in agency planning and direction, some voluntary agencies have developed advisory committees in addition to their boards of directors. All governmental units shall have boards or advisory committees to fulfill this function; and proprietary agencies shall have advisory committees or boards drawn from the local service area to insure that representatives of the community served will have the opportunity to participate in policy formulation and planning for agency services.

Bylaws are the rules adopted legally by an organization to assist it in the performance and regulation of its affairs and would ordinarily include such subjects as rotation of board membership and specific duties of officers. Policies and procedures which could result in restricting the governing bodies and the administration in discharging their legal responsibilities should not be included in this document. Bylaws are the means with which to facilitate the exercise of effective organization and functioning of the agency.

[1] See statement, p. 789.

III. There shall be no discriminatory practices based on race, color, or national origin; and the agency either must have or be working toward an integrated board, advisory committee, homemaker-home health aide services staff, and clientele

The agency board and staff components, as well as the individuals served should reflect the type of ethnic and racial groups included in the agency's service area. Generally, this will be a mixed group. However, if the agency is organized to serve a specific age, patient, or sectarian group, this group might be the only one represented on the board and committees.

Documents such as the bylaws, personnel policies, job descriptions, and publicity materials developed by the agency should include a statement of the agency's nondiscrimination policies. In most instances the efforts to include representation from the community served will involve an outreach program to assure that all ethnic and racial groups are on its policymaking bodies and on its staff, and that the agency's homemaker-home health aide service is available to all who need it.

IV. There shall be designated responsibility for the planning and provision of financial support to maintain at least the current level of service on a continuing basis

Fiscal preparedness of an agency should be reflected in clear, comprehensive fiscal planning and procedures, documented through the preparation of an annual budget.

Agencies have a fundamental obligation to secure broad financial support for the agency's service programs. Planning to secure adequate funding for homemaker-home health aide service should be an ongoing process. The individuals responsible for this planning should be thoroughly familiar with Federal, State, and local policies in terms of funding for service, including third-party contracts.

V. The service shall have written personnel policies; a wage scale shall be established for each job category

Each agency should operate under a personnel policy document which pertains to all categories of employees—administrative, professional, clerical, and homemaker-home health aide. The document should describe the terms and conditions of employment which pertain to full-time and part-time personnel. Procedures and administrative policies should be included as addenda to specific job descriptions or be in a separate administrative document. Each category of employment should have a wage scale that takes into account applicable minimum wage laws and wages for comparable jobs in the area served. When an individual is employed by an agency, the employee should be provided with a copy of the personnel policies, the wage scale for the specific position for which he or she was employed and a copy of the job description for that category of employment. Where employees are represented by a labor union, there should be a collective bargaining mechanism leading to a labor contract.

VI. There shall be a written job description for each job category for all staff and volunteer positions which are part of the service

A qualified and competent staff is the basic requirement for an effective service. Job descriptions are the guides which have been developed and that are used in recruiting qualified staff and to guide them in carrying out the functions noted therein. One of the most important elements to be aware of when developing job descriptions is that the responsibilities outlined for a particular position are commensurate with the qualifications of education and experience specified for the position.

VII. Every individual and/or family served shall be provided with these two essential components of the service: (a) Service of a homemaker-home health aide and supervisor; (b) service of a professional person responsible for assessment and implementation of a plan of care

This standard represents the "heart" of homemaker-home health aide service. Homemaker-home health aide service is a team service which includes both the professional and the homemaker-home health aide personnel in a agency.

Functions of a professional supervisor [2] should include:

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[2] See also "Phase I Report of Case Management Study," National Council for Homemaker-Home Health Aide Services, 1976.

(1) In-person (home or office) assessment and periodic reassessment of the need for homemaker-home health aide service.

(2) Development of a plan of care which includes all aspects of service that are required. All clients should have available input from qualified social workers, qualified health professionals, and other professionals as needed.

(3) Providing the homemaker-home health aide with the plan for service delivery and periodic home visits by the supervisor to see that the plan is being carried out and is appropriate.

(4) Individual conferences with the homemaker-home health aide to discuss service and, in the interim times, telephone discussions to maintain contact with the aide.

(5) Maintenance of complete and appropriate records about the service being delivered to the client and complete records about the homemaker-home health aide's performance, which include a formal evaluation on a periodic basis.

(6) Convening of interdisciplinary conferences which include the homemaker-home health aide to discuss the individual's or family's needs.

(7) Plans for the appropriate termination of service.

The homemaker-home health aide has the responsibility for carrying out the tasks outlined in the plan of care, being aware of changes as they may occur in the needs of the individual or family and of reporting these changes to the professional team member.

The professional team member should have qualifications appropriate to the situation. Nursing supervision must be available in situations where personal care is part of a medical plan. Nursing care or consultation must be available where personal care as supportive assistance is provided.[3] Social work supervision or consultation must be available where there are psychological or social problems. The home management skills of the home economist are often needed and should be available where appropriate.

Professional staff members who function in homemaker-home health aide service shall have as a minimum the following qualifications as appropriate:

"* * * a current license to practice as a registered professional nurse, a bachelor's degree in social work, home economics, or closely related helping profession, plus 1 year of related experience."

Individuals employed in the agency before December 31, 1974, who have had at least 5 years of professional experience (i.e., employed and functioned as a professional social worker in a governmental agency), may assume the role of the professional team member if their own supervisors have higher educational qualifications, such as a master's degree in social work, nursing, or home economics.

Appropriate activities for a homemaker-home health aide who has been delegated some supervisory functions are: Administrative supervision of the aide, such as assigning homemaker-home health aides to cases and establishing work schedules; or obtaining basic information for use of the professional charged with case assignment and development of the plan of care. Unless they have the professional background specified in the preceding paragraph, these paraprofessional staff shall not be assigned full responsibility for assessing cases and developing comprehensive plans of care.

The delivery of service may be shared through the development of contractual arrangements. When contractual arrangements are established, the input of the professional person responsible for the assessment of need and case supervision may be provided by either agency, but the agency which employs the homemaker-home health aide must provide the administrative supervision of the homemaker-home health aide. The arrangements between two agencies must be spelled out clearly in a contract.

VIII. There shall be an appropriate process utilized in the selection of homemaker-home health aides

It is essential that an agency have a well-defined recruitment and selection process for homemaker-home health aides. The agency needs to be aware that many individuals applying for homemaker-home health aide positions have never been formally employed before and may not be able to talk easily in an office setting. The interviewer needs to be particularly sensitive to the applicant's attitudes toward and probable ability to get along well with a variety of people from a variety of backgrounds.

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[3] See "Addenda to Standards for Homemaker-Home Health Aides," New York: National Council for Homemaker-Home Health Aide Services, Inc., 1969, pp. 7–10, for differentiation.

IX. There shall be: (a) Initial generic training for homemaker-home health aides such as outlined in the National Council for Homemaker Services' Training Manual; (b) an ongoing in-service training program for homemaker-home health aides

The initial and ongoing training of homemaker-home health aides is an essential component of the standards.

Initial generic training shall be a minimum of 40 hours and be provided prior to or at least within the first 6 months of employment. The 40 hours are to include formal classroom instruction and supervised laboratory instruction in the following areas:

(1) The agency, the community, and the homemaker-home health aide;
(2) The family and the homemaker-home health aide;
(3) Care and maintenance of the home and personal belonging;
(4) Home accident prevention;
(5) Family spending and budgeting;
(6) Food, nutrition, and meals;
(7) The child in the family;
(8) The ill, the disabled, and the aging adult;
(9) Mental health and mental illness;
(10) Personal care and rehabilitative services.

Qualified individuals from a variety of disciplines shall be utilized as instructors in their areas of expertise. Training by health professionals alone, by social workers, or by home economists alone will not suffice. On-the-job training is in addition to the 40 hours of classroom and laboratory training.

In-service programs should be offered on a regularly scheduled ongoing basis, at least quarterly, and all homemaker-home health aides should have the opportunity to attend these meetings. The programs should follow up content areas introduced in the initial generic training and include relevant trends in service. Programs on the agency's policies and procedures are necessary but should not constitute the majority of programs. Opportunity to attend outside seminars and workshops should be made available.

As the number of homemaker-home health aide staff increases, the agency should develop vertical and/or horizontal job opportunities which recognize competence and skill.

X. There shall be a written statement of eligibility criterial for the service

Each agency should have a written statement which outlines the eligibility criteria for service. This statement should be circulated both within and outside the agency. Priorities, based on clients' needs, should be developed for the service. Each individual or family who applies for service, but who cannot meet the criteria, should be assisted in obtaining appropriate services elsewhere.

XI. The service, as an integral part of the community's health and welfare delivery system, shall work toward assuming an active role in an ongoing assessment of community needs and in planning to meet these needs including making appropriate adaptations in the service

The homemaker-home health aide service is an integral part of the human service delivery system in a community; therefore, it should be active in organizations which are working toward meeting community needs. Board and staff members and volunteers should assume the fundamental responsibility for working with others to improve services.

XII. There shall be an ongoing agency program of interpreting the service to the public, both lay and professional

The agency has a responsibility to interpret homemaker-home health aide service as a service which includes professional staff and trained and supervised homemaker-home health aides. Information about the agency and its services shall be made known to the public, both lay and professional. Publicity materials should contain a thorough description of the service as well as specific information concerning fees, eligibility requirements, and the hours the service is offered and any limitations on service.

XIII. The governing authority shall evaluate through regular systematic review all aspects of its organization and activities in relation to the service's purpose(s) and to community needs

Annual reviews and periodic in-depth self-studies of the agency's service are required so that its effectiveness and efficiency can be evaluated. Broad partici-

pation from all groups—the board, committees, all levels of staff including the homemaker-home health aides, and consumers of the service should be included in the analysis of the service.

XIV. Reports shall be made to the community, and to the National Council for Homemaker-Home Health Aide Services, as requested

Community relations and public accountability are of major importance to an agency. Development of a narrative, statistical and financial annual report and an audit done by a nonrelated organization are essential to establishing and maintaining communications. Provision of data to the national council is essential to the full development and adequate funding of quality homemaker-home health aide service.

ITEM 2. LETTER AND ENCLOSURES FROM FLORENCE MOORE,[1] EXECUTIVE DIRECTOR, NATIONAL COUNCIL FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, INC., NEW YORK, N.Y., TO SENATOR PETE V. DOMENICI, DATED APRIL 18, 1978

DEAR SENATOR DOMENICI: The National Council for Homemaker-Home Health Aide Services is most grateful to you and to the Senate Committee on Aging for arranging the hearings on standards held Monday, April 17, 1978.

You requested information on our membership statistics. As of the end of 1977 they were as follows:

Agencies:	
Approved/accredited	124
Agency associates	109
Individuals	264
Organizations	41
Total	538

Enclosed are definitions for a number of supplementary services. We would be glad to have them published with our testimony.

Sincerely,

FLORENCE MOORE.

Enclosures.

DEFINITIONS[2] OF VARIOUS IN-HOME SERVICES

Friendly visitors: A visitors program is one in which volunteers visit, on a regularly scheduled basis, handicapped, chronically ill, or older persons who live alone or are lonely for companionship.

Telephone reasurrance: A telephone reassurance program provides calls 7 days a week at a prearranged time to ill, disabled, or elderly persons who live alone. The purpose of the calls is to determine each person's condition and to provide community contact over a sustained period of time.

Chore services: A chore service program provides help with minor home repairs, heavy house cleaning, and yard tasks which need to be carried out intermittently to maintain a person safely in his own home. It does not include personal care.

Meals-on-wheels: A meals-on-wheels program is a service in which prepared nutritious meals are delivered directly to the residence of ill, handicapped or elderly homebound persons who are unable to prepare or obtain their own meals.

Transportation or escort services: Transportation and escort service provide assistance to a person who requires help to get where he needs to go, including, when necessary, an escort to help secure the needed service and to return him safely home.

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[1] See statement of Hadley D. Hall, p. 789.

[2] From "Supplementary Services Guidelines for Services Supplementary to Homemaker-Home Health Aide and Home Health Services." Available from National Council for Homemaker-Health Aide Services.

Policy Statement on Training for Homemaker-Home Health Aides

BACKGROUND TO POLICY STATEMENT

Appropriate training and professional supervision of homemaker-home health aides are required by the National Council for Homemaker-Home Health Aide Services' standards. These standards were developed and adopted by leaders in the field to protect consumers and providers of the service and to ensure that monies spent, public and private, are used effectively. A manual for training homemaker-home health aides was prepared by educators in the field with the help of the Office of Education of the Department of Health, Education, and Welfare. This publication outlines the basic components of the generic training required of aides for agencies applying for approval and accreditation.

A census of classroom training programs for homemaker-home health aides was conducted in 1976 by the National Council. Of the 1,700 agencies surveyed, 1,247 useable responses were coded, computerized and analyzed. Two of the overall impressions, well supported by data, were: (1) Training of homemaker-home health aides lacks uniformity of auspice, and (2) agencies are interested in communicating with others about training homemaker-home health aides.

As new and innovative ways of providing better services and more services are explored and tested by approved/accredited agencies, new resources for the training of aides are under exploration: for example, community colleges, vocational-technical schools, adult education programs, Red Cross and hospital-based programs.

POLICY STATEMENT

Whatever the auspice of the training program, the following guidelines should be observed:

1. Aides who receive training must be screened and sponsored by the agency which will employ them and assume responsibility for their services. In no case should homemaker-home health aides be trained to become independent providers. The moral and legal implications of independently provided paraprofessional services are self-evident.
2. The training of the homemaker-home health aide, both initial and ongoing, is based on a "team concept," in which professionally educated persons assume the responsibility for training the aides as well as the responsibility for case assessment and reassessment. establishing a plan of care (case management) and providing supervision and direction of the aide.
3. Instructors for the course should be familiar with the homemaker-home health aide field and, wherever possible, should have had experience working with an approved homemaker-home health aide service. When possible, instructors should be selected who have had some experience in teaching adults.
4. Field experiences are essential to a good training program. Plans for providing aide trainees with these learning experiences should be worked out jointly by the employing agency and the training resource.
5. The employing agency should have the privilege of monitoring the entire course. The instructors should be given opportunities to observe the aides at work in the homes of the families they serve.

Initial Policy Statement on Supplementary Services, Adopted by the Board of Directors, May 4, 1974

The National Council for Homemaker-Home Health Aide Services, Inc., has formulated this policy statement because it actively supports the development of various in-home services being organized in many communities to meet a broad range of human needs and thus to enable people to remain in their own homes. Many local agencies use various types of non-professional in-home services to supplement the core program of homemaker-home health aide services. The National Council encourages this trend.

Supplementary services are not the professional services rendered in the home but they frequently supplement such services. They are provided by paraprofessionals and/or volunteers under the aegis of a professional health or social service agency that assumes responsibility for evaluating the need for the service and is accountable for the performance of personnel and for the quality of the service delivered.

Supplementary service—those non-professional in-home services other than homemaker-home health aide services—include, but are not limited to, chore services, meals-on-wheels, friendly visitors, telephone reassurance, escort service, shopping services and transportation.

Many families and individuals are able to function with the assistance of a single supplementary service while others may need several services, often in conjunction with homemaker-home health aide services, to maintain or return to independent living. Many different clusters of service are possible and may involve various combinations of professional, paraprofessional and volunteer personnel.

The National Council for Homemaker-Home Health Aide Services believes that supplementary services, like all other services, require guidelines for their orderly and safe delivery.

Supplementary services must be carefully planned so that they are readily available and accessible throughout a geographic area. They should be an integral part of the network of health and social services in a community. The homemaker-home health aide agency may deliver supplementary services or make use of services delivered by others. When more than one agency is involved in the delivery of supplementary services, ultimate responsibility for the coordination of these services to a family or individual must be assumed by a single agency and this responsibility must be clearly delineated.

GUIDELINES FOR AGENCIES WHICH PROVIDE OR COORDINATE IN-HOME SERVICES WHICH ARE SUPPLEMENTARY TO HOMEMAKER-HOME HEALTH AIDE SERVICES

The provision or coordination of various supplementary services by a homemaker-home health aide agency to help maintain families and individuals in their own homes requires that the agency:

1. be responsible for seeing that assessment and reassessment is undertaken by professional personnel so that the appropriate persons are provided supplementary services;
2. be responsible for the careful selection of persons who are to be sent into the homes of those in need of service;
3. be responsible for orientation and direction of personnel, appropriate to the service to be provided;
4. be accountable to the community for all of the services provided or coordinated under its auspice.

The following agency administrative policies and procedures are recommended:

1. The parameters of each supplementary service should be clearly defined so that it can be determined when that service is appropriate.
2. The purpose of each supplementary service, and its parameters, should be clearly stated to the community.
3. Each supplementary service should be shown on the agency's organization chart, with policymaking and administrative responsibilities for the activities clearly stated.
4. Those in charge of each supplementary service should be responsible to a professional person who is fully competent to evaluate and coordinate all of the in-home programs needed by the individuals served and responsible for seeing that appropriate service is provided.
5. The responsibilities and functions of the various persons who will carry out the services should be defined in job descriptions and personnel policies.
6. Orientation should be given to all those who will be involved in each supplementary service to: insure understanding of the needs of those to be served; the procedures to be used, the policies to be followed; the purpose and functions of the parent agency and of other resources in the community.
7. Each supplementary service should be carefully analyzed to determine what policies and procedures are needed to safeguard those served and to safeguard the staff members or volunteers providing services. These might include, for instance, general liability insurance including that for a transportation program; or a monitoring system in a telephone reassurance program, to assure that all necessary calls are made and that a carefully worked out emergency plan goes into effect immediately when a reassurance call goes unanswered.
8. Relevant statistics concerning each supplementary service, including indications of unmet needs or duplication of services, should be communicated to the board of the agency and then to appropriate planning and funding groups.
9. Careful financial records should be kept for each supplementary service so that a reasonable estimate can be made of unit costs, such as cost per ride, per meal or per call.
10. Each supplementary service should be evaluated regularly by special committees within the agency and by appropriate community groups.

GUIDELINES TO DEFINING THE PARAMETERS OF CHOICE SERVICES SUPPLEMENTARY TO HOMEMAKER-HOME AIDE SERVICES

The National Council believes that the parameters of chore services should be clearly limited to those skilled or semiskilled tasks which are needed to maintain a person in safety and dignity in his own home.

Chore services fall into three categories: minor home repairs, heavy cleaning, yard and walk maintenance.

Minor home repairs include but are not limited to: replacing window panes, fuses, electric plugs, frayed cords, faucets or faucet washers, hanging screens and storm windows; caulking windows, installing weather stripping around doors; minor painting and repairs to walls, floors, ceilings, stair repair and handrail installation or repair; installing safety rails for tubs and toilets; minor plumbing repairs; furniture repair, minor carpet repair; installation of locks, window locks and hinges.

Heavy cleaning includes but is not limited to: cleaning attics or basements to remove fire hazards; moving heavy furniture; exterior window washing, extensive wall washing, floor care or painting; carrying of water, coal or wood; removing ashes.

Yard and walk maintenance includes: lawn cutting; leaf raking; hedge trimming; minor walkway repairs; snow removal; trash removal.

Chore services in any or all of the three categories may be the only services needed in some instances. In others, they may be provided in addition to homemaker-home health aide services.

ITEM 3. ATTACHMENTS TO STATEMENT SUBMITTED BY JOAN E. CASERTA,[1] NATIONAL LEAGUE FOR NURSING, NEW YORK, N.Y.

nln chha/chs

council of home health agencies and community health services

ATTACHMENT 3

nln/apha accreditation program

Comparison of
Conditions for Medicare Certification
and
NLN/APHA Criteria for accreditaion
of Home Health Agencies

Attached is the comparison of the above done by HEW staff. In addition to the criteria listed, the NLN/APHA Accreditation Program also requires the following evidences:

- consumers of service and representatives of the community participate in agency affairs;
- administrative and fiscal policies and practices assure effective and efficient implementation of the program;
- the agency is coordinated with community and other health facilities and services;
- the agency does an ongoing assessment of current health needs of the community;
- programs are established, reviewed and modified to keep pace with current health needs;
- the agency has specific measurable objectives for each program offered;
- the agency has priorities among and within each program and service offered; and
- if appropriate and feasible, the agency accepts responsibility for participation in the education of health personnel.

April 14, 1978

national league for nursing · ten columbus circle · new york, new york 10019 · 212·582-1022

[1] See statement, p. 791.

COMPARISION OF

CONDITIONS FOR MEDICARE CERTIFICATION	AND	CRITERIA FOR ACCREDITATION OF HOME HEALTH AGENCIES
Compliance with Federal, State and Local Laws. Condition-		Compliance with Federal, State and Local Laws. Condition---
The home health agency and its staff are in compliance with all applicable Federal, State and local laws and regulations. If State or applicable local law provides for the licensure of home health agencies, an agency not subject to licensure must be approved by the licensing authority as meeting the standards established for such licensure. A proprietary organization which is not exempt from Federal income taxation under Section 501 of the Internal Revenue Code of 1954 has to be licensed as a home health agency pursuant to State law. If no State law exists for the licensure of a proprietary home health agency, (see 405.1202(c)) it cannot be certified for participation in the Medicare program. (Reg. 405.1220)		The agency must be legally authorized and have a governing body responsible for its operation. It must (1) submit source of legal authorization to operate, and (2) give the agency's statement of purpose and the source in which it is found, and when it was formulated and when reviewed. The agency must show it is licensed by the State it operates in if that State requires licensure. Administrative responsibilities and relationships are established and clearly defined.
Organization, Services, Administration. Condition-		Organization, Services, Administration. Condition-
Organization, services provided, administrative control and lines of authority for the delegation of responsibility down to the patient care level are clearly set forth in writing and are readily identifiable. Administrative and supervisory functions are not delegated to another agency or organization and all services not provided directly are monitored and controlled by the primary agency, including services provided through subunits (see 405.1202(w)) of the parent agency. If an agency has subunits, appropriate administrative records are maintained for each subunit. (Reg. 405.1221)		The agency must: a. Submit its plan of organization currently in effect to show clearly the channels of authority and the relationships of service personnel, program units, or other divisions to one source. b. Delineate the overall responsibilities of all administrative and service personnel. Describe the lines of authority and accountability in relationship to their responsibilities, if different from those shown on the organizational chart.

(a) Services Provided. The Agency provides part-time or intermittent skilled nursing services and at least one other covered therapeutic service (physical, speech, or occupational therapy, medical social services, or home health aide services).

Services Provided. The agency provides part-time or intermittent skilled nursing and at least one other covered therapeutic service and also requires that proprietary agencies provide all services directly and that only the primary agency has authority to accept patients for care. It also includes support elements such as medical supplies and equipment, transportation, laboratory services, etc.

(b) Governing Body. A governing body (or designated persons so functioning) assumes full legal authority and responsibility for the operation of the agency. The governing body appoints:

(i) a qualified administrator, (see 405.1202(a)
(ii) arranges for professional service (see 405.1222),
(iii) Adopts and periodically reviews written bylaws (see 405.1202(b))or an acceptable equivalent,
(iv) oversees the management and fiscal affairs of the agency.

The name and address of each officer, director, and owner are disclosed to the State Medicare agency with changes reported promptly.

Governing Body. The agency must have a governing body responsible for its operation. It must name and describe the composition and method of operation of the agency's legally constituted governing bodies and/or advisory groups. It must include the following: (1) number and basis for selection of members, (2) tenure or term of office, (3) plan for orientation, (4) frequency of meetings, (5) attendance at meetings, (6) kinds of records kept of activities. The agency must list the overall responsibilities of the governing body and how these responsibilities are fulfilled and give examples of significant action taken by the governing body within recent years which has had effect on the agency's program.

The NLN criteria for the governing body includes all criteria requirements of Title XVIII.

c. Give examples and/or submit administrative documents that illustrate the channels of communication among the governing body or bodies, the administration, and the service personnel.

d. State the ways in which staff in all disciplines and position classficiations have a voice in the agency's administrative policies.

ACCREDITATION

(c) Administrator. The qualified administrator, who may also be the supervising physician (see 405.1202(k)) or registered nurse, (see 405.1202(r)):

(i) organizes and directs the agency's ongoing functions,
(ii) maintains ongoing liaison among the governing body, the group of professional personnel, and the staff,
(iii) employs qualified personnel and ensures adequate staff education and evaluations.
(iv) ensures the accuracy of public information materials and activities, and
(v) implements an effective budgeting and accounting system.

A qualified person is authorized in writing to act in the absence of the administrator.

Administrator. The governing body delegates to a qualified health professional from a profession involved in implementing the agency's programs, the authority and responsibility to:

--plan, administer, and coordinate the services and programs of the agency,

--participate in the deliberations and decisions made on policies guiding services and programs, utilizing the advice and counsel of other health professionals in the agency.

The qualifications of the administrator should be those established by the profession.

The NLN avers its requirements exceed those required by Title XVIII.

A qualified person is authorized in writing to act in the absence of the administrator.

CERTIFICATION

(d) Supervising Physician or Registered Nurse. The skilled nursing and other therapeutic services provided are under the supervision (see 405.1202(y)) and direction of a physician or a registered nurse (who preferably has at least 1 year of nursing experience and is a public health nurse (see 405.1202(q)). This person or similarly qualified alternate, is available at all times during operating hours and participates in all activities relevant to the professional services provided, including the qualifications and assignment of personnel.

ACCREDITATION

Supervising Physician or Registered Nurse. Health care services are directed and/or coordinated by a health professional from a discipline providing agency services. The qualifications for a supervising physician and registered nurse are those enunciated by their respective health professional organizations and are in keeping with the responsibilities assigned within the agency. For all professional personnel, the agency must provide ongoing supervision, peer review, or consultation by a co-professional qualified for this function.

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CERTIFICATION

(e) Personnel Policies. Personnel practices
d patient care are supported by appropriate,
itten personnel policies. Personnel records
clude qualifications, licensure, performance
aluations, and health examinations and are kept
rrent.

ACCREDITATION

Personnel Policies. Personnel practices and patient care are supported by written personnel policies. Personnel policies delineate the conditions of employment and the respective obligations between the employer and employee for all salaried, hourly, or contract personnel. The agency is an equal opportunity employer and has a program of affirmative action.

CERTIFICATION

(f) Personnel Under Hourly or Per Visit Contract. such personnel are utilized by the home health ency, there is a written contract between such rsonnel and the agency clearly designating:

(i) that patients are accepted for care only by the primary home health agency,
(ii) the services to be provided,
(iii) the necessity to conform to all applicable agency policies including personnel qualifications, the responsibility for participating in developing plans of treatment.
(iv) the manner in which services will be controlled, coordinated, and evaluated by the primary agency,
(v) the procedures for submitting clinical and progress notes, (see 405.1202(d) and (n)) scheduling of visits, periodic patient evaluation and
(vi) the procedures for determining charges and reimbursement.

(g) Coordination of Patient Services. All personnel viding services maintain liaison to assure that ir efforts effectively complement one another and port the objectives outlined in the plan of treatment.

(i) The clinical record or minutes of case conferences establish that effective interchange, reporting and coordinated patient evaluation does occur.

(ii) A written summary report (see 405.1202(x)) for each patient is sent to the attending

ACCREDITATION

Personnel Under Hourly or Per Visit Contract. Personnel policies delineate the conditions of employment and the respective obligations between the employer and employee for all salaried, hourly, or contract personnel. The agency is an equal opportunity employer and has a program of affirmative action.

In assigning responsibility, there must be a written description for the basis of assigning personnel with different degrees of preparation and experience to service and related activities, whether they be full-time, part-time, or on a contract basis.

Coordination of Patient Services. Conferences of workers providing services to a patient/family are held (for evaluation, reevaluation, and planning of total care). A professional nurse has the responsibility for coordinating the agency plan for patient care. The records must show the type of conferences, frequency of meetings, participants, and provisions for recording the results. Service records are maintained for planning and improving all services to individuals, families, and groups. The service records should outline clearly the contents such as updated medical records, plan for total care, progress notes reflecting current status of the patient, reasons for terminating any services, plans for discharge and continuing care, etc.

The NLN requires that a written summary report for each patient be sent to the attending physician every 60 days.

CERTIFICATION

(h) Services Under Arrangements. Services provided
der arrangement with another public or nonprofit
ency (see 405.1202(p) and (e)) must be subject to
ritten contract conforming with the requirements
cified in 405.1221(f).

up of Professional Personnel, Condition -

group of professional personnel, which includes at least
practicing physician and one registered nurse (preferably
ublic health nurse), and with appropriate representation
other professional disciplines, establishes and
ually reviews the agency's policies governing scope of
vices offered, admission and discharge policies, medical
ervision and plans of treatment, emergency care, clinical
cords, personnel qualifications, and program evaluation.

least one member of the group is neither an owner (405.1221)
employee of the agency. (Reg. 405.1222)

(a) Advisory and Evaluation Function. The group of
fessional personnel meets frequently enough to advise the
ncy on professional issues, participate in the evaluation of
agency's program and assist the agency in maintaining
ison with other health care providers in the community
rmation program.

meetings are documented by dated minutes.

ACCREDITATION

The MLN requires that the agency establish and annually review its policies governing the scope of services offered, admission and discharge policies, medical supervision and plan of treatment, emergency care, clinical records, personnel qualifications, and program evaluation.

Services Under Arrangements. Delineate the overall responsibilities of administrative and service personnel, whether full-time, part-time, or under contract. Describe the lines of authority and accountability in relationship to their responsibilities, if different from those shown on the organizational chart.

The assignment of responsibility provides for appropriate utilization of every employee, whether full-time, part-time, or contract employees.

Group of Professional Personnel.
Programs are established, reviewed, and modified to keep pace with current health needs. This is done by a group of professional personnel, including at least one practicing physician and one registered nurse, with appropriate representatiion from other professional disciplines.

The MLN does require that at least one member of the group is neither an owner nor an employee of the agency.

Meetings are documented by dated minutes.

CERTIFICATION

ceptance of Patients, Plan of Treatment, Medical pervision. Condition -

atients are accepted for treatment on the basis of reasonable expectation that the patient's medical, rsing and social needs can be met adequately by the gency in the patient's place of residence. Care llows a written plan of treatment established and eriodically reviewed by a physician, and care continues nder the general supervision of a physician (Reg. 405.1223)

(a) Plan of Treatment. The plan of treatment veloped in consultation with the agency staff covers l pertinent diagnoses, including:

(i) mental status,
(ii) types of services and equipment required,
(iii) frequency of visits,
(iv) prognosis
(v) rehabilitation potential,
(vi) functional limitations,
(vii) activities permitted.

ACCREDITATION

Acceptance of Patients, Plan of Treatment, Medical Supervision.

The agency has written policies outlining the major areas of policy in which the scope and also limitations of services are defined, including the major provisions in each group of policies and, specifically, including the conditions for admitting, continuing, and discharging clients, also eligiblity, source of medical direction, practice policies and procedures for each professional service, its assistants and/or aides. The agency will state who is involved in the formulation, review and approval of each group of policies. The written policies should reflect professional standards or existing State laws for each service; protect families and patients and relate to quality of care; and protect the service staff and the agency.

Plan of Treatment. Service records are maintained for planning and improving all services to individuals, families, and groups. Included in the service record are updated medical records, plan for total care, current status of patient, need for continued service with professional reappraisal at regular intervals, plans for terminating services or discharge with continuing care.

(viii) nutritional requirements,
(ix) medications and treatments,
(x) any safety measures to protect against injury,
(xi) instructions for timely discharge or referral, and
(xii) any other appropriate items.

If a physician refers a patient under a plan of treatment which cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency and duration. The therapist and other agency personnel participate in developing the plan of treatment.

(b) Periodic Review of Plan of Treatment. The total plan of treatment is reviewed by the attending physician and agency personnel as often as the severity of the patient's condition requires, but at least once every 60 days. Agency professional staff promptly alert the physician to any changes that suggest a need to alter the plan of treatment.

Periodic Review of Plan of Treatment. The NLN does require a review of the total plan of treatment by a physician and the HHA personnel as often as the patients' condition warrants, and at least once every 60 days.

(c) Conformance with Physician's Orders:

(i) Drugs and treatments are administered by agency staff only as ordered by the physician.

(ii) The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature.

Conformance with Physicians' Orders. The NLN requires that the patients' record contain updated medical orders, including all drugs and treatments administered by agency staff, and only as ordered by a physician. The nurse/therapist immediately records and signs oral orders and obtains the physicians' countersignature within a reasonable time.

CERTIFICATION

(iii) Agency staff check all medicines a patient may be taking to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contra-indicated medication, and reports any problems to the physician.

Skilled Nursing Service. Condition-

The home health agency provides skilled nursing service by or under the supervision of a registered nurse and in accordance with the plan of treatment. (Reg.405.1224)

(a) Duties of the Registered Nurse. The registered nurse:

(i) makes the initial evaluation visit,
(ii) regularly reevaluates the patient's nursing needs,
(iii) initiates the plan of treatment and necessary revisions,
(iv) provides those services requiring substantial specialized nursing skill
(v) initiates appropriate preventive and rehabilitative nursing procedures,
(vi) prepares clinical and progress notes,
(vii) coordinates services,
(viii) informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in inservice programs, and supervises and teaches other nursing personnel.

(b) Duties of the qualified Licensed Practical Nurse see 405.1202 (1)). The qualified licensed practical nurse:

(i) provides services in accordance with agency policies
(ii) prepares clinical and progress notes,
(iii) assists the physician and/or registered nurse in performing specialized procedures,
(iv) prepares equipment and materials for treatments observes [illegible] as required; and

ACCREDITATION

The agency staff is responsible for checking all medicines given a patient for identifying possible ineffective drug therapy or adverse reactions, side effects, drug allergies, etc. It requires that any problems be reported to the physician.

Skilled Nursing Service

The service staff inclues professional personnel who meet the standards for employment of their respective professional organizations. Professional nurses have the responsibility for planning, providing, and supervising the nursing care to patients and families. The nursing service, including practical nurses and aides, is directed by a public health nurse whose qualifications are in keeping with the responsibilities assigned, whether director of the overall agency or of the nursing service department.

Duties of the Registered Nurse. The service staff includes professional personnel who meet the standards for employment of their respective professional organizations. The agency must have written policies outlining the major areas of policy in which the scope and also limitations of services are defined. The agency must have job descriptions for each classification, showing functions and required academic/experience qualifications included with the self-study report.

Duties of the Qualified Licensed Practical Nurse. The service staff includes professional personnel who meet the standards for employment of their respective professional organizations. The agency must have written policies outlining the major areas of policy in which the scope and also limitations of services are defined. The agency must have job descriptions for each classification, showing functions and required academic/experience qualifications included with the self-study report.

CERTIFICATION

Therapy Services. Condition -

Any therapy services offered by the agency directly or under arrangement are given by or under the supervision of a qualified therapist in accordance with the plan of treatment. The qualified therapist (see 405.1202(f) (i) and (u)): (Reg. 405.1225)

(i) assists the physician in evaluating level of function,
(ii) helps develop the plan of treatment (revising as necessary),
(iii) prepares clinical and progress notes,
(iv) advises and consults with the family and other agency personnel, and
(v) participates in inservice programs.

(a) Supervision of Physical Therapist Assistant (see 405.1202(j) and Occupational Therapy Assistant (see 405.1202(g). Services provided by a qualified physical therapist assistant, or occupational therapy assistant may be furnished under the supervision of a

ACCREDITATION

Therapy Services

The agency provides orientation and inservice education for each discipline and each classification of worker. The agency makes continuing education opportunities available to all workers, whether they be full-time, part-time, or on a contract basis. The agency must maintain plans for orientation, ongoing education, preparation of staff for new programs, etc.; plans for financing, staff participation, consultant services, resources, etc.

Supervision of Physical Therapist Assistant and Occupational Therapy Assistant. Each employee has ongoing professional or technical supervision to promote individual development and performance. This may be provided by agency employed, qualified personnel or by contract. Job descriptions for each classification, showing functions and required academic/experience qualifications are included with the self-study report.

qualified physical or occupational therapist.
physical therapist assistant or occupational
therapy assistant:

(i) performs services planned, delegated and supervised by the therapist,
(ii) assists in preparing clinical notes and progress reports, and
(iii) participates in educating the patient and family and
(iv) inservice programs.

(b) Supervision of Speech Therapy Services. Speech therapy services are provided only by or under supervision a qualified speech pathologist or audiologist.

edical Social Services. Condition -

edical social services, when provided, are given by a qualified social worker (see 405.1202(t)) or by a qualified social work assistant (see 405.1202(s)) under the supervision of a qualified social worker, and in accordance with the plan of treatment. The social worker: (Reg. 405.1226)

(i) assists the physician and other team members in understanding the significant social and emotional factors related to the health problems,
(ii) participates in the development of the plan of treatment,
(iii) prepares clinical and progress notes,
(iv) works with the family,
(v) utilizes appropriate community resources.
(vi) participates in discharge planning and inservice programs, and
(vii) acts as a consultant to other agency personnel.

Supervision of Speech [illegible]. For all professional personnel the agency provides ongoing supervision, peer review, or consultation by a co-professional qualified for this function. Each employee has ongoing professional or technical supervision to promote individual development and performance. Job descriptions for each classification, showing functions and required academic/experience qualifications are included with the self-study report. The agency provides orientation and inservice education for each discipline and each classification of worker.

A physical therapist assistant or occupational therapy assistant assists in preparing clinical notes and progress reports, and participates in educating the patient and family.

Medical Social Services

For all professional personnel, the agency provides ongoing supervision, peer review, or consultation by a co-professional qualified for this function. Each employee has ongoing professional or technical supervision to promote individual development and performance. Job descriptions for each classification, showing functions and required academic/experience qualifications are included with the self-study report. The agency provides orientation and inservice education for each discipline and each classification of worker.

CERTIFICATION

Home Health Aide Services. Condition -

Home health aides are selected on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job. Aides are carefully trained in assisting patients to achieve maximum self-reliance, principles of nutrition and meal preparation, the aging process and emotional problems of illness, maintaining a clean, healthful, and pleasant environment, changes in patient's condition that should be reported, work of the agency and the health team ethics and confidentiality, and recordkeeping.

They are closely supervised to assure their competence in providing care. (Reg. 405.1227)

(a) Assignment and Duties of the Home Health Aide. The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or therapist as appropriate. Duties include:

(i) the performance of simple procedures as an extension of therapy services,
(ii) personal care,
(iii) ambulation and exercise,
(iv) household services essential to health care at home.
(v) assistance with medications that are ordinarily self-administered,
(vi) reporting changes in the patient's conditions and needs, and,
(vii) completing appropriate records.

(b) Supervision. The registered nurse, or appropriate professional staff member, if other services are provided, makes a supervisory visit

ACCREDITATION

Home Health Aide Services

The service staff includes professional personnel who meet the standards for employment of their respective professional organizations. Staff may in addition include other appropriate personnel such as aides or assistants.

Assignment and Duties of the Home Health Aide. Each employee has ongoing professional or technical supervision to promote individual development and performance. Job descriptions for each classification, showing functions and required academic/experience qualifications are included with the self-study report. The NLN states that written instructions are prepared by a registered nurse and the duties of the home health aide are outlined in the professional requirements of the job which exceed the requirements of Title XVIII.

Supervision. Each employee has ongoing professional or technical supervision to promote individual development and performance.

CERTIFICATION

to the patient's residence at least every 2 weeks, either when the aide is present to observe and assist, or when the aide is absent to assess relationships and determine whether goals are being met.

Clinical Records. Condition -

A clinical record is maintained in accordance with accepted professional standards and contains: (Reg. 405.1228)

(i) pertinent past and current findings,
(ii) plan of treatment,
(iii) appropriate identifying information,
(iv) name of physician,
(v) drug, dietary, treatment and activity orders,
(vi) signed and dated clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly).
(vii) copies of summary reports sent to the physician, and
(viii) a discharge summary.

(a) Retention of Records. Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies call for retention even if the agency discontinues operation

If a patient is transferred to another health facility, a copy of the record or abstract accompanies the patient.

(b) Protection of Records. Clinical record information is safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. Patient's written consent is required for release of information not authorized by law.

ACCREDITATION

Clinical Records.

Service records are maintained for planning and improving all services to individuals, families, and groups.

Retention of Records. The agency's policy with regard to retention of records is consistent with applicable State and local laws.

Protection of Records. The NLN requires patients' written consent before releasing information not authorized by law.

CERTIFICATION

Evaluation Condition -

The home health agency has written policies requiring an overall evaluation of the agency's total program at least once a year by: (Reg.405.1229)

(i) the group of professional personnel (or a committee of this group), agency staff and consumers, or by
(ii) professional people outside the agency working in conjunction with consumers.

The evaluation consists of an overall policy and administrative review and a clinical record review. The evaluation assesses the extent to which the agency's program is appropriate, adequate, effective and efficient.

Results of the evaluation are reported to and acted upon by those responsible for the operation of the agency and are maintained separately as administrative records.

(a) Policy and Administrative Review. As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation. The data to be considered may include but are not limited to: number of patients receiving each service offered, number

ACCREDITATION

Evaluation.

The agency has established procedures for program evaluation. The agency will list individuals (by title, not name) and/or groups responsible for program evaluation. It will describe the formal and/or informal procedures used in evaluating the programs of the agency. The agency will list the kinds of data used in the evaluation procedure and explain how they are used to determine the objectives attained. It will explain by example how findings are interpreted to others and how they are used. A written description will be made of any recent changes or innovations that have occurred in the evaluation process.

Policy and Administrative Review. Staff patterns, policies, and practices are evaluated in relation to fulfilling the purposes of the agency. The review will describe the factors considered in establishing the types and numbers of personnel utilized. Agency practices will be discussed to insure that needed services for patients and families are continued or adjusted in a planned way during periods of change.

CERTIFICATION

of patient visits, reasons for discharge, breakdown by diagnosis, sources of referral, number of patients not accepted, with reasons, and total staff days for each service offered.

ACCREDITATION

The agency conducts or participates in a planned evaluation of its organization and administration. All health disciplines providing services and other agency staff are involved in this evaluation process. The evaluation should describe briefly or include the overall agency plan for total evaluation. It should give the dates when the agency last evaluated its organizational structure and annotate any changes resulting from this evaluation. The evaluation should also describe the methods used to evaluate the administrative practices of the agency.

CERTIFICATION

(b) Clinical Record Review. At least quarterly, appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to assure that established policies are followed in providing services (direct as well as services under arrangement).

There is a continuing review of clinical records for each 60-day period that a patient receives home health services to determine adequacy of the plan of treatment and appropriateness of continuation of care.

ACCREDITATION

Clinical Record Review. The agency maintains an established mechanism for ongoing review of the quality of service rendered by each discipline.

ATTACHMENT 4

PROPOSED MODEL FOR THE DELIVERY OF HOME HEALTH SERVICES

CHHA/CHS

COUNCIL OF HOME HEALTH AGENCIES
AND COMMUNITY HEALTH SERVICES

PROPOSED MODEL FOR THE DELIVERY OF HOME HEALTH SERVICES

INTRODUCTION

Home health care services in the United States continue to be so limited in scope and geographic availability that large segments of the population are denied access to such services as a viable choice for meeting their health care needs.

The purpose of this document is to set forth a model plan for increasing the availability of a broad scope of home health services to all segments of the population and at the same time maximize manpower utilization, provide quality assurance, and promote cost containment.

BACKGROUND

Home health services of good quality are an essential part of the health care system. Such services, appropriately articulated with other health and social services—institutional and ambulatory—provide a more economical and desirable way of meeting many of the health care needs of society, both preventive and curative.

Home health services may be defined as an array of health care services provided to individuals and families in their places of residence or in ambulatory care settings for purposes of preventing disease and promoting, maintaining or restoring health or minimizing the effects of illness and disability. Services appropriate to the needs of the individual and his family are planned, coordinated and made available by an organized health agency—through the use of agency employed staff, contractual arrangements or a combination of administrative patterns. Medical services are primarily provided by the individual's

private or clinic physician although in some instances agencies will employ or contract for physician's services.

These services must be available to the total population and must include all service components necessary to ensure the health and safety of those for whom such services are appropriate.

There are over 2,000 agencies in this country currently providing home health services. However, there is great unevenness in the amount and variety of services available. In addition, there are some extensive, sparsely populated areas where services are minimal or absent.

The Council of Home Health Agencies and Community Health Services of the National League for Nursing[1] is committed to the promotion of ways and means by which communities throughout the country can be assisted in the development of comprehensive home health services. The organizational model proposed in this document is intended for use by community groups, health planning bodies, the insurance industry, and those developing legislative proposals as a new approach to the organization of home health agencies which will foster the availability of comprehensive home health services.

SERVICE COMPONENTS

Essential Home Health Services

The following services are considered essential and hence eligible for insurance coverage. Those denoted with an asterisk* would usually be arranged for by the home health agency and facilitated by the availability of patient transportation services:

Basic Essential (in alphabetical order)

Home Health Aide—Homemaker
Medical Supplies and Equipment (expendable and durable)
Nursing
Nutrition
Occupational Therapy
Physical Therapy

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[1] The Council of Home Health Agencies and Community Health Services of the National League for Nursing is the national spokesman for over 1,400 official and voluntary home health and community health agencies.

Speech Pathology Services
Social Work

Other Essential (in alphabetical order)

Audiological services*
Dental services*
Home delivered meals
Housekeeping services
Information and referral services
Laboratory services*
Ophthalmological services*
Patient transportation and escort services
Physicians services*
Podiatry services*
Prescription drugs
Prosthetic/orthotic services*
Respiratory therapy services
X-ray services*

Desirable Home Health Services

The following environmental/social support services are highly desirable and should be made available to augment home health care services through agency–community planning and development:

Barber/cosmetology services
Handyman services
Heavy cleaning services
Legal and protective services
Pastoral services
Personal contact services
Recreation services
Translation services

ORGANIZATIONAL MODEL

Two classifications of home health programs are proposed in the Model based upon the magnitude of the population served, the geography covered, services offered either directly or by arrangement, administrative structure, and numbers and kinds of staff employed either directly or by contract. These agencies would be community-based, certified to provide home health care and could also be involved in community-based services other than "care of the sick."

PROPOSED HOME HEALTH AGENCY PROGRAM MODEL

BASIC ESSENTIAL SERVICES

HOME HEALTH PROGRAM I		HOME HEALTH PROGRAM II
Nursing and at least two direct services of the following:	PROVIDED DIRECTLY BY AGENCY	Nursing
Home Health Aide-Homemaker Medical Supplies and Equipment Nutrition Services Occupational Therapy Physical Therapy Social Work Speech Pathology Services	PROVIDED DIRECTLY BY AGENCY OR BY CONTRACT	Home Health Aide-Homemaker Occupational Therapy Physical Therapy Social Work Speech Pathology Services

OTHER ESSENTIAL SERVICES WHICH MAY BE PROVIDED DIRECTLY OR BY ARRANGEMENT

Audiological Services*	Laboratory Services	Physician Services*
Dental Services*	Medical Supplies and Equipment†	Podiatry Services*
Home Delivered Meals*	Nutrition†	Prescription Drugs
Housekeeping Services	Ophthalmological Services	Prosthetic/Orthotic Services*
Information and Referral Services	Patient Transportation and Escort Services	Respiratory Therapy X-ray Services*

*These services may be arranged for by the agency and facilitated by the availability of transportation.
†Required for Home Health Program I; incorporated into Home Health Program II if feasible.

DESIRABLE ENVIRONMENTAL-SOCIAL SUPPORT SERVICES—SOME MAY BE DEVELOPED AS VOLUNTEER SERVICES

Barber-Cosmetology	Heavy Cleaning Services	Pastoral Services	Recreational Services
Handyman Services	Legal and Protective Services	Personal Contact Services (Friendly Visitor, etc.)	Translation Services

ASSUMPTIONS BASIC TO THE PROPOSED MODEL

The following assumptions are basic to the organizational model as proposed:

1. The home health care services provided will be adapted to meet the health needs of individuals and families of all age groups, in all diagnostic categories, and in all economic situations without regard to race, color, creed, or national origin.

2. The program will include the basic essential home health services as identified on pp. 2-3 and, as feasible, the "other essential" home health services as well as appropriate environmental/support services.

3. The geographic boundaries selected will not be in conflict with area-wide regional health planning.

4. All geographic areas will have service available based upon validation of need.

5. The agencies providing home health services will be certified for this purpose by appropriate bodies and maintain standards as established by the National League for Nursing, the American Public Health Association and other national standard-setting bodies, as appropriate.

6. Overlapping and duplication of services will be avoided and new agencies will not be developed in areas where there is a home health program with capacity to meet the needs for services as described in the proposed Model. Health programs serving a defined population, *i.e.,* hospital-based home care programs, health maintenance organizations, and neighborhood health centers, will contract for home health services with the programs described in the Model.

7. Insurance coverage and other payment mechanisms for health care will include the essential home health services as previously identified.

HOME HEALTH PROGRAM I

Home Health Program I will be conducted by an agency which would:

1. Serve a defined population base and geographic area such as a state, or group of counties, a large county, a large city.

2. Be accredited or in the process of being accredited by NLN/APHA.

3. Limit staff travel for direct service with consideration for terrain, use of sub-stations, numbers and kind of specialized staff, and transportation facilities.

4. Offer all basic essential services listed in the "Proposed Home Health Agency Program Model" on pp. 4-5 as a minimal program package either directly or by arrangement, with the exception that nursing, and at least two other services, *must* be offered directly. In addition, the full range of identified *essential* and *desirable* services should be incorporated into the service program as feasible in the community.

5. Ensure the availability of the number and kinds of staff needed to supply the range of services offered to the base population.

6. Be willing to extend selected direct patient care services and consultant services to Home Health Program II agencies through arrangement.

7. Be capable of and willing to offer administrative management and centralized services to neighboring Home Health Program II agencies. These may include, but are not necessarily limited to, billing, statistical, accounting, costing and purchasing services; centralized inservice education; patient record and utilization review systems.

HOME HEALTH PROGRAM II

Agencies which qualify as a Home Health Program II would:

1. Serve a defined population base and geographic area such as small county, small city, town, health area.

2. Provide nursing service directly and, in addition, provide directly or by arrangement (contracts) Homemaker/Home Health Aide service, Occupational Therapy, Physical Therapy, Social Work, and Speech Pathology services. In addition, the full range of identified *essential* and *desirable* services should be incorporated into the service program as feasible in the community.

3. Employ a direct service staff of at least five full-time nurses (or part-time equivalent) plus one full-time director/supervisor (or equivalent). Although staff may be deployed on a wide geographic basis, necessary provisions would be made for regular on-site contact to agency headquarters on the part of field staff. This staffing pattern is proposed with the understanding that, in sparsely populated areas, modification may be necessary.

4. Contract with a neighboring Home Health Program I agency for direct patient care and consultant services not available to the agency locally.

5. Contract with a neighboring Home Health Program I agency for administrative management and centralized services not available locally, as are required to maintain quality administrative practices.

ITEM 4. LETTER AND ENCLOSURE FROM JOAN E. CASERTA, NATIONAL LEAGUE FOR NURSING, NEW YORK, N.Y., TO SENATOR PETE V. DOMENICI, DATED APRIL 25, 1978

DEAR SENATOR DOMENICI: In behalf of the members of the Council of Home Health Agencies and Community Health Services, we thank you for the opportunity to present our views last week on the issue of standards in home care. You are to be congratulated on your keen insight, knowledge, and understanding of the home health industry and the problems confronting the industry.

At the hearing you asked for a breakdown of the services provided by our member agencies. At this time we do not have up-to-date figures, but will conduct a survey this summer to gain a profile of the groups. Historical data from the National Center for Health Statistics reveal that in 1975 services provided by home health agencies were as follows:

Type of service:	*Percent providing service*
Nursing	100
Physical therapy	75
Speech pathology	35
Occupational therapy	25
Medical social work	25
Home health aide	70

We are enclosing CHHA/CHS's position statements on the issues of certificate of need and licensure which are for your review and which we would like entered into the record of the hearings. As soon as our tabulation on the distribution of income and expenditure for voluntary home health agencies is completed, we will forward it to you for inclusion in the record.

Thank you again. We look forward to continuing work with you and your very able staff.

Sincerely,

JOAN E. CASERTA.

Enclosures.

POSITION ON LICENSURE OF HOME HEALTH AGENCIES

Two processes are required by law to protect consumers of home health agencies and to assure title 18 and 19 that the minimum standards required by the law are in effect.

One process is certification by a State of nonprofit entitles; the other is licensure, an option each State may elect in order to certify profitmaking entities.

Each process is required annually. Each is able to permit provisional approval until agency practices can be brought into compliance. Each tests compliance with the Federal law. Both may be withheld or withdrawn for noncompliance.

Certification by each State is approved by regional HEW offices and ultimately by the Secretary. States may require higher standards, but not lower than required by the law.

Licensure in each State is not approved by regional HEW. Licensure can be a function of department of institutions, department of licenses, or other arrangement within the States.

There is no evidence that licensure has enriched or reinforced certification. Rather, it may have had the negative effect of decreasing emphasis on much needed improvements in the certification process. It has also increased costs, both in time and paperwork.

CHHA/CHS promotes the certification requirement for home health as a uniform national test of legal compliance for home health agencies. CHHA/CHS will continue to work for the improvement of sanctions and upgrading of provisions in the certification process.

If licensure remains the only federally acceptable method for certifying a profitmaking home health agency, CHHA/CHS will support State licensure for all home health agencies equally when based on a certificate of need requirement (national standard).

CHHA/CHS will continue supporting the position of a federally required certificate of need based on national standards rather than a State option.

In new Federal legislation CHHA/CHS recommends that certification be expanded to protect both the people and the government purchasing so that additional layers of bureaucracy are not needed.

POSITION STATEMENT ON CERTIFICATE OF NEED

Introduction

Home health services are rapidly gaining recognition as a vital, integral part of the health care system by the Federal Government, consumers, insurance companies, and other providers of services.

In the coming years, we can anticipate an accelerated growth in the number and kinds of agencies offering home health services. We predict as well that the kinds and amounts of services being offered will change. Thus, the industry is faced with two alternatives: The expansion can be left to chance with the possible end result of costly fragmentation, duplication of services in some areas, and no service in other areas; or, the expansion can be accomplished in a planned, rational, and orderly fashion based on community need. We believe the latter is the only feasible approach.

To achieve this, we are proposing that all newly established home health agencies and all proposals for geographical extension of services or for establishment of satellite offices of existing agencies be subject to a certificate of need review.

We have defined a home health agency as an overall organization offering a program of home health services in homes and/or other community settings to people of all ages. Such services include: physician service, nurse service, physical therapy, occupational therapy, speech pathology, home health aide/homemaker service; medical social work, nutrition, laboratory service, and medical supplies and equipment.

We hereby make a distinction between an agency which offers a home health program, including the above services and an agency which offers a home management program (meals-on-wheels, transportation, chore service, etc.). One agency may offer both programs. In this paper, however, we are addressing ourselves solely to a home health program.

Rationale for Needs Criteria

The establishment of baseline criteria sets is essential to enable:

(1) Health planners to more effectively identify the mix of health needs not currently being met;

(2) Consumers to make educated decisions about the appropriate facility to meet their felt needs;

(3) Health providers to develop and implement service modalities based on factual data in concert with recognized community groups.

The Council of Home Health Agencies and Community Health Services is very sensitive to the political pressures involved when an agency tries to establish itself where another agency or other agencies exist. Objective criteria should eliminate these pressures and should prevent a certificate of need in name only, being used to protect the turf of existing agencies or allowing for the establishment of new agencies where need does not exist.

Developing Criteria

In developing the criteria, the following types of information will be needed:

Population characteristics.—For both community and catchment area, each of the following in relation to morbidity rate: Age; income level; ethnicity (including language); usual living arrangements; education; general survey of industry in area; employment status and reasons (e.g., temporary industry layoff); infant mortality; and resources for reimbursement.

Provider profiles.—Institutional health facilities (hospitals, SNF's, ECF's, etc.) for both community and catchment area: Number of beds by type of service (med-surg., etc.); number of admissions; and number of discharges by diagnosis and disposition.

Noninstitutional health facilities.—(HMO's, home health agencies, rehabilitation centers, etc.) for both community and catchment area: Services being provided; and composition of case load being served.

Other providers.—For both community and catchment area: Number of physicians by specialty; and number of surgeons by specialty.

Patient assessment.—Levels of care provided in community; ratio of visits per patient by discipline; ratio of visits per patient by diagnosis; and outcome measures.

The criteria which are eventually developed must take into account the following: The number of patients to be served with and without prior hospitalization; projections of the population mix 5 years hence; projections of the impact of new health care providers (surgicenters, HMO's, etc.) 5 years hence; how to en-

courage provision of service to rural areas and/or to traditionally underserved population segments; and how to distinguish between need for additional services or additional agencies.

Determining Need

The data will be used to determine indices. The indices must be measured against national indices for population at risk utilizing home health services. Then the indices will be used to develop criteria. Such criteria will have to be tested for validity and finally valid criteria will establish national standards against which local communities can measure their needs.

It would appear, then, that in determining need, the following is the logical sequence:

Information (or data or facts)→Indices (or guidelines)→Criteria (tested for validity)→Standards (for determining need)

ITEM 5. LETTER AND ENCLOSURE FROM JOHN P. BYRNE,[1] PRESIDENT, NATIONAL ASSOCIATION OF HOME HEALTH AGENCIES, ST. LOUIS, MO., TO KATHLEEN DEIGNAN, STAFF MEMBER, SENATE SPECIAL COMMITTEE ON AGING, DATED APRIL 10, 1978

DEAR KATHY: Our association of home health agencies has been grappling with the problem of standards for agencies and services provided from them for the past couple of years. As you may recall in my testimony as president of NAHHA before the HEW regional hearing in Chicago in October 1977, I stated, and still believe, that the most critical issue facing home health agencies and the appropriate expansion of services rests with the issues of effective standards.

In the fall of 1975, when NAHHA held its fifth annual meeting here in St. Louis, the membership directed its board to pursue the issue of standards and the development of an adequate approach to them. Following that, during the succeeding year, a small ad hoc committee met several times to review what had been done to date in the home health care field with regard to standards or a summary of them as criteria performance. Based upon this review and a great deal of study, a draft of standards statements was prepared and submitted to the membership at the Philadelphia meeting in October 1976. It was intended to be only a reflection of what was the attempt of the board to address the issue. The board and its ad hoc committee received the endorsement of the membership to continue this work, as indeed we did during the remainder of that year and the first 6 or 7 months of 1977.

I might note that although a fair amount of time elapsed, our limited resources permitted only infrequent meetings of this ad hoc committee over these 18 or 24 months. As the work of the ad hoc committee continued, it became relatively apparent that we were dealing with a large number of word changes from what others had done, but not a great deal of substantive new developments resulted from the work. Another concern that we had was that in reviewing the accreditation and standards processes of other national organizations, we found that only a small number of home health agencies were in fact inclined toward participating in these efforts.

Keeping this in mind and also seeing the rather minimal results from the efforts of the ad hoc committee in terms of a "spanking new" approach and some substantive progress in this area, it was decided during October 1977 that we change the thrust of the ad hoc committee and begin to study the conditions of participation, which are in fact a universal set of regulations effecting all home health agencies receiving title XVIII funds.

As a result of this new direction, the ad hoc committee was slightly revamped and has met twice during 1978 to study the conditions. As a result of these meetings, we are enclosing a copy of the conditions and their definitions with a commentary wherever we felt necessary to illustrate weaknesses in the conditions, as well as actual oversights. It is our judgment that if these areas are strengthened, the conditions of participation can provide the framework applicable to all title XVIII and, for that matter, title XX agencies who are charged with the responsibility of providing services under Federal dollars support.

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[1] See statement of Hope Runnels, p. 796.

We do not mean to imply by the submission enclosed to think that the work on this is nearly done. We are merely trying to point out what we feel are the areas that a combined effort by HEW and home health agencies could complete, whereby we truly would have effective standards in this area of health delivery.

It is our hope to meet with officials from HCFA or any other appropriate administrative unit within DHEW to review this matter and attempt to obtain their endorsement to proceed with a further development in this regard. We are indeed prepared as a national body to work to whatever extent possible in the completion of this work which we feel is so very vital to the success of home care in the future.

We look forward to discussing this matter with you at the time of the committee hearing on April 17, 1978.

Sincerely,

JOHN P. BYRNE.

Enclosure.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-R0735)	NAHHA Standards Committee Remarks
I. Compliance with Federal, State and Local Laws. Condition-(405.1220) The home health agency and its staff are in compliance with all applicable Federal, State and local laws and regulations. If State or applicable local law provides for the licensure of home health agencies, an agency not subject to licensure must be approved by the licensing authority as meeting the standards established for such licensure. A proprietary organization which is not exempt from Federal income taxation under Section 501 of the Internal Revenue Code of 1954 has to be licensed as a home health agency pursuant to State law. If no State law exists for the licensure of a proprietary home health agency (see 405.1202 (o) it cannot be certified for participation in the Medicare program	Private, non-profit status is not well defined.
II. Organization, Services, Administration. Condition-(405.1221) Organization, services provided, administrative control, and lines of authority for the delegation of responsibility down to the patient care level are clearly set forth in writing and are readily identifiable. Administrative and supervisory functions are not delegated to another agency or organization and all services not provided directly are monitored and controlled by the primary agency, including services provided through subunits (see 405.1202 (w)) of the parent agency. If an agency has subunits, appropriate administrative records are maintained for each subunit.	Requirement that administrative supervisory functions cannot be delegated to another agency or organization requires clarification when both agencies are certified as home health agencies; e.g., a certified agency contracts for all services but one with another certified agency. Both have a responsibility for supervision of all their employees. This provides duality of supervision and increases costs. Clarification of administrative supervision and clinical supervision is needed.
If the agency has subunits, list each by name and address.	The definition of subunit is interpreted differently by the various surveyors. This causes hardship in rural public health agencies-criteria should be spelled out. Crux of the problem is who is held accountable and by what means in order to assure quality of care.
(a) Services Provided. The agency provides part-time or intermittent skilled nursing services and at least one other covered therapeutic service (physical, speech, or occupational therapy, medical social services, or home health aide services).	Recommend that agencies be required to provide a full range of therapeutic services or show cause for not doing so.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-RO735)

NAHHA Standards Committee Remarks

Services provided directly and/or under arrangement

A. Skilled Nursing
B. Physical Therapy
C. Speech Therapy
D. Occupational Therapy
E. Medical Social Services
F. Home Health Aide

(b) Governing Body. A governing body (or designated persons so functioning) assumes full legal authority and responsibility for the operation of the agency. The governing body appoints:
(i) a qualified administrator, (see 405.1202(a))
(ii)arranges for professional service (see 405.1222),
(iii)Adopts and periodically reviews written bylaws (see 405.1202(b)) or an acceptable equivalent, and
(iv)oversees the management and fiscal affairs of the agency.

The name and address of each officer, director, and owner are disclosed to the State Medicare agency with changes reported promptly.

Clarify "arranges for professional services". Recommend a restudy because of the differing types of home health care providers; e.g., the governing bodies of public health home health agencies are the county elected officials. If this is an attempt to assure accountability and legal responsibility, these issues should be confronted in a more direct manner; e.g., who is the governing body in a sole proprietorship or partnership? Who is the governing body of a hospital home health agency when it is responsible to the Board of Trustees and a University?

(c) Administrator. The qualified administrator, who may also be the supervising physician (see 405.1202 (k)) or registered nurse (see 405.1202 (r)):
(i) organizes and directs the agency's ongoing functions,
(ii)maintains ongoing liaison among the governing body, the group of professional personnel, and the staff,
(iii)employs qualified personnel and ensures adequate staff education and evaluations.
(iv)ensures the accuracy of public information materials and activities, and
(v) implements an effective budgeting and accounting system.

A qualified person is authorized in writing to act in the absence of the administrator.

Administrator (405.1221(c))-- eliminate "who may also be the supervising physician or registered nurse". Recommend improved definition of functions of the administrator along more commonly accepted lines; i.e., planning, organizing, evaluating, and so forth as found in chief executive officer's job descriptions in health institutions.

HOME HEALTH AGENCY SURVEY REPORT (form OMB No. 72-RO735)

NAHHA Standards Committee Remarks

(d) Supervising Physician or Registered Nurse. The skilled nursing and other therapeutic services provided are under the supervision (see 405.1202 (y)) and direction of a physician or a registered nurse (who preferably has at least 1 year of nursing experience and is a public health nurse (see 405.1202(q)). This person or similarly qualified alternate, is available at all times during operating hours and participates in all activities relevant to the professional services provided, including the qualification and assignments of personnel.

(e) Personnel Policies. Personnel practices and patient care are supported by appropriate, written personnel policies. Personnel records include qualifications, licensure, performance evaluations, and health examinations and are kept current

Delete "patient care". There should be written job descriptions, performance evaluations, and evidence of licensure or certification.

(f) Personnel Under Hourly or Per Visit Contract. If such personnel are utilized by the home health agency, there is a written contract between such personnel and the agency clearly designating:

(i) that patients are accepted for care only by the primary home health agency,

(ii) the services to be provided,

(iii) the necessity to conform to all applicable agency policies including personnel qualifications, the responsibility for participating in developing plans of treatment,

(iv) the manner in which services will be controlled, coordinated, and evaluated by the primary agency,

(v) the procedures for submitting clinical and progress notes, (see 405.1202 (d) and (n)) scheduling of visits, periodic patient evaluation, and

(vi) the procedures for determining charges and reimbursement.

Delete "Hourly or Per Visit" and bring (h) Services Under Arrangement in closer relationship to (f). Suggest(a) Services under individual arrangement and(b) Services under group arrangement.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-R0735)

NAHHA Standards Committee Remarks

(g) Coordination of Patient Services. All personnel providing services maintain liaison to assure that their efforts effectively complement one another and support the objectives outlined in the plan of treatment.
(i) The clinical record or minutes of case conferences establish that effective interchange, reporting, and coordinated patient evaluation does occur.
(ii) A written summary report (see 405.1202(x)) for each patient is sent to the attending physician at least every 60 days.

Suggest changing to 90 days.

(h) Services Under Arrangements. Services provided under arrangement with another agency (see 405.1202(p) and (c)) must be subject to a written contract conforming with the requirements specified in 405.1221(f).

See (f).

(i) Standard: Institutional planning. The home health agency under the direction of the governing body, prepares an overall plan and budget which provides for an annual operating budget and a capital expenditure plan.

Should be a new condition developed as a Condition on Planning for Home Health Agencies.

(1) Annual operating budget. There is an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that it is not required that there be prepared, in connection with any budget, an item by item identification of the components of each type of anticipated income or expense).

(2) Capital expenditure plan.

(i) There is a capital expenditure plan for at least a three year period (including the year to which the operating budget described in paragraph (i)(1) of this section is applicable), which includes and identifies in detail the anticipated expenditure in excess of $100,000. In determining if a single capital expenditure exceeds $100,000, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, modernization, expansion, or replacement of land, plant, building, and equipment are included. Expenditures

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-RO735)

NAHHA Standards Committee Remarks

directly or indirectly related to capital expenditures such as grading, paving, broker commissions, taxes assessed during the construction period, and costs involved in demolishing or razing structures on land are also included. Transactions which are separated in time but are components of an overall plan or patient care objective are viewed in their entirety without regard to their timing. Other costs related to capital expenditures include title fees, permit and license fees, broker commissions, architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, notes and other costs incurred for borrowing funds.

(ii) If the anticipated source of such financing is in any part, the anticipated reimbursement from title V (Maternal and Child Health and Crippled Children's Services) or title XVIII (Health Insurance for the Aged and Disabled) or title XIX (Grants to States for Medical Assistance Programs) of the Social Security Act the plan states:

(a) Whether the proposed capital expenditure is required to conform, or is likely to be required to conform to current standards, criteria, or plans developed pursuant to the Public Health Service Act or the Mental Retardation Facilities, and Community Mental Health Centers Construction Act of 1963, to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(b) Whether a capital expenditure proposal has been submitted to the designated planning agency for approval pursuant to section 1122 of the Social Security Act (42 U.S.C. 1320a-1) and implementing regulations.

(c) Whether the designated planning agency has approved or disapproved the proposed capital expenditure if it has been so presented.

(3) Preparation of plan and budget. The overall plan and budget is prepared under the direction of the governing body of the home health agency by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-R0735)

NAHHA Standards Committee Remarks

Overall Plan and Budget prepared by representatives of:
1. governing body
2. administrative staff
3. medical staff or patient advisory group

Composition of committee:

Name	Title

(4) Annual review of plan and budget. The overall plan and budget is reviewed and updated at least annually by the committee referred to in paragraph (j)(3) of this section under the direction of the governing body of the agency.

III. Group of Professional Personnel.Condition-(405.1222)
A group of professional personnel, which includes at least one practicing physician and one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines, establishes and annually reviews the agency's policies governing scope of services offered, admission and discharge policies, medical supervision and plans of treatment, emergency care, clinical records, personnel qualifications, and program evaluations.

Can be mis-interpreted. Causes confusion in roles of ultimate authority. The group of professional personnel; e.g., VNA Board is utlimate authority. What is the role of the professional personnel group? How do they interrelate? Is personnel the terminology-should it be professional advisors?

At least one member of the group is neither an owner (405.1221(b)) nor employee of the agency.

Describe committee.

List professional background and community representation (if any) where applicable.

(a) Advisory and Evaluation Function. The group of professional personnel meets frequently enough to advise the agency on professional issues, participate in the evaluation of the agency's program and assist the agency in maintaining liaison with other health care providers in the community information program.

Its meetings are documented by dated minutes.

Note dates of last two meetings.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-RO735)

IV. Acceptance of Patients, Plan of Treatment, Medical Supervision. Condition-(405.1223)
Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing and social needs can be met adequately by the agency in the patient's place of residence. Care follows a written plan of treatment established and periodically reviewed by a physician, and care continues under the general supervision of a physician.

Written policies reflect admission criteria:

(a) Plan of Treatment. The plan of treatment developed in consultation with the agency staff covers all pertinent diagnoses, including:
(i)mental status,
(ii)types of services and equipment required,
(iii)frequency of visits,
(iv)prognosis,
(v)rehabilitation potential,
(vi)functional limitations,
(vii)activities permitted,
(viii)nutritional requirements,
(ix)medications and treatments,
(x)any safety meansures to protect against injury,
(xi)instructions for timely discharge or referral, and
(xii)any other appropriate items.(Examples: laboratory procedures and any contra-indications or precautions to be observed).

If a physician refera a patient under a plan of treatment which cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan.

Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration.

The therapist and other agency personnel participate in developing the plan of treatment.

NAHHA Standards Committee Remarks

Change title to Patient Care Services. What is encompassed by social needs? Suggest new language "on the basis that the patient's health and social needs can be met with a provision that exceptions can be granted where patients are awaiting hospitalization or nursing home placement. Delete second sentence and place under subsection on plan of treatment. Add a new requirement-written policies reflect admission and discharge policies. Definition of "place of residence" does not cover patients in day care centers and hospice programs.

Explanation should read-"medical orders are initiated by the physician. Based on the diagnosis, medical orders, and other relevant factors, a patient care plan is developed by appropriate agency personnel and is endorsed by the physician." Eliminate (i) through rest of paragraph.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-R0735)	NAHHA Standards Committee Remarks
(b) Periodic Review of Plan of Treatment. The total plan of treatment is reviewed by the attending physician and agency personnel as often as the severity of the patient's condition requires, but at least once every 60 days. Agency professional staff promptly alert the physician to any changes that suggest a need to alter the plan of treatment.	Change review of Plan of Treatment from 60 days to 90 days.
(c) Conformance with Physician's Orders: (i) Drugs and treatments are administered by agency staff only as ordered by the physician. (ii)The nurse or therapist immediately records and signs oral orders and obtains the physician's counter-signature. (iii)Agency staff check all medicines a patient may be taking to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contra-indicated medication, and reports any problems to the physician.	Agency staff makes a "reasonable effort" to review all medications. Add new statement (iv) Decisions to decrease visits may be made by the care given.
V. Skilled Nursing Service. Condition-(405.1224) The home health agency provides skilled nursing service by or under the supervision of a registered nurse and in accordance with the plan of treatment.	Change to read "skilled health service", delete nursing.
(a) Duties of the Registered Nurse. The registered nurse: (i) makes the initial evaluation visit, (ii)regularly reevaluates the patient's nursing needs, (iii)initiates the plan of treatment and necessary revisions, (iv)provides those services requiring substantial specialized nursing skill, (v) initiates appropriate preventive and rehabilitative nursing procedures, (vi)prepares clinical and progress notes, (vii)coordinates services, and (viii)informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nurse and related needs, participates in inservice programs, and supervises and teaches other nursing personnel.	(ii) Change to "health" needs. (iv) Change to "those services requiring specialized knowledge, judgment, and skill". (vi)Documents clinical care given in patient's care record. (viii) Separate out last two functions to read: (ix) supervises nursing personnel, (x) teaches nursing personnel.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-RO735)

NAHHA Standards Committee Remarks

(b) Duties of the Qualified Licensed Practical Nurse (see 405.1202(l)). The qualified licensed practical nurse:
(i) provides services in accordance with agency policies,
(ii) prepares clinical and progress notes,
(iii) assists the physician and/or registered nurse in performing specialized procedures,
(iv)prepares equipment and materials for treatments observing aseptic technique as required, and
(v) assists the patient in learning appropriate self-care techniques.

Change to Duties of the Licensed Practical Nurse and add provides services in accordance with agency policies and in compliance with the State Nurse Practice Act, thus eliminating (iii), (iv), and (v) and add reports changes and conditions to registered nurse.

VI. Therapy Services. Condition-(405.1225)
Any therapy services offered by the agency directly or under arrangement are given by or under the supervision of a qualified therapist in accordance with the plan of treatment. The qualified therapist (see 405.1202 (f) (i) and (u)):
(i) assists the physician in evaluating level of function,
(ii)helps develop the plan of treatment (revising as necessary),
(iii)prepares clinical and progress notes,
(iv) advises and consults with the family and other agency personnel, and
(v) participates in inservice programs.

(a) Supervision of Physical Therapist Assistant (see 405.1202(j)) and Occupational Therapy Assistant (see 405.102(g)).
Services provided by a qualified physical therapist assistant, or occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant:
(i)performs services planned, delegated and supervised by the therapist,
(ii)assists in preparing clinical notes and progress reports, and
(iii)participates in educating the patient and family, and
(iv)inservice programs

Put physical therapy assistants and occupational therapy assistants under respective therapy classifications.

No. Physical Therapists_____
No. Physical Therapist Assistants_____
No. Occupational Therapists_____
No. Occupational Therapist Assistants_____

HOME HEALTH AGENCY SURVEY REPORT (Form OMB No. 72-R0735)

NAHHA Standards Committee Remarks

(b) Supervison of Speech Therapy Services. Speech therapy services are provided only by or under supervision of a qualified speech pathologist of audiologist.

VII. Medical Social Services. Condition-(405.1226)
Medical social services, when provided, are given by a qualified social worker (see 405.1202(t)) or by a qualified social work assistant (see 405.1202(s)) under the supervision of a qualified social worker, and in accordance with the plan of treatment.
The social worker:
(i) assists the physician and other team members in understanding the significant social and emotional factors related to the health problems,
(ii)participates in the development of the plan of treatment,
(iii)prepares clinical and progress notes,
(iv)works with the family,
(v) utilizes appropriate community resources,
(vi)participates in discharge planning and inservice programs, and
(vii)acts as a consultant to other agency personnel.

No. Social Workers_____
No. Social Work Assistants_____

Suggest addition of: Evauates the social and emotional factors impacting on the health problems and does direct intervention as indicated.

VIII. Home Health Aide Services. Condition-(405.1227)
Home health aides are selected on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job. Aides are carefully trained in assisting patients to achieve maximum self-reliance, principles of nutrition and meal preparation, the aging process, and pleasant environment, changes in patient's condition that should be reported, work of the agency and the health team, ethics and confidentiality, and recordkeeping.

They are closely supervised to assure their competence in providing care.

Change to: Home health aides are recruited and selected on the basis of successful completion of a formal training program administered by an educational institution or a training program approved by the State surveyors.

HOME HEALTH AGENCY SURVEY REPORT (Form OMB 72-RO735)

NAHHA Standards Committee Remarks

(a) Assignment and Duties of the Home Health Aide.
The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or therapist as appropriate. Duties include:
(i) the performance of simple procedures as an extension of therapy services,
(ii)personal care,
(iii)ambulation and exercise,
(iv)household services essential to health care at home,
(v) assistance with medications that are ordinarily self-administered,
(vi)reporting changes in the patient's conditions and needs, and
(vii)completing appropriate records.

(b) Supervision. The registered nurse, or appropriate professional staff member, if other services are provided, makes a supervisory visit to the patient's residence at least every two weeks, either when the aide is present to observe and assist, or when the aide is absent to assess relationships and determine whether goals are being met.

Suggest new language: "Makes a supervisory visit to the patient's residence within the first two weeks of service to evaluate the home health aide's performance when the aide is newly employed. Makes a supervisory visit to evaluate the patient's progress at periodic intervals at a minimum of once a month. Makes a visit to the patient's residence to supervise the aide's performance on a regularly scheduled basis at a minimum of once every three months."

IX. Clinical Records. Condition-(405.1228)
A clinical record is maintained in accordance with accepted professional standards and contains:
(i) pertinent past and current findings,
(ii)plan of treatment,
(iii)appropriate identifying information,
(iv)name of physician,
(v)drug, dietary, treatment and activity orders,
(vi)signed and dated clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly),
(vii)copies of summary reports sent to the physician, and
(viii)a discharge summary.

Suggested addition: "A clinical record is developed by the care giver and is maintained in accordance with accepted professional standards and agency policy and contains (then list (i) through (viii))"and add Patient outcome expectation"(vi) clinical notes are prepared by the care giver on the date care is given and are signed and dated no less than on a weekly basis."

HOME HEALTH AGENCY SURVEY REPORT (Form OMB 72-RO735)	NAHHA Standards Committee Remarks
(a) Retention of Records. Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies call for retention even if the agency discontinues operation.	Clarify length of time for retention of records when they are microfilmed.
If a patient is transferred to another health facility, a copy of the record or abstract accompanies the patient.	Perhaps the last paragraph should specify that the transfer is from one home health agency to another home health agency. Home health agencies do not transfer patients from their service to other institutions. Physicians do this.
(b) Protection of Records. Clinical record information is safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. Patient's written consent is required for release of information not authorized by law.	
X. Evaluation. Condition-(405.1229) The home health agency has written policies requiring an overall evaluation of the agency's total program once a year by: (i)the group of professional personnel (or a committee of this group), agency staff and consumers, or by (ii)professional people outside the agency working in conjunction with consumers.	Suggest new language: There shall be an evaluation process based on the goals and objectives of the agency. There shall be a review at least once a year of the goals and objectives, accomplished in relation to the goals and objectives for the ensuing year.
The evaluation consists of an overall policy and administrative review and a clinical record review. The evaluation assesses the extent to which the agency's program is appropriate, adequate, effective and efficient.	These shall be reviewed by the professional advisory committee. Evaluation must track the purpose of the agency, services performed (qualitative and quantitative), objectives for staff, fiscal operations, use of equipment and supplies, and development of resources for all of the aforegoing.
Results of the evaluation are report to and acted upon by those responsible for the operation of the agency and are maintained separately as administrative records.	
Describe the evaluation procedure:	

HOME HEALTH AGENCY SURVEY REPORT (Form OMB 72-R0735)

NAHHA Standards Committee Remark

(a) Policy and Administrative Review. As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation. The data to be considered may include but are not limited to: number of patients receiving each service offered, number of patient visits, reasons for discharge, breakdown by diagnosis, sources of referral, number of patients not accepted, with reasons, and total staff days for each service offered.

Describe the data collected and the way it is used:

(b)Clinical Record Review. At least quarterly, appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to assure that established policies are followed in providing services (direct as well as services under arrangement).

Suggest provision of: Review of records where service was denied.

Amplify to include Utilization Review for both under and over utilization. (Note: Surveyor's manual specifies smaple review guidelines. Why in one instance is it 10% sample of the visits when in all other samples reference is made to patients, cases, or records?)

There is a continuing review of clinical records for each 60-day period that a patient receives home health services to detemine adequacy of the plan of treatment and appropriateness of continuation of care.

Describe how the sample was selected:

SUGGESTED NEW CONDITIONS

1. Planning.

Develop a condition requiring a plan and a conscious planning process in each agency. Such a plan should encompass as a minimum a program plan, a budget plan, a staffing and equipment plan,and a statement of goals and objectives. Criteria are available to justify the staffing plan for all levels of personnel.

2. Supervision.

Perhaps some adaptation of the definition contained in the book Public Health Administration by R. Freeman (Holmes, 1960) would strengthen this part of the Conditions of Participation. We would suggest the addition of a coordination function to this definition. The current Conditions do not distinguish between supervision of patient care (case management) and supervision of employee (line management).

3. Fiscal Responsibility.

Suggest a requirement for a uniform methodology for cost reporting by home health agencies.

Suggest a Condition covering the prudent buying concept.

4. Physical Therapists, Occupational Therapists, and Speech Therapists.

Recommend that the A.P.T.A., A.O.T., and A.S.H.A. be consulted for updating of those sections of the Conditions.

CONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)	NAHHA Standards Committee Remarks
As used in this subpart, the following definitions apply:	
(a) Administrator, home health agency. A person who: 1. Is a licensed physician; or 2. Is a registered nurse; or 3. Has training and experience in health service administration and at least one year of supervisory or administrative experience in home health care or related health programs.	Delete (1) and (2) so that (3) becomes the body of the definition.
(b) Bylaws or equivalent. A set of rules adopted by a home health agency for governing the agency's operation.	Bylaws govern a corporation or organization, but not an agency operation. Needs clarification.
(c) Branch office. A location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.	Definition is vague in relation to sub-unit. Interpretation varies among surveyors state by state. (Sub-unit is found in Item (w))
(d) Clinical note. A dated written notation by a member of the health team of a contact with a patient containing a description of signs and symptoms, treatment and/or drug given, the patient's reaction, and any changes in physical or emotional condition.	A dated notation by the care-giver for each patient care encounter which contains a descrip- of signs and symptoms, treatment...
(e) Nonprofit agency. An agency exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954.	No changes.
(f) Occupational therapist. A person who: 1. Is a graduate of an occupational therapy curriculum accreditated jointly by the Council on Medical Education of the American Medical Association and the American Occupation Therapy Association; or	Confer with occupational therapy association regarding current eligibility.

GONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)	NAHHA Standards Committee Remarks
2. Is eligible for the National Registration Examination of the American Occupational Therapy Association; or 3. Has two years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist for December 31, 1977.	
(g) Occupational therapy assistant. A person who: 1. Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Assocition; or 2. Has two years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.	Confirm with an occupational therapy association regarding current required eligibility.
(h) Parent home health agency. The agency that develops and maintains administrative controls of subunits and/or branch offices.	No changes.
(i) Physical therapist. A person who is licensed as a physical therapist by the State in which practicing, and the American Physical Therapy Association or 1. Has graduated from a physical therapy curriculum approved by (ii) The Council on Medical Education and Hospitals of the American Medical Association,or (iii) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or 2. Prior to January 1, 1966, (i) Was admitted to membership by the American Physical Therapy Association, or (ii) Was admitted to registration by the American Registry of	Confer with A.P.T.A. for current requirements.

CONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)

NAHHA Standards Committee Remarks

Physical Therapists, or (iii) Has graduated from a physical therapy curriculum in a four-year college or university approved by a State department of education; or

3. Has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977, or
4. Was licensed or registered prior to January 1, 1968, and prior to January 1, 1976, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring physicians; or
5. If trained outside the United States, (i) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy. (ii)Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy. (iii) Has 1 year of experience under the supervision of an active member of the American Physical Therapy Association, and (iv) Has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.

(j) Physical therapist assistant. A person who is licensed as a physical therapist assistant, if applicable, by the State in which practicing, and

Confer with A.P.T.A. regarding current requirements.

1. Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or
2. Has 2 years of appropriate experience as a physical therapist assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such

CONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)	NAHHA Standards Committee Remarks
determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualifications as a physical therapist assistant after December 31, 1977.	
(k) Physician. A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which such function or action is performed.	No change.
(l) Practical (vocational) nurse. A person who is licensed as a practical (vocational) nurse by the State in which practicing.	No change.
(m) Primary home health agency. The agency that is responsible for the service rendered to patients and for implementation of the plan of treatment.	No change.
(n) Progress note. A dated, written notation by a member of the health team summarizing facts about care and the patient's response during a given period of time.	A dated, written notation by the care-giver summarizing facts...
(o) Proprietary agency. A private profit-making agency licensed by the State.	No change.
(p) Public agency. An agency operated by a State or local government.	No change.
(q) Public health nurse. A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or post-registered nurse study which includes content approved by the National League for Nursing for public health nursing preparation.	Confirm with A.N.A. regarding current requirements for community health nursing.
(r) Registered nurse. A graduate of an approved school of professional nursing, who is licensed as a registered nurse by the State in which practicing.	No change.
(s) Social work assistant. A person who:	

CONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)

NAHHA Standards Committee Remarks

1. Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or
2. Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a social work assistant after December 31, 1977.

(t) Social worker. A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

Confirm with A.C.S.W. regarding the current requirements in the field.

(u) Speech pathologist or audiologist. A person who:
1. Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or
2. Meets the educational requirement for certification and is in the process of accumulating the supervised experience required for certification.

Confirm with A.S.H.A. regarding the current requirements.

(v) Subdivision. A component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department which independently meets the conditions of participation for hom health agencies. A subdivision which has subunits and/or branches is regarded as a parent agency.

No change.

(w) Subunit. A semi-autonomous organization which serves patients in a geographic area different from that of the parent agency. The subunit by virtue of the distance between it and the parent agency is judged incapable of sharing administration, supervision, and services on a

Needs clarification in relation to branch (c).

CONDITIONS OF PARTICIPATION DEFINITIONS (405.1202)	NAHHA Standards Committee Remarks
daily basis with the parent agency and must, therefore, independently meet the conditions of participation for home health agencies	
(x) Summary report. A compilation of the pertinent factors from the clinical notes and progress notes regarding a patient which is submitted as a summary report to the patient's physician.	Needs clarification in relation to discharge summary.
(y) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Unless otherwise provided in this subpart, the supervisor must be on the premises if the person does not meet qualifications for assistants specified in the definitions in this section.	

See comments for suggestion new conditions. Definitions need to be developed for planning, standard, and fiscal (see Discursive Dictionary).

ITEM 6. LETTER AND ENCLOSURE FROM FLORENCE MOORE, EXECUTIVE DIRECTOR, NATIONAL COUNCIL FOR HOMEMAKER-HOME HEALTH AIDE SERVICES, INC., TO MARGARET S. FAYÉ, MINORITY STAFF, SENATE SPECIAL COMMITTEE ON AGING, DATED MAY 4, 1978

DEAR PEG: This comes further to my letter of April 18 to Senator Domenici with additional information.

Of the 124 National Council approved/accredited programs at the end of 1977, 19 of them were certified for medicare participation. We do not know how many of the agency associates are medicare certified.

The homemaker-home health aide services provided by agencies fall generally into four categories:

(1) Substitute and/or supplementary mother/child care;
(2) Care of the aged and/or disabled;
(3) Personal care and rehabilitation; and
(4) Helping to raise the quality of individual and/or family life, including protective services.

The National Council's goal and objectives for 1978 are attached. (The goal doesn't change, some of the objectives will.)

It occurred to me that if you are including the definition of the various supplementary services in the hearing publication, it would be useful also to include a definition of homemaker-home health aide services. Of course, it should not be attributed to the supplementary services guidelines, but it can be attributed to this organization.

The definition is as follows: "Homemaker-home health aide service helps families to remain together or elderly persons to remain in their own homes when a health and/or social problem occurs or to return to their own homes after specialized care. The trained homemaker-home health aide, who works for a community agency, carries out assigned tasks in the family's or individual's place of residence, working under the supervision of a professional person who also assesses the need for the service and implements the plan of care."

Sincerely,

FLORENCE MOORE.

[Enclosure.]

GOAL AND OBJECTIVES APPROVED BY BOARD OF DIRECTORS, OCTOBER 26, 1977

GOAL

Availability of quality homemaker-home health aide services in all sections of the nation to help individuals and families in all economic brackets when there are disruptions due to illness, disability, social and other problems or where there is need to help enhance the quality of daily life.

OBJECTIVES

Establish and help assure implementation of basic standards for the service through provision of a current code of standards, guides for meeting the standards and operation of a national agency accreditation program including the current approval program.

Shape and implement the National Council's policies and programs by bringing together representatives of voluntary and governmental health and social services, professional and lay leadership, business, labor and the general public to serve on National Council committees and the board of directors.

Interpret the service to legislators and government agencies through testimony, letters and personal contacts and keep member agencies informed of major legislative and regulatory developments.

Provide technical assistance to agencies, communities, organizations and individuals through institutes, manuals and consultation specifically geared to organizing new or expanded services and to strengthening the administrative and management capabilities of agencies providing the service.

Provide technical assistance (as above) by expanding services and benefits to members and associates.

Interpret the need for quality homemaker-home health aide services to the general public and to special groups and to develop technical materials and publish studies about various uses of the service.

Coordinate homemaker-home health aide services with other health and social services in cooperation with other national agencies, both voluntary and governmental.

Act as an information and referral service to those seeking homemaker-home health aide service.

Seek new ways of using homemaker-home health aide services and develop new methods of carrying them out, with special attention to such groups as the physically disabled, emotionally or mentally disturbed and mentally retarded.

Promote needed research, collect basic data about the field.

Develop uniform reporting and accounting procedures.

Develop a sound funding base for the National Council sufficient to underwrite its basic ongoing operating costs and seek project support.

Provide liaison between the homemaker-home health aide service field in the United States and the International Council of Homehelp Services in such ways as representation on the International Council's official bodies, participation in international meetings and the fostering of associate and individual memberships in ICHHS from the United States.

○

TAX FORMS AND TAX EQUITY FOR OLDER AMERICANS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

WASHINGTON, D.C.

FEBRUARY 24, 1978

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CONTENTS

Page

Opening statement by Senator Frank Church, chairman 1

CHRONOLOGICAL LIST OF WITNESSES

Sunley, Emil M., Deputy Assistant Secretary for Tax Policy, Department of the Treasury 3
Kurtz, Jerome, Commissioner, Internal Revenue Service 9
Marlin, David H., Washington, D.C., director, legal research and services for the elderly, National Council of Senior Citizens 22
Hacking, James, Washington, D.C., assistant legislative counsel, National Retired Teachers Association/American Association of Retired Persons, accompanied by William C. McMorran, national coordinator, tax-aide program 26
Stanat, Arthur, Washington, D.C., tax-aide counselor, National Retired Teachers Association/American Association of Retired Persons 39
Skardon, Stephen, Washington, D.C., legislative assistant, National Association of Retired Federal Employees, accompanied by Judy Park, legislative assistant 42

APPENDIX

Letter and enclosure from C. O. Youngstrom, chairman, Legislative Committee, Idaho Federation of National Association of Retired Federal Employees, to Senator Frank Church, dated March 6, 1978 55

TAX FORMS AND TAX EQUITY FOR OLDER AMERICANS

FRIDAY, FEBRUARY 24, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met at 10:38 a.m., pursuant to notice, in room 6226, Dirksen Senate Office Building, Hon. Frank Church, chairman, presiding.

Present: Senator Church.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Margaret S. Fayé, minority professional staff member; Theresa M. Forster, fiscal assistant; and Marjorie J. Finney, correspondence assistant.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. We are operating under a considerable time restraint since the Panama Canal debate has commenced in the Senate. One of the rules we are obliged to follow is that 2 hours after the Senate convenes, Senators may no longer sit in committee. This morning, the Senate convened at 8:45, which gives me 5 minutes. However, the staff is prepared to carry forward with the questioning and to develop the record we hope to make today.

Even though I will be obliged as the manager of the treaties to go to the floor, I want you to know the reasons why. I hope that the record we make will be very helpful for the subject we are pursuing which is "Tax forms and tax equity for older Americans."

I shall ask the witnesses this morning to stay within their allotted time in order that we can make a complete record and to permit the staff to ask the questions they wish.

Before we open the testimony, I would like to make a few key points.

First, Congress has enacted several measures to provide tax relief for older Americans, such as the tax credit for the elderly and allowing older Americans to exclude fully or partially the gain from a sale of a personal residence.

Unfortunately, some of these tax benefits require a maze of computations, statements, and schedule transfers to complete.

For the unsuspecting taxpayer, form 1040 with its accompanying schedules, can be like going through a minefield with numerous linguistic boobytraps.

My point is this: Tax relief provisions are not very helpful unless they are workable and understandable.

President Carter has made tax equity and tax simplification two of his top priority goals. The committee stands ready, willing, and able to work with the administration to achieve these goals. I hope that the hearing this morning can shed more light on possible improvements for the tax form.

Protection Against Overpayment of Income Tax

Second, the committee is concerned that many older Americans needlessly overpay their taxes each year because they are unaware of helpful deductions, credits, and exemptions.

The Internal Revenue Service has repeatedly emphasized that the Federal Government wants no individual to pay more taxes than legally due.

In recent years the committee has published a checklist of itemized deductions to alert older and younger taxpayers alike about tax benefits that can save them money.

We have been assisted by competent and dedicated staff of Internal Revenue Service who have reviewed the committee's publication for accuracy and clarity. I would like to extend again our sincere appreciation to Commissioner Kurtz and the IRS staff for this cooperation.

Additional steps, though, are needed to safeguard individuals from overpaying their taxes.

Tax preparation assistance, for example, can be made more readily available. We shall hear from Commisioner Kurtz later about IRS efforts to assist aged persons in preparing their tax returns.

The committee will also want to know what future actions are planned to extend tax preparation services.

Tax Credit for Elderly

Third, we are concerned about apparent anomalies in the tax law for older Americans.

A classic example may be the tax credit for the elderly. Some elderly taxpayers are discovering that they are being penalized upon reaching age 65.

Qualifying persons under 65 years of age may now claim a 15-percent credit on up to $2,500 of Government pensions, producing a $375 tax savings for persons with no social security benefits and little earnings.

But upon becoming 65, these same individuals may lose the credit entirely, even though their needs may be greater. This is because the $2,500 starting point is reduced by $1 for each $2 of adjusted gross income above $7,500. The effect is that the credit is phased out completely for persons 65 or older with income of $12,500 or more.

I've received many letters from elderly persons who object to one set of rules applied to persons under 65 and another set for those 65 or older.

Our witnesses, I am sure, will have more to say about this situation. We look forward to your comments and possible recommendations.

Administration's Tax Package

Finally, the committee wants to hear from administration officials and others about the impact of the President's tax package for older Americans.

How will the proposed rate reductions and the new $240 personal exemption credit affect elderly taxpayers?

Will older Americans be adversely affected by the recommended reduction or elimination of expenses which are now deductible? If so, to what extent?

The committee will seek answers to other important questions during the hearing on "tax forms and tax equity for older Americans."

So with these considerations in mind, we shall hear from our lead-off witness.

Mr. Commissioner, I understand that Emil Sunley, the Deputy Assistant Secretary for Tax Policy of the Department of the Treasury, is going to lead off the testimony this morning. I just want to express to both of you our appreciation for your aid.

STATEMENT OF EMIL M. SUNLEY, DEPUTY ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. Sunley. Mr. Chairman, I appreciate the opportunity to appear. I have a prepared statement which I hope will be entered into the record.[1] I, however, would like to just summarize part of that statement. The first part of my statement treats the current tax treatment of the aged. The middle section of my statement includes some comments on the impacts of the President's program on the aged. Finally, I conclude with the administration position on a number of bills which have been submitted to Congress on providing changes in the tax treatment of the aged.

President's Tax Program for Aged

Let me begin first with the impact of the President's program on the aged. Now, under the President's tax program, older Americans will have a substantial tax cut, as will taxpayers generally. It is noteworthy, however, that as social security beneficiaries they generally will not have to offset their income tax cut with social security tax increases scheduled for the nonaged. As a consequence, the overall tax cut for the aged will be substantially greater than that of the nonaged. The tax liabilities of the aged will drop by $925 million under the President's program. The average net tax cut will be almost $250 per tax return. The tax savings will be spread fairly evenly among taxpayers in all income classes below $100,000.

Aged taxpayers with adjusted gross incomes of $100,000 or more will, on the average, experience a tax increase. There is a relatively small number of such high-income aged persons, filing about 66,000 tax returns.

The President's tax program will substantially increase the tax-free levels of income for the elderly and more than 1 million addi-

[1] See p. 5.

tional returns now filed by taxable persons aged 65 or over will be dropped from the income tax rolls. This arises from the fact that the tax program proposes to substitute a $240 per capita credit for the personal exemption and the general tax credit.

Tax-Free Levels

As a result, the tax-free levels of income for a single person aged 65 or over will increase by $850, from $6,400 to $7,250, and will increase by $1,200 for a couple, with both spouses aged 65 and over, from $10,450 under current law to $11,650 under the President's proposal.

The President has also proposed changes in the rules under which qualified retirement plans may integrate with social security. The proposed rules will assure that if a company provides a pension for an employee, it must make a substantial provision for every employee not represented by a collective bargaining unit. This proposal would insure that the low-income aged in the future will receive more adequate private pensions to supplement their social security benefits.

Under the President's tax program, to obtain fairness between the taxpayers at various income levels, the personal exemption and the general tax credit would be converted to a $240 per capita credit. A tax credit is directly subtracted from tax as opposed to an exemption which is subtracted from income. The aged would each receive two per capita credits for a total of $480, irrespective of income level and rate bracket.

Break-Even Income Levels

Although the per capita credit is being proposed in combination with the restructuring of the tax rates, it may be helpful for the committee to know the break-even income bracket level if the per capita credit were presented as an isolated change. For an elderly couple with less than $20,200 income, the new $240 credit will provide greater tax savings than the existing personal exemption and general tax credit. At that level of income, the elderly couple is neither better off nor worse off. The tax before the credit for the elderly would be $2,586 under either the $240 credit or under existing law. Most elderly couples with incomes above $20,200 would be better off because lower rate schedules have been proposed to offset the tax increases that would occur at high income levels if a $240 credit simply replaced the existing personal exemption and general tax credit.

The $240 credit and the new rate schedule would achieve first equity; the credit for the aged couple is worth the same regardless of the couple's level of income. Second, it would achieve simplification; one credit will replace the existing combination of a deduction and alternative credits.

Treasury Opposition to S. 2128

Now let me turn to S. 2128. Briefly, this bill would increase the maximum amounts of which the credit for the elderly is computed from $2,500 to $3,000 for an aged individual and from $3,750 to

$4,500 for an aged couple. The bill would also remove completely the adjusted gross income phaseout of the maximum amount. The current phaseout begins at $7,500 of adjusted gross income for an aged person and $10,000 of adjusted gross income for an aged couple.

The phaseout is a reduction of the maximum amount by one-half of the excess over the stipulated AGI levels. In addition, the bill would change the maximum amounts each year according to annual changes in the Consumer Price Index.

The Treasury opposes enactment of the bill. First, the elderly already receive substantial tax benefits and a group is already favorably treated as compared to taxpayers generally. The cost of the bill, if applicable to tax year 1978, would be $963 million and would increase about 10 percent a year. Just looking at the bill from a revenue cost standpoint, there is no room in the President's tax program and in the near term Federal budget for that type and amount of revenue loss.

On equity grounds, the bill is highly questionable. It would provide substantial tax benefits for the elderly who are relatively affluent and would do absolutely nothing for the 18 million older Americans who are not even on the tax rolls, but who may face the serious problem of lack of income. Even among the 6 million older Americans who do pay tax, the bill would distribute the $1 billion inequitably. Two-thirds of that benefit would go to taxpayers with over $15,000 and one-fourth of the benefit would go to those with incomes over $30,000.

In fact, the bill would distribute almost $100 million for taxpayers with $50,000 or more of income.

In addition, the Treasury is opposed to introducing indexing with respect to a specific item or tax allowance. The issue of indexing is one that must be faced on a universal basis. It is just not good tax policy to put one group in a better position than another with respect to inflation, as this bill would do.

That concludes my formal remarks.

[The prepared statement of Mr. Sunley follows:]

PREPARED STATEMENT OF EMIL M. SUNLEY

Mr. Chairman and members of the committee, I am pleased to be here this morning and to join with Commissioner Kurtz in testifying on the income tax treatment of older Americans. My remarks will address two important questions:

(1) How are older Americans affected by the Federal income tax?

(2) How will they be affected under the President's tax program?

I will also discuss briefly, the Treasury's position on several bills in which you, Mr. Chairman, and your committee have a particular interest and which have tax policy implications.

Let me answer the two questions first.

CURRENT TREATMENT OF THE AGED

Mr. Chairman, older Americans, age 65 or more, are treated favorably under the Federal income tax which is structured so that 18 million of the 24 million older Americans currently pay no income tax. The tax law keeps these 18 million off the tax rolls by providing tax-free levels of income that are approximately double the tax-free income levels provided for individuals under 65 years. For example:

—A single person under age 65 can now receive $3,200 before he is liable for tax, while a single person over 65 is not subject to tax until his income

exceeds $6,400. The tax-free level may be higher if he receives social security benefits since these benefits are exempt from tax.

—A married couple with both spouses under age 65 is not subject to tax until the couple's income exceeds $5,200, while if both are 65 or over, the couple is not subject to tax until the couple's income exceeds $10,450.

These tax-free levels of income reflect the combined effect of a number of tax allowances, including special ones for the elderly. These allowances include: The regular personal exemption, the extra personal exemption for the aged, the general tax credit, the zero bracket amount or standard deduction, and the special credit for the elderly.

Let me turn to the 6 million who are taxpayers, about one out of four older Americans. They are the relatively more affluent who have incomes on average of nearly $20,000. They now pay $13.5 billion in income taxes. Under current income tax law, they also are granted favorable treatment in the following ways:

First, they are granted an extra personal exemption of $750.

Second, the aged are allowed an extra $35 credit, if the 2-percent rule is not elected under the general tax credit. The credit currently is equal to $35 per exemption or 2 percent of taxable income up to a credit of $180, whichever is greater.

Third, social security and railroad retirement income is not subject to tax.

Fourth, for the aged, with little or no social security or railroad retirement income, the credit for the elderly is allowed.

Fifth, taxpayers age 65 or over are allowed an exemption for all gains on sales of personal residences selling for $35,000 or less, and a portion of gains for residences selling for more than that amount.

These special tax preferences for the aged reduce Federal revenues by $6 billion annually. That is a substantial Government benefit for older Americans that does not appear on the outlay side of the budget.

I might mention, Mr. Chairman, that the credit for the elderly replaced the highly complex retirement income credit. Enacted as part of the Tax Reform Act of 1976, the current credit is much simpler to use than the former credit. In fact, a taxpayer may now ask the Internal Revenue Service to compute the credit. But the computation is actually quite straightforward. Let me illustrate by an example:

For a married couple filing a joint return, assume that both spouses are over age 65. The couple's adjusted gross income is $12,000 and they also receive $2,000 of social security benefits. The elderly credit would be computed as follows:

Initial amount of income for credit computation (This amount is specified in the Internal Revenue Code. For a single individual, the initial amount is $2,500)	$3,750
Deduct social security pension ($2,000) and one-half of adjusted gross income that exceeds $10,000 ($1,000)	3,000
Balance	750
Credit for the elderly (15 percent of $750)	112.50

The couple therefore may reduce its tax liability (if any) by $112.50.

IMPACT OF PRESIDENT'S PROGRAM ON AGED

Under the President's tax program, older Americans will have a substantial tax cut, as will taxpayers generally. It is noteworthy however, as social security beneficiaries, they generally will not have to offset their tax cut with the social security tax increase scheduled for the nonaged. As a consequence, the overall tax cut of the aged will be substantially greater than that of the nonaged. The tax liabilities of the aged will drop by $925 million (see table 1). The average net tax cut will be almost $250. The tax savings will be spread fairly evenly among taxpayers in all income classes below $100,000. Aged taxpayers with adjusted gross incomes of $100,000 and over will, on average, experience tax increases. They are a relatively small number of aged persons filing about 66,000 returns.

TABLE 1.—COMPARISON OF TAX LIABILITIES FOR PERSONS AGE 65 OR OVER UNDER CURRENT LAW AND UNDER THE ADMINISTRATION PROPOSALS (1976 INCOME LEVELS)

Expanded income[1] class	Current law		Administration proposal		Difference	
	Number of taxable returns (thousands)	Amount of tax (millions)	Number of taxable returns (thousands)	Amount of tax (millions)	Number of taxable returns (thousands)	Amount of tax (millions)
Under $5,000	378	$10	(2)	$−13	−378	$−23
$5,000 to $10,000	1,651	589	985	291	−666	−298
$10,000 to $15,000	1,083	1,113	1,035	888	−48	−226
$15,000 to $20,000	541	1,039	538	910	−3	−129
$20,000 to $30,000	501	1,739	501	1,561	----------	−179
$30,000 to $50,000	305	2,109	305	1,980	----------	−129
$50,000 to $100,000	158	2,709	158	2,654	----------	−56
$100,000 to $200,000	51	2,016	51	2,044	----------	28
$200,000 and over	15	2,192	15	2,279	----------	87
Total	4,682	13,518	3,588	12,593	−1,095	−925

[1] Expanded income does not include social security and railroad retirement benefits.
[2] Less than 500.

NOTE—All tax amounts include the full amount of the earned-income credit. Details may not add to totals because of rounding.

Source: Office of the Secretary of the Treasury, Office of Tax Analysis, Feb. 24, 1978.

Mr. Chairman, the President's tax program will substantially increase the tax-free levels of income for the elderly. More than a million additional returns now filed by taxable persons age 65 or over would be dropped from the income tax rolls. This arises from the fact that the tax program proposes to substitute a $240 per capita credit for personal exemption and the general tax credit. As a result the tax-free levels of income for persons age 65 or over, will increase by $850 for a single person, from $6,400 to $7,250 of income, and will increase by $1,200 for a couple with both spouses 65 and over, from $10,450 to $11,650.

The President has proposed changes in the rules under which qualified retirement plans may integrate with social security. The proposed rules will assure that, if a company provides a pension for an employee, it must make a substantial provision for every employee not represented by a collective bargaining unit. This proposal will insure that the low-income aged in the future will receive more adequate private pensions to supplement their social security benefits.

THE PROPOSED $240 CREDIT

Under the President's tax program, to obtain fairness between taxpayers at various income levels, the personal exemption and the general tax credit would be converted to a $240 per capita credit. A tax credit is directly subtracted from tax as opposed to an exemption which is subtracted from income. The aged would each receive two per capita credits for a total of $480, irrespective of income level and rate bracket.

Although the per capita credit is being proposed in combination with a restructuring of tax rates, it may be helpful for the committee to know the credit's "break-even level" if presented as an isolated change. For an elderly couple with less than $20,200 of income, the new $240 credit will provide greater tax savings than the existing personal exemption and general tax credit, assuming no changes were made in the tax rate schedule. At that level of income, the elderly couple is neither better off nor worse off. The tax (before the credit for the elderly) would be $2,586 under either the $240 credit or under existing law.

EXAMPLE OF OPERATION OF THE PROPOSED $240 PER CAPITA CREDIT AND THE "BREAK-EVEN" LEVEL

	Current law	Proposed law (assuming current law rate schedule)
Adjusted gross income	$20,200	$20,200
Less two personal exemptions and two aged exemptions	3,000	----------
Taxable income[1]	17,200	20,200
Tax before credits	2,766	3,546
General tax credit	180	----------
Less four per capita credits	----------	960
Tax after per capita credit but before credit for the elderly	2,586	2,586

[1] The example assumes the taxpayer has no itemized deductions in excess of the zero bracket amount.

Most elderly couples with incomes above $20,200 would be better off because lower rate schedules have been proposed to offset the tax increases that would occur at high-income levels if a $240 credit simply replaced the existing personal exemption and general tax credit.

The $240 credit and the new rate schedule would achieve:

Equity—the credit for aged couple is worth the same regardless of the couple's level of income; and

Simplification—one credit will replace the existing combination of a deduction and alternative credits.

OTHER TAX PROPOSALS

Now let me turn to the proposed legislation of special interest to the committee. These are: S. 2128, a bill to expand the credit for the elderly; S. 1014, a bill to use tax allowances to expand housing opportunities for the elderly; S. 835, a bill to provide tax counseling for the elderly; and finally the Church-Domenici amendment to the energy tax bill, to provide a refundable tax credit to the elderly to meet the rising energy costs.

First, S. 2128. Briefly, the bill would increase the maximum amounts on which the credit is computed, from $2,500 to $3,000 for an aged individual and from $3,750 to $4,500 for an aged couple. In addition, the bill would change the maximum amounts each year according to annual changes in the Consumer Price Index.

The Treasury opposes enactment of the bill. First, the elderly already receive substantial tax expenditures and the group is already favorably treated as compared to taxpayers generally. The cost of the bill, if applicable to tax year 1978, would be $963 million and would increase about 10 percent a year. Just looking at the bill from a revenue cost standpoint, there is no room in the President's tax program and in the near-term Federal budget for that type and amount of revenue loss.

On equity grounds, the bill is highly questionable. It would provide substantial tax benefits to the elderly who are relatively affluent and would do absolutely nothing for the 18 million older Americans who are not even on the tax rolls but who may face the serious problem of lack of income. Even among the 6 million who do pay tax, the bill would distribute the $1 billion inequitably. Two-thirds of that benefit would go to taxpayers with incomes over $15,000. One-fourth of the benefit would go to those with incomes over $30,000. In fact, the bill would distribute almost $100 million dollars to taxpayers with $50,000 or more of income.

In addition, the Treasury is opposed to introducing indexing with respect to a specific item of income or tax allowance. The issue of indexing is one that must be faced on a universal basis. It is just not good tax policy to put one group in a better position than another with respect to inflation, as this bill would do.

Next, S. 1014. The bill would provide a $250 tax credit or a $1,000 deduction to a taxpayer who maintains a dependent age 65 or more within his home. The purpose is to provide housing for older Americans.

The Treasury is opposed to the bill on several grounds. First, the $800 million revenue cost would be substantial. It would generate double allowances for aged dependents. One allowance is the existing $750 dependency exemption and the other would be $1,000 deduction or the $250 credit in the bill. It would tend to move older Americans from nondependency status to dependency status to take advantage of the double allowance. It is noteworthy that the Congress granted the dependency exemption to taxpayers who supported relatives outside the home. The purpose was to provide some independence for the dependent. S. 1014 would move in the opposite direction.

The extra allowance would be discriminatory among aged since the dependency test requires that the children provide more than half of the support for the parent. Low income families may provide a home for an aged parent but not meet the support test. Higher income families could more easily meet the support test and thus qualify for the additional allowance.

The double allowance would also provide a windfall to those taxpayers who already have aged dependents in their home. To the extent that the windfall does nothing to provide more housing opportunities, the large revenue cost of providing the windfall would be a deadweight loss.

In addition, it is hard to justify the double allowance that would be granted by the bill and not grant it to other dependents who are also in need of housing

but are not age 65 or older. These include dependents who are incapacitated or who are unemployed or are students.

Perhaps most importantly, the S. 1014 double allowance would be regressive in its impact. The greatest portion of the benefit would go to those in the higher incomes who have the resources and facilities to provide housing for their aged dependents and can meet the support test. In many cases the regressive impact of the allowance would be compounded by the fact that the aged dependent already lives in the house and thus the allowance would be a windfall to the taxpayer.

Next, S. 835. A provision of the bill would authorize the tax-free reimbursement for certain expenses incurred by volunteers who provide tax assistance to the elderly. I want to focus only on the tax exemption aspect.

The Treasury is opposed to the tax exemption. The Department objects to introducing another statutory exclusion from the tax base. To the extent that the volunteer is a low income person, the reimbursement of certain expenses as provided in the bill would generally be nontaxable in any case.

Finally, let me turn to the Church-Dominici amendment (No. 1523) to the energy tax bill, H.R. 5263. As part of his national energy plan, the President proposed that the proceeds of the crude oil equalization tax be rebated to individuals on a per capita basis in order to assist them in meeting increased costs attributable to that tax. It is estimated that the per capita rebate would total approximately $45 per year when the tax is fully effective. In addition, the plan provides for a reduction in heating oil costs of consumers equal to the increase that would be caused by the imposition of the tax. When the crude oil tax is fully effective that reduction in price would total approximately $50 per year for a typical purchaser of heating oil.

These payments, of course, would be available to all individuals, whether young or old. In fact, in the case of the low income individuals, the amount to be paid to them under the plan would exceed the additional costs they would incur by reason of the crude oil tax.

The Church-Domenici amendment provides a refundable credit for the elderly in addition to these payments and adjustments. It would provide an additional $75 to heads of households age 65 or over with a phaseout for taxpayers with adjusted gross incomes between $7,500 and $12,500.

Treasury opposes the refundable credit for the elderly. Adequate adjustments for increased energy costs for the consumer are provided in the national energy plan and elsewhere. The credit would also deplete general revenues to the extent of $6.7 billion in the fiscal years 1978–85. In addition, the effect of such a widely distributed refundable credit would be to restore to the tax rolls millions of aged taxpayers who had been removed from the rolls in the last several years.

Thank you, Mr. Chairman.

Mr. AFFELDT [presiding]. Now we will hear from Commissioner Kurtz.

STATEMENT OF JEROME KURTZ, COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. KURTZ. I appreciate this opportunity to be here to discuss several aspects of tax administration that are of concern to the elderly. I will begin with a summary of our programs of assistance to all taxpayers, including the elderly. I will then discuss several specific items of proposed legislation which are of immediate interest to this committee.

The Internal Revenue Service taxpayer assistance program provides the general public with comprehensive information about the Federal tax system. The IRS offers toll-free telephone assistance to all taxpayers. The IRS also provides walk-in service, including returns preparation assistance. Since December 1976, the IRS has provided tax assistance by TV–phone and teletypewriter services for the deaf on a nationwide, toll-free basis.

VITA—Volunteer Income Tax Assistance

In addition to its direct taxpayer assistance activities, the Service promotes the volunteer income tax assistance, or VITA, program to provide tax counseling and help in return preparation. Through VITA, IRS trains volunteers who, in turn, offer tax assistance to taxpayers at convenient locations throughout their communities. The VITA program focuses primarily on providing assistance to lower income, elderly, or non-English speaking taxpayers.

This year, as a result of a special congressional appropriation of additional funds for VITA, we have expanded the VITA program so that this free assistance can be provided to a greater number of taxpayers.

IRS Efforts To Help Elderly

In addition to our overall taxpayer service activities, the Service also has a number of programs which provide benefits especially to the elderly. For example, the Service makes every effort to locate its taxpayer service offices near public transportation and on the first floor of buildings, making them particularly convenient to the elderly and the handicapped.

We are also continuing to conduct retiree income seminars as a part of our overseas taxpayer assistance program. These seminars are designed to assist retirees and senior citizens residing abroad to determine their correct U.S. tax obligations.

We also distribute a number of free publications aimed especially at tax issues relevant to our older citizens. These include: Publication 524, "Tax Credit for the Elderly"; publication 554, "Tax Benefits for Older Americans"; publication 502, "Deductions for Medical and Dental Expenses"; publication 522, "Tax Information on Disability Payments"; publication 575, "Tax Information on Pension and Annuity Income"; and publication 567, "Tax Information on U.S. Civil Service Retirement and Disability Retirement."

Publication 554, a primary source of tax information for the elderly, is printed in large type for easy readability, and is distributed by both the Service and the Social Security Administration. For the 1979 edition, we plan to simplify certain portions of the text and add a comprehensive example with accompanying forms to illustrate many of the tax situations that face senior citizens.

Our public affairs organization conducts a number of programs targeted for the Nation's senior citizens and also works with numerous other organizations to provide specialized media coverage for the elderly. News releases, television and radio public service announcements, and other media material such as question and answer columns, are specifically directed toward promoting older Americans' awareness of the taxpayer assistance and VITA services I have just described.

Tax Benefits for Older Americans

In addition, these materials call attention to features of the tax law of particular interest to the elderly. These include such items as the increase from $20,000 to $35,000 of the nontaxable limit on the sale of a personal residence; the additional $750 personal exemption

available to persons age 65 or older; the gross income levels under which persons age 65 or older are not required to file; the nontaxability of social security payments and railroad retirement benefits; the existence of Form W–4P, which authorizes the payor of retirees' pensions to withhold taxes at the source to avoid a large tax bill at the end of the tax year; and the necessity for part-time workers, many of whom are 65 or over, to file for a possible refund if there was any tax withheld from their pay during the year.

Simplify Tax Forms and Instructions

Another major Service activity which benefits all taxpayers, including the elderly, is our ongoing effort to simplify tax return forms and instructions. In addition to the areas of the Internal Revenue Code which are specifically directed at the elderly, the older taxpayer, of course, is subject to all of the general provisions of the code.

However, it has been our experience that the retired taxpayer frequently must deal with some of the complex individual income tax situations such as rental property, income from dividends, pension and annuity income, sales of securities, et cetera. Thus, any simplification achievements realized within the overall forms and publications area directly benefit the elderly.

The Tax Reduction and Simplification Act of 1977 allowed us to make considerable progress in the area of simplification. The computations previously required of most taxpayers for determining the total deduction for personal exemptions, the general tax credits, and the actual tax liability have been incorporated into the new tax tables, and generally do not have to be computed on the return.

Continuing efforts are being made to simplify the language used in the forms and instructions. In 1977, for example, the Form 1040 was pretested among a number of groups to identify potential problem areas. Included among the pretest group were a number of retirees representing the American Association of Retired Persons. We have also assisted the National Association of Retired Persons with their comprehensive tax publication.

There are presently several pending legislative proposals which are aimed at reducing either the economic or administrative burden of income taxation upon the Nation's older citizens. While we defer to the Treasury Department regarding commentary on the substantive features of such pending legislation, we do have some observations to make concerning some of their administrative features.

S. 2128—Tax Credit for Elderly

S. 2128 would increase the maximum credit for the elderly through an initial increase in the maximum amount on which the credit for the elderly is computed, effective with taxable years beginning after December 31, 1976. Beginning with the 1977 tax year, annual increases in the maximum amount would be tied to changes in the Consumer Price Index.

The effective year provision of this legislation, if left unchanged, could result in the filing of a large number of amended returns for 1977. This bill also provides for an elimination of the current phase-

out of credit based on adjusted gross income. This could result in a large increase in the number of returns claiming the credit.

S. 835—Older Americans Tax Counseling Assistance Act

Another pending measure, S. 835, provides for reimbursement to volunteers for transportation, meals, and other expenses incurred by them in training or in providing tax counseling for the elderly. This would pose distinct administrative problems for the Service.

Though the reimbursements probably would be relatively small, the Service would have extensive budgeting, monitoring, and audit responsibilities related to the moneys spent by volunteers.

In addition, we are concerned that by providing these reimbursement rights solely for volunteers working with the elderly, this act would work to the detriment of our VITA program, to the extent that it would establish a double standard which would not apply to volunteers working with taxpayers other than the elderly.

S. 1014—Maintaining Older Dependent in Taxpayer's Home

S. 1014 would provide for either a $250 tax credit or a $1,000 deduction to individuals who maintain a dependent age 65 or over within their homes. We believe that this bill would further add to the complexity of the Form 1040 and instructions, since the choice of a credit or deduction would have to be presented on the form and in the instructions, and since the better alternative may not necessarily be clear to the taxpayer.

For example, it would not be advantageous to a taxpayer to use the deduction option unless this deduction, plus other itemizable deductions, exceeded the zero bracket amount and in addition the taxpayer's marginal rate exceeded 25 percent.

Refundable Tax Credit for Rising Energy Costs

Finally, section 1012 of H.R. 5263, the Senate-passed version of the energy bill, would make available a refundable tax credit, subject to an income phaseout, for all individuals age 65 or over who maintain a household. Because the tax credit would be refundable to taxpayers who would otherwise not have any tax liability and would not be required to file, the provision would expand substantially the number of individual returns filed.

Our experience with the refundable earned income credit demonstrates the difficulties of reaching individuals who are not otherwise required to file, to inform them of the credit. The Service does not know the identity of these persons, since they are not on the tax rolls; and they can only be reached through special publicity efforts which may not be wholly successful.

This concludes my prepared remarks, and I will be pleased to answer any questions.

Mr. Affeldt. Thank you very much.

Head of Household Versus Single Status Question

I would like to pose a question to you first, Commissioner Kurtz. From time to time, we receive calls from elderly taxpayers who have

questions about tax problems. In this particular example, an elderly lady wondered whether she could claim head of household treatment under these circumstances: She was a single aged taxpayer; she, together with her brothers and sisters, contributed more than one-half of her elderly mother's support. Her mother was 84 years old. She claims her mother as a dependent under a multiple support agreement. She also furnishes more than one-half of the cost of maintaining a household for her mother, and her mother lived with her for more than one-half of the year.

The issue raised was: Can this elderly taxpayer claim head of household status when she claims her mother as a dependent under a multiple support agreement or would she be required to file as a single person?

Page 14, I think, of "Your Federal Income Tax" publication provides some information. In addition, section 2(b) of the Internal Revenue Code and page 7 of your instructions for Form 1040 would be helpful.

I was asked the question. I thought I knew the answer. I know something about taxes, but I had to do some checking and I was not sure after I read it whether I was right or not.

All right. Let me tell you what the answer is.

Mr. KURTZ. Thank you. [Laughter.]

Mr. AFFELDT. We have an IRS agent who works in the new Senate office building and I raised the question with him and he said the answer is head of household. Section 2(b) of the Internal Revenue Code provides that when a relative must be claimed as a dependent the dependency status cannot be established through a multiple support agreement.

I read some of these instructions and I was not sure. So I asked some of the staff of our committee to make calls to IRS information offices and this is the result. They called nine offices. Five of them said head of household status, four of them said single status. So you know five of them were wrong in this particular case if my interpretation is correct.

ASSURING TAXPAYERS ACCURATE INFORMATION FROM IRS

So that leads to the question I want to raise here. What steps can be taken to provide greater asurances that taxpayers receive accurate information when they call IRS offices? I know the tax law is very complex. In fairness to the IRS, I should point out that we raised another question with regard to what to include in the basis of property when an elderly person would sell that property. In this particular case, there was unanimity with regard to the responses that we received. So, in one case there was agreement.

In this case, which I grant is more complex, there was disagreement. But, the point is that the taxpayer here could be mislead to his or her detriment. What was at stake was potentially hundreds of dollars.

Mr. KURTZ. It is unfortunate, but those things do occur. In every filing season we see reports of those kinds of occurrences.

Overall, the accuracy rate on the telephone assistance is quite high and that is due to the fact that most of the questions asked are sim-

pler than the one you asked. The problem is that a great deal of tax advice, answers to questions during the filing season, are given by temporary employees who expand our services very substantially.

As I say, the accuracy rate overall is quite high. I suppose the answer to some extent might be more training, although our telephone assisters do receive approximately 5 weeks of training before they answer calls, and there are, in addition, the front line assisters, second and third line assisters, who handle more complex questions.

I suppose, ultimately, the answer is a simpler law, a simple law. I have been at it 20 years and I didn't know the answer to your question without doing a fair amount of research.

Now, as I say, I think overall the quality of the advice is good. That does not make it perfect and we keep working with it.

Mr. AFFELDT. Let me just point out something that was confusing to me and may perhaps be inaccurate. You can have your technicians check this item. This is the reason I had some people check on this information on page 7 of the instructions.

Mr. KURTZ. The 1040 instructions?

Mr. AFFELDT. Yes. If you will bear with me, it is the middle column. We have some forms over there that you can examine yourself. The middle column reads, and I quote:

You may use the filing status—

Referred to as head of household—

. . . only if, on December 31, 1977, you were unmarried (including certain married persons living apart), or legally separated, and met one of the following tests:

1. You paid more than half the cost of keeping up a home which was the main home of your father or mother whom you can claim as a dependent (you do not have to live with that parent).

All right. Skip down to (b) where it says:

Any other person listed in 5(a) under lines 6 (c) and (d)—

And that is children and other dependents on page 8 of the instructions—

. . . whom you can claim as a dependent provided he or she is not your dependent under a multiple support agreement.

What is 5(a)? When you look over the form, there is no block 5(a) on form 1040, unless there is a reference to something else that confuses me. Block 5, I believe, refers to surviving spouse status for a qualifying widow or widower.

Now 6(c) and 6(d) match up with regard to dependent children who live with you or other dependents who do not live with you but can be claimed as dependents provided certain tests are met. There are basically five tests for a dependent to be claimed.

So I don't know if you can respond at this point, but this appears to be confusing or inaccurate in terms of the line references.

Mr. KURTZ. Well, we will look at it and try to straighten it out.

Mr. AFFELDT. All right. Another question that I have is——

Mr. KURTZ. It is referring to paragraph 5(a) of the instructions but it is not clear.

Mr. AFFELDT. Oh, paragraph 5(a).

Mr. KURTZ. Paragraph 5(a) of the instructions, which is on the next page.

Mr. SUNLEY. The instructions for line 6(d) and 6(c).
Mr. AFFELDT. Paragraph 5(a)——
Mr. KURTZ. It lists the relationship.
Mr. AFFELDT. Where does paragraph 5(a) appear on the form?
Mr. KURTZ. It is not on the form.
Mr. AFFELDT. On the instructions.
Mr. KURTZ. Page 8, lower left-hand corner.

NOTCH PROBLEMS

Mr. AFFELDT. Fine. The tax tables, I think, will simplify tax preparation for many taxpayers because they are not required to make complex computations to determine their tax liability. However, the tax table is divided into increments of $50 which may pose certain notch problems.

For example, a taxpayer with more than $1 of taxable income may wind up paying $21 more in taxes for that additional dollar. I think there may be an incentive for some people to remember suddenly that perhaps they gave an extra dollar or two to the Salvation Army for their cash contributions, putting them in that lower $50 bracket. But, what can be done to lessen the impact of these notch problems and still make the tax computation simple, through the use of the tax table. Would it be possible to break it down into smaller increments?

Mr. KURTZ. The tables have the $50 increments because that was our understanding of the congressional mandate setting the tables forth. The problem is that to break them down into $25 segments will require twice as many tables and there is some trade-off there. We now have some 12 or so pages of tables and to go to $25 increments would give you perhaps 25 pages of tables.

Unquestionably, the wider the bracket, the more questionable the notch. I don't doubt that.

Mr. SUNLEY. You also have taxpayers who benefit by being $1 under the top side; otherwise the amount of tax for every $50 bracket is computed at what the tax would be if they have the income right in the middle. So on average it gets the right answer. It is true that——

Mr. AFFELDT. There is a break-even point.

Mr. SUNLEY. Yes. There are many taxpayers who get a benefit as well under this provision.

Mr. AFFELDT. But the ones who complain are those who lose, of course. They are the people that we hear from, not the winners.

ITEMIZED DEDUCTIONS

I would like to direct another question to you concerning how the tax form deals with schedule A for itemized deductions. We have found that many elderly people overpay their taxes because they are unaware of certain itemized deductions. Do you think that schedule A could perhaps be improved if there would be more specific reference to allowable itemized deductions? In 1970, Commissioner Thrower testified before our committee and we suggested to him at the time that there could be some additional line references with re-

gard to medical expenses, such as transportation. I think eyeglasses was another one.

Mr. KURTZ. They are on there—dentures, transportation. There is also a debate on forms every year as to how much instructions to put on the forms and there is a trade-off between the complexity of the form and the information contained on it. The more you put on it, the more complex it appears and in some respects misleading. If you itemize certain items as being on a line and not every one, which is frequently impossible to do because of the number, it may create an implication that the one not listed is not deductible, so there are considerations both ways, and generally we try to include summary information on the form and rely on the instructions for more details.

In any particular case it is a close question and it does change somewhat from year to year. Where we find that a particular item is overlooked or misunderstood, we tend to put more instructions on the form as to that to demonstrate it is a deficiency.

PAYROLL TAX REDUCTIONS?

Mr. AFFELDT. Let me pose some questions now to Assistant Secretary Sunley. Senator Church, I know, is very much interested in the administration's tax package. Your overall proposal would result in about a $23.5 billion reduction for individuals. This, of course, is designed to offset the social security tax increase that was enacted in December. But Senator Church was wondering whether a different approach may be more effective for individual taxpayers.

What he is thinking about is perhaps targeting more of that relief in the form of payroll tax reductions. This could be achieved perhaps through general revenue financing either partially or totally for the medicare part A hospital insurance program. What this would mean is there may be a smaller reduction for the individual income tax cut to stay within the administration's target of $23.5 billion in tax reductions. But the issue here is: How would the administration feel about having a different mix in terms of a $23.5 billion tax cut?

I know other Senators are giving considerations to this, such as Senator Nelson. Do you have any thoughts about this approach?

Mr. SUNLEY. As you may recall, last year the administration twice proposed some general financing of social security. First, there was the payroll tax credit for employers, proposed as part of the stimulus bill, and the Congress rejected the credit for employers and instead substituted an employment tax credit. Second, in the social security proposals that the administration submitted, provision was made for some general financing of social security, and again Congress rejected that proposal. It is true, that since the social security legislation was enacted, there has been considerable interest in the last few weeks in the possibility of, instead of only income tax cuts, having smaller income tax cuts and some social security tax cuts.

So, my judgment at this time, and it depends on how contentious the issue of financing social security will be, is that it would probably be better for Congress to come back and look at social security in 1979 and not even tangle with that in this year's tax bill. But it is

possible, of course, that the Congress will want to cut taxes for individuals by providing both income tax cuts and social security tax cuts.

I would add, though, and this may be of particular interest to this committee, that if the tax program is restructured along the lines that you suggest, the aged social security beneficiaries would receive smaller income tax reductions and generally would not benefit from the social security tax reductions which would be substituted.

Mr. AFFELDT. Under your tax package, most workers will have an overall reduction for their combined social security taxes and income taxes in 1979.

Mr. SUNLEY. That is correct.

BREAK-EVEN POINT

Mr. AFFELDT. What is the break-even point? Do you happen to know off the top of your head?

Mr. SUNLEY. It varies a little bit. The breaking point is about $20,000 of earned income if all the income of a four-person, one-earner family is from earnings. For a four-person, two earner family, the break point is $30,000.

Mr. AFFELDT. What would be the effect in the 1980's when the social security tax rate increases much more sharply? The rate is now 6.05 percent, it rises to 6.13 percent next year. By 1982, it is up to 6.7. In 1985, it rises to 7.05 percent. So, within a period of 7 years, the social security tax rate will increase by 1 percent, and 1 percent for a wage earner earning $20,000 would be a $200 increase in social security taxes.

Mr. SUNLEY. I would anticipate that there would be additional income tax reductions in the years ahead.

Mr. AFFELDT. To offset the——

Mr. SUNLEY. To offset the higher social security taxes and in part to offset the impact inflation may have on pushing taxpayers into higher tax brackets and increasing effective tax rates. Over the last 20 years, it has been the practice for Congress to periodically cut taxes. In fact, the average tax rate of American taxpayers has fluctuated in a fairly narrow band. So, as inflation tends to push effective tax rates up, Congress provides new tax reductions. I would anticipate that this pattern would continue in the future and that it is very likely additional individual income tax reductions would be enacted in 1980.

HOW MUCH ECONOMIC STIMULUS?

Mr. AFFELDT. Senator Church was also wondering whether the tax cuts in recent years, or the one that is proposed now, will have that much economic stimulus. It was his feeling that the last tax reduction did not result in that much money being pumped into the economy. Many people, instead, chose to save the money or to meet some other larger expenses. How do you feel about that? This is one reason that he wonders whether it would be more desirable to target the relief toward social security payroll taxes in order that more lower and moderate-income persons would be the beneficiaries.

Mr. SUNLEY. Well, as you may know, in determining the size of a tax cut to propose, a number of factors are taken into consideration. But the key factor in arriving at the overall dollar magnitude of the program is the amount necessary to sustain economic recovery. We had a very good year in 1977, in terms of reducing the level of unemployment from 7.7 percent in December 1976 to 6.4 percent in December 1977. Also, 4.2 million additional jobs were created in the economy and 1.2 million people were removed from the unemployment rolls. So we are first trying to set a level of fiscal stimulus that will sustain that recovery.

Now this particular level, when it is split between business and individuals, leads to a net tax reduction in 1979 of about $16.8 billion dollars for individuals, and if compared to 1977, the overall effective tax rates in 1979—that is to say, individual tax rates plus social security tax rates—will be about the same as they were in 1977.

Mr. AFFELDT. Is the $16.8 billion a net reduction? You have $23.5 billion in tax relief through lower Federal income taxes. I gather there is going to be an offset here because of increased social scurity taxes. What else would offset this $23.5 billion reduction to get to your net.

Mr. SUNLEY. The social security is not a part of the net. The net is from a gross of $23.5 billion to a net of $16.8 billion. The difference is revenue raising reforms and structure reforms in the individual income tax.

$925 MILLION TAX REDUCTION PROPOSED FOR ELDERLY

Mr. AFFELDT. In this context, you indicated that elderly people would receive a $925-million reduction in their taxes under the administration's proposals. But there are also some items that would take away itemized deductions for the elderly, such as elimination of the deduction for the personal property tax, the sales tax, and the gasoline tax. These three items, in 1974, provided more than $700 million in relief for aged taxpayers. You are also constricting the deduction for medical expenses.

In 1974, the medical expense deduction was claimed by about 2 million tax returns with an aged taxpayer, producing $2.8 million in tax relief.

My question to you is, whether this $925 million in tax relief takes into account these losses in your tax relief provisions that had been available to the elderly? Is this a net figure or is it something else?

Mr. SUNLEY. No, the $925 million figure is a net figure. It is a component of the $16.8 million of net.

Let me, if I may, elaborate a little bit on the itemized deduction changes. First, it should be be kept in mind that out of 24 million Americans age 65 or over, 18 million pay no Federal income tax currently, so those who pay income tax currently are generally the better off of the aged.

Second, in proposing changes in itemized deductions such as the repeal of the deductions for gasoline taxes and sales taxes and the revisions in the medical deduction, we proposed at the same time rate reductions which will in most cases offset the tax increases that

would come from the repeal of certain itemized deductions. Also, 96 percent of all American taxpayers who now pay taxes get a tax reduction under the program. There are something like, I think, 2½ million taxpayers who would have a tax increase under the program.

Mr. AFFELDT. That many taxpayers or returns on which taxpayers are claimed?

Mr. SUNLEY. Those are returns on which taxpayers are claiming itemized deductions.

I believe you know that our itemized deduction proposals are quite consistent with your line of questioning of Commissioner Kurtz expressing worry about the complexity of itemized deductions. The medical deduction now has some 10 to 12 lines on the form, requiring you first to segregate your insurance premiums, and then to compute 3 percent of income, so you may deduct in excess of 3 percent, and then to compute your drugs in excess of 1 percent, but to count toward that in the excess of the 3 percent computation. As you can see, this has been a source of considerable complexity.

Although it is true that the elder Americans probably have higher medical expenses than the nonaging, they tend also, of course, to be better protected by insurance. So, I believe that this program of revising the medical deduction when accompanied by significant rate reductions will not have an adverse impact on the aged.

I should add that even of the 6 million aged who currently pay income tax, most of them do not itemize their deductions. Most of them claim the standard deduction and would not be affected in any event.

Mr. AFFELDT. For the record, out-of-pocket per capita health care costs for the elderly are somewhere between $400 and $500 a year. This is even with medicare, medicaid, and other Federal reimbursement programs.

REIMBURSEMENT FOR EXPENSES IN PROVIDING TAX ASSISTANCE

You made some comments about the legislation that I find interesting. But first, I would like to raise a question with you concerning the treatment of reimbursement for meals and out-of-pocket expenses for people who would be doing tax counseling assistance. This may qualify as rendering service for a charitable organization. When you render services as an individual taxpayer for a charitable organization, you may claim mileage. You may claim either your actual expenses, or you make take a standard mileage rate of 7 cents a mile.

For my own edification, a taxpayer who performs services for a charitable organization and incurs meals expenses would not be able to claim out-of-pocket expense deduction for the meals unless he is away from home overnight. Would that be the same as for business purposes?

Mr. KURTZ. Yes, that is my understanding.

Mr. AFFELDT. The provision in S. 835 would exempt the reimbursement for travel and meals as being includable as income. If you were to include the reimbursement as income, it would probably not be that much. In addition, it may create more problems for the elderly taxpayer in terms of filling out his tax form.

With this in mind let me ask you this question. If this provision were changed, what would the Treasury's position be with regard to S. 835? Would the Treasury be inclined to support enactment of the bill if the reimbursement provision would be adjusted to your satisfaction?

Mr. SUNLEY. We are generally opposed to introducing another statutory exclusion from the tax base. Commissioner Kurtz also pointed out the inequity of having one set of rules applying to volunteers who counsel the aged, and then a different set of rules applying to volunteers who counsel the nonaged. I think that would give us some trouble.

Mr. AFFELDT. There is another way of dealing with that problem, and that, of course, is to treat the others the same way as the elderly are treated. One of the tax counselors under the tax aid program, Ira Funston, pointed out that some people are discouraged from participating in the program because they are incurring out-of-pocket expenses. Some elderly people living on limited budgets may be very competent tax preparers, but they may discover that it is a hardship to incur these expenses.

Mr. SUNLEY. Again, I think we should remember the very high tax-free levels of income that are currently provided the aged in the income tax law and what the administration is proposing. When you are talking about the elderly for whom taxing these reimbursements would be a hardship, you are probably also talking about an elderly individual or an elderly couple who is currently not subject to income tax. So there are no tax consequences of having the reimbursements included in the tax base.

Mr. AFFELDT. We are talking about tax-free levels of $6,400 for individuals and $10,450 for elderly couples.

Mr. SUNLEY. Other than social security.

Mr. AFFELDT. But even so, an individual having $10,000 in income is certainly not living lavishly, particularly in an area like Washington, D.C. It is very costly and it still may be expensive. I don't know if we are going to settle this at all, but we do feel there is a justification for having this provision.

If you feel that there is some middle ground on this measure, or some other way to improve it, we are open to your suggestions.

Let me get back to this point. Assuming that we could work out some of these problems concerning the Older American Tax Counseling Assistance Act, would the administration support the enactment of the overall bill?

Mr. SUNLEY. From a tax policy point of view, we have no problem if the special exclusion of the reimbursement was omitted from the bill. Jerry may have some problems with other aspects of the bill.

REHIRING OF FORMER IRS AGENTS

Mr. AFFELDT. I may also point out the IRS suggested, the last time we developed this bill, that there be a provision in there to permit the rehiring of former IRS agents. We put that provision in the bill at the suggestion of the IRS and we thought that it would be desirable. However, it did create problems with the Civil Service Commission. So, it was deleted this time when the bill was reintro-

duced. There is no objection to that provision from a substantive standpoint. It was deleted for strategy reasons.

We would like to sit down with officials from the Treasury or IRS to see if we can work out something.

Mr. SUNLEY. We have met with you and your staff before, and I look forward to meeting you again.

INCOME BENEFICIARIES UNDER S. 2128

Mr. AFFELDT. In this context, you have expressed opposition to Senator Inouye's proposal, S. 2128.

Mr. SUNLEY. Yes, sir.

Mr. AFFELDT. For the record, I would appreciate it if the Treasury could indicate to us how that relief would be targeted by adjusted gross income brackets. The reason I am making that request is because I obtained some different figures when I called Treasury. The assumptions may have been different. The additional cost was based on 1976 income levels under the 1978 law. The total figure I received was $767 million. Of that total, $365 million, or 46 percent, would be attributable to taxpayers with adjusted gross income exceeding $20,000.

So, if you could just provide this information for the record, we would appreciate it.

Mr. SUNLEY. It may be the difference between the 1976 levels of income and 1978.

Mr. AFFELDT. You were able to get the 1978 income levels.

Mr. SUNLEY. We will check and provide a table for the record.

Mr. AFFELDT. Thank you.

[Subsequent to the hearing, the Treasury Department provided the following distribution of the revenue loss under 1978 law and at calendar year 1976 income levels:]

Adjusted gross income class:	*Revenue loss (millions)*
0–5	$3
5–10	71
10–15	192
15–20	165
20–30	163
30–50	109
5–100	64
100 and over	29
Total	796

Mr. AFFELDT. One last question. We may submit some additional questions to you in writing.

Would the administration support any type of proposal to modernize the tax credit for the elderly, and if so, what would it be? If you are opposed to the so-called Inouye bill, S. 2128, is there something else that you would accept as an alternative, such as raising the maximum amounts for computing the credit to $3,000 for individuals and $4,500 for elderly couples filing jointly, or other changes as well?

Mr. SUNLEY. Of the three changes which are proposed in Senator Inouye's bill, the most serious problem is removing the adjusted gross

income limit. I think that would be conclusively in contradiction to the basic purpose of the credit for the elderly as it was enacted. We also have trouble with the indexing. We would have less problem with increasing the $3,750 to $4,500. But it was not a proposal that the administration made.

Mr. AFFELDT. It is my understanding the costs of this provision would be around $50 million.

Mr. SUNLEY. Yes, the cost of that change would be smaller.

[Subsequent to the hearing, the Treasury Department provided the estimate of $79.5 million in taxable year 1978.]

Mr. AFFELDT. Mrs. Fayé.

Mrs. FAYÉ. No questions.

Mr. AFFELDT. As I said before, I would like to proceed further but we must hear from other witnesses.

One other thing for the Commissioner of IRS. We would like to discuss with you and your staff some alternative funding levels that Senator Church may seek with regard to the volunteer income assistance program and we shall contact you by phone.

Mr. KURTZ. We will be happy to do whatever we can to be helpful.

Mr. AFFELDT. Thank you very much. We appreciate your testimony.

Mr. SUNLEY. Thank you.

Mr. AFFELDT. We have three groups testifying after the administration. What I plan on doing now is to call them up individually. After all three have had an opportunity to present their testimony, we can pose questions to the three groups.

Our next witness is David Marlin, who is the director of Legal Research and Services for the Elderly.

STATEMENT OF DAVID H. MARLIN, WASHINGTON, D.C., DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. MARLIN. Thank you, Mr. Affeldt.

My testimony this morning is based on two things. One is during the 10 years experience I have had with the membership of the National Council of Senior Citizens, 3.5 million persons, discussing their tax liabilities and their difficulties with Federal tax forms. The second is a survey with consumer emphasis that we made in response to the committee's invitation to testify today. We conducted a telephone survey [1] among 20 selected major State and local organizations of older persons, elderly law projects, area agencies on aging, and senior centers to assess: The expressed demand by older persons for assistance in completing Federal tax forms, the cooperation between IRS and these organizations in disseminating tax saving information and assistance for older persons; and the major problem areas in the language of the IRS tax instructions and tax forms.

In addition, we have reviewed the IRS publication 554, "Tax Benefits for Older Americans"; the "Volunteer Income Tax Assistance Course Book"; the 1977 instructions for Forms 1040 and 1040A as well as the 1040 forms and schedules A, B, D, E, R, and RP.

The findings of this brief, informal study are as follows:

[1] See p. 25 for listing.

Low Demand for Tax Assistance

Older persons' expressed demand for tax assistance: Despite the fact that we are currently in the Federal income tax season, none of the organizations contacted have been flooded with requests from older persons for tax assistance. Two District of Columbia organizations, Legal Counsel for the Elderly and PEP—both of whom have widely publicized tax assistance clinics—reported only low to moderate utilization of their services.

The Older Philadelphians Legal Services Plan, which is a new, older-person controlled, low-cost telephone advice and reduced fee referral program which specifically includes assistance in tax matters as a covered service, has had a similar utilization rate during its first month of operation. With 1,000 enrolled members, OPLS has had only 10 inquiries regarding tax matters. Of these inquiries, four involved Federal tax matters.

Also, 14 other organizations and/or agencies representing primarily the urban elderly reported only limited demand by older persons for tax assistance, as did 3 organizations serving primarily rural areas.

The critical issue, of course, is what does low demand for tax assistance mean? It may mean that the annual filing of Federal income tax forms—although not a pleasant task—is at least a familiar one. It is not a new burden thrust upon older persons when they reach retirement age.

Or perhaps, H. & R. Block, and similar private entrepreneurs, have simply cornered the market and currently satisfy the demand by older persons desiring assistance in completing income tax returns.

In addition, this is only February and there will be an increased demand as the filing date draws closer.

However, lack of demand for assistance may also be reflective of older persons' lack of awareness of the tax savings they might realize through careful preparation of their income tax returns.

Effectiveness of IRS information and assistance efforts: In assessing the validity of this last explanation, we asked the organizations we contacted three questions:

One: Are you aware of any IRS efforts in your area to educate older persons regarding changes in the tax laws and to provide assistance in filing the tax returns?

Two: Has your organization been contacted by the IRS to disseminate Federal income tax information to your clients and/or members?

Three: What recommendations would you make for improving IRS tax assistance to the elderly?

The majority of the 20 organizations contacted were aware that IRS provided tax assistance to the general population through district and local IRS centers.

However, they pointed out that such services were confined to larger population centers and generally not well publicized. Older persons in rural areas, particularly, may be unaware of the free tax service available from IRS.

Although IRS does have toll-free lines, these lines are not listed in the telephone directories of towns or counties lacking an IRS office.

The second major IRS effort to educate older persons regarding tax benefits, IRS publication 554, "Tax Benefits for Older Americans," has not been received by the majority of the organizations contacted. The few who had read it described it as too complex for the ordinary older taxpayer.

In addition, 18 of the 20 organizations responded that they have never been contacted by IRS to serve as conduits of tax information to older persons. The two contacted were invited and did participate in an IRS sponsored volunteer income tax assistance program. They found the training generally useful, but questioned whether it was sufficient to prepare non-tax-trained persons to effectively assist older persons in tax return preparation. They also questioned the adequacy of the VITA program in terms of its priority within IRS with respect to space and staffing as well as its realistic capacity to serve large numbers of persons.

For example, the Philadelphia-based VITA program was able to assist 800 to 900 persons—both old and young—to prepare tax returns during the past year. As there are over 327,000 persons in Philadelphia 60 years of age and over, the resources of the VITA program are insignificant should a significant portion of older Philadelphians desire tax assistance.

Suggestions to Improve IRS Services

As for methods of improving IRS services aimed at older taxpayers, the following suggestions were offered by the contacted aging organizations:

IRS might publish and disseminate through the State and area agencies on aging, as well as through the major national and State organizations of older persons, reproducible drop ads which simply and clearly summarize tax provisions favorable to older persons. These organizations could publish these ads in their own publications or in local newspapers.

IRS might publish and disseminate simple 1- or 2-page descriptions of the major tax provisions important to older persons which could be used as handouts in community education programs currently being offered by elderly law projects and community colleges.

In rural areas, IRS might circuit-ride during tax season through towns and counties not having a permanent IRS office. In many rural areas, social security has already established this practice and found it useful in meeting the needs of older persons.

The WATTS-line number of IRS should be publicized in local newspapers, on television and radio stations.

The basic IRS informational piece directed toward older persons is "Tax Benefits For Older Americans." Rather than critique it in detail, I suggest that the committee simply compare it to the Commerce Clearinghouse, Inc., January 21, 1977, publication entitled "Special Tax Benefits for the Senior Citizen." Both publications cover substantially the same material; however, CCH's treatment is far simpler and more logical. It is written from the point of view of the taxpayer. Using questions many older persons might have as a guide, the CCH publication clearly sets out the basic provisions in the tax law affecting older persons and explains tax saving tech-

niques. Perhaps IRS should simply distribute CCH's publication rather than writing or revising its own. I believe the Commissioner said they were going to revise it.

Regarding the tax forms themselves, we offer two basic suggestions:

One: The various schedules should be screened in color like forms 1040 and 1040A and set in large type to enable older persons to read them more easily. The typeface for the instructions for form 1040, particularly, should be substantially enlarged.

Two: Form 1040A might include a line for pension income to enable older persons living solely on pensions and social security to fill out form 1040A rather than the 1040 long form.

Beyond these cosmetic changes, it appears to us that IRS has translated the complex provisions of the tax laws into fairly understandable forms. The remedy for the complexity of schedules and forms does not appear to us to lie with the IRS but with Congress.

Congress, of course, must continue to balance the need for simplicity in tax laws with the public policy of shielding vulnerable population groups from an undue tax burden through a system of credits and deductions. As older persons presently benefit from many of the tax preferences which contribute to the complexity of the tax forms, we would resist the push for simplicity of forms if the net result would be to increase rather than decrease the Federal tax burden on the elderly.

[The listing of organizations to which Mr. Marlin referred to follows:]

ORGANIZATIONS CONTACTED REGARDING TAX ASSISTANCE FOR OLDER PERSONS

(1) Action Alliance, Philadelphia, Pa.
(2) Archdiocesan Council of Senior Citizens, Philadelphia, Pa.
(3) Barney Senior Citizens Center, Washington, D.C.
(4) Bay Area Senior Citizens Legal Services, Tampa, Fla.
(5) Betterment for United Seniors, Prince Georges County, Md.
(6) Georgia State Office on Aging, Atlanta, Ga.
(7) Greater Boston Legal Services Elderly Law Program, Boston, Mass.
(8) Legal Council for the Elderly, Washington, D.C.
(9) Legal Services for Maine's Elderly, Augusta, Maine.
(10) Massachusetts Association of Older Persons, Boston, Mass.
(11) Mississippi Council on Aging, Jackson, Miss.
(12) Model Cities Senior Citizens Center, Washington, D.C.
(13) National Council of Senior Citizens, Washington, D.C.
(14) Northwestern Legal Services, Erie, Pa.
(15) Older Philadelphians Legal Services Plan, Philadelphia, Pa.
(16) Operation PEP, Washington, D.C.
(17) Pennsylvania Association of Older Persons, Harrisburg, Pa.
(18) Philadelphia Corporation for Aging, Philadelphia, Pa.
(19) Southern Mississippi Area Agency on Aging, Biloxi, Miss.
(20) Southwestern Mississippi Area Agency on Aging, Natchez, Miss.

Mr. AFFELDT. Thank you, Mr. Marlin.

We shall hear from our next witnesses and then we shall call you up to respond to questions later.

Now we shall hear from the National Retired Teachers Association and the American Association of Retired Persons. Mr. Hacking is the assistant legislative counsel and Arthur Stanat is a tax-aide counselor in Washington, D.C.

STATEMENT OF JAMES HACKING, WASHINGTON, D.C., ASSISTANT LEGISLATIVE COUNSEL, NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS, ACCOMPANIED BY WILLIAM C. McMORRAN, NATIONAL COORDINATOR, TAX-AIDE PROGRAM

Mr. HACKING. Thank you, Mr. Affeldt.

My name is James Hacking. I am assistant legislative counsel for the 11-million member National Retired Teachers Association/American Association of Retired Persons.

On my far right is William C. McMorran. He is national coordinator of the association's tax-aide program. On my immediate right is Arthur Stanat, who is a tax aide counselor.

I would like to submit my full statement for the record of the hearing, and with your permission, I would like to summarize some parts of it.

Mr. AFFELDT. Your statement will be incorporated in the record.[1]

Mr. HACKING. As I proceed I would like to focus on a wide number of topics. First, I shall make some comments about the background in the context of which the tax reductions have been offered this year. Second, I shall comment on some of the specific items contained in the package. Third, I shall comment on some items and issues of concern to older persons that are not included in the package, but which we would like to see included. Finally, I shall address the need on the part of the elderly for tax assistance and the Older Americans Tax Counseling Assistance Act. Mr. Stanat will then supplement my remarks with some comments about his experience as a tax-aide counselor in the District of Columbia.

With your permission I will proceed.

This administration has offered its tax cut package this year for a number of reasons. The first, of course, is the need to strengthen and maintain the economic expansion and further lower the unemployment rate. Second, there is a need to offset the increasing income tax burden that results from the combination of inflation-induced income increases and the progressive income tax rate structure. Third, business investment is in need of stimulus. Business activity has lagged ever since the economic recovery began in 1975. Finally, and I think for us most importantly, the tax cut package has been offered in part to offset the social security payroll tax increase that took effect this year and the one scheduled for next year.

CONCERN ABOUT INCREASED PAYROLL TAXES

We are seriously concerned over what may be developing here—namely, a public policy of increasing payroll tax burdens on the one hand and cutting income taxes on the other. Here is why. First, such a policy will increase the share of Federal Government revenue derived from regressive payroll taxes relative to that derived from progressive income taxes.

Second, at a time when continued reduction in unemployment is a primary economic goal, it makes no sense to discriminate against

[1] See p. 30.

labor by enacting legislation that schedules enormous increases in payroll taxes. Higher payroll taxes increase the cost of labor and make reducing employment that much more difficult. This is especially so when you look at other increases in cost that have been legislated and will be legislated, for example, increases in unemployment insurance taxes and the energy bill.

Third, many households will lose more from payroll tax increases than they will gain from income tax cuts. That is not, of course, true in the case of households of workers who are not affected by payroll tax increases; these households will have a very substantial windfall via the income tax cuts.

Rather than scheduling enormous increases in payroll taxes to shore up the social security system and then cutting income taxes to offset the adverse economic consequences of the initial policy choice, it would have made better sense and created fewer problems to have introduced some limited use of "general revenues" into the cash benefit programs to deal with the short-term financial imbalance problem.

Limited Use of General Revenues for Social Security

Since 1975, our associations have advocated a limited, and hopefully temporary, use of general revenues to fund a portion of the cost of automatic benefit increases to the extent that those increases exceed a specified level, say, for example, 4 percent a year. The administration last year came out with a proposal that would have replaced from general revenues income lost to the social security system as a result of unemployment rates in excess of 6 percent. We thought that too made a great deal of sense.

We have very good reasons for continuing to espouse these two limited uses of general funds directly in the cash benefit programs. First, these two general revenue devices—one on the outgo side and one on the income side of the social security ledger—will insulate the system from the extraordinarily adverse consequences of high rates of inflation and unemployment over time.

Second, they will assist sound financial planning for future payroll tax needs by assuring a minimum amount of income to the system each year and also by assuring that the payroll tax mechanism will only be called upon to fund the cost of automatic benefit increases up to a specified maximum level; the annual cost of automatic increases excess of that level would come from the general fund. It is almost impossible for an actuary to sit down today and tell you over the 75-year projection period what inflation is going to be. They try to make reasonable projections, and today those projections may indeed be reasonable when made, but that does not mean that they will turn out to be correct.

Third, by desensitizing the social security system to adverse economic dvelopments, not only would the system be better protected but beneficiaries and workers would have greater assurance of its ongoing financial viability.

Fourth, by introducing general revenues into the cash benefit programs, some of the inflationary pressures that payroll tax increases cause could be avoided. In many sectors of the economy, businesses

simply mark up prices as a percentage over cost, and in that respect, as the costs go up, so do the prices. That means more inflation.

At this juncture we would strongly urge that the Congress set about developing legislation to introduce general revenue uses into the cash benefit programs and repeal at least part of these payroll tax increases that are scheduled for future years.

Now, I would like to comment on specific items contained in the administration's tax cut package, indicating those we specifically support, those we specifically oppose, and one we would like modified.

Administration Tax Proposals Supported

First, we support the administration's proposal to reduce the marginal tax rates for individual income taxpayers. This, of course, will help to counteract the tendency of inflation to push people into higher tax brackets.

Second, we support the proposals to reduce corporate tax rates and strengthen the investment credit. Business investment has lagged all through the recovery and certainly is in need of some stimulation.

Finally, we endorse the repeal of what remains of the communications tax and the proposed reduction in unemployment tax rates.

Administration Tax Proposals Opposed

Certain items in the package we specifically oppose.

We oppose the administration's proposal to eliminate the existing deduction for medical care expenses and substitute a single hardship loss deduction—with a high threshold amount—for such medical care expenses and casualty and theft losses. I would point out that in taxable year 1974, 27 percent of all returns filed by persons age 65 and over claimed the medical expenses deduction. I would also point out that the rising cost of health care is imposing an increasing expenditure burden upon the elderly. I believe, Mr. Affeldt, you have already stated for the record the present level of out-of-pocket medical expenses on the part of the elderly.

We oppose the administration's proposal to eliminate the deductibility of nonbusiness sales and personal property taxes. The administration, in justification for this particular proposal, indicates that the elimination of the deductibility of these taxes would relieve the taxpayer of a great recordkeeping burden. Well, we are certain that the elderly taxpayers who in 1974 filed 1.9 million returns claiming deductions for sales taxes and the 800,000 returns claiming deductions for personal property taxes would prefer to endure the administrative burden and spare themselves the increased taxes. It is interesting that almost every time some tax simplification proposal surfaces, it usually entails an increase in taxes for the taxpayer and some revenue gain for the Treasury.

We believe that some degree of tax simplification can be achieved that lowers the taxpayer's burden. For example, if one wanted to simplify the medical expense deduction, one might eliminate the 1-percent floor for drugs and the 3-percent floor for medical expenses. That would certainly be advantageous to the elderly.

Finally, our associations are opposed to the administration's proposal to tax interest earned on premium payments for deferred life annuities as that interest accrues during the accumulation period prior to the annuity starting date. The administration claims this has become a "tax shelter." We believe that this proposed change is going to discourage persons from saving for their retirement and this matter is of increasing concern to us.

If you review the statistics, you will find that the elderly are increasingly dependent for income on Government programs and have not been providing on their own for their later years of life. It has been a long-standing policy of the association to support incentives, in addition to those available under current laws, as for example, tax breaks to encourage the establishment of private pension plans and IRA accounts, to reverse this trend among the elderly toward increasing income dependency. Also, we think more incentives are going to be needed to offset the antisaving bias that long term and high level rates of inflation may very well cause.

Credit for Personal Exemption Deduction

The final item on which our associations wish to comment with respect to the administration's package, is the $240 credit per exemption as a replacement for the present $750 deduction per exemption and the general tax credit. The associations would modify this proposal to give the taxpayer the choice between the combination that is available to them under the present law or the $240 credit per exemption that the administration has proposed.

We believe it is enough that inflation-induced income increases have been pushing people into higher tax brackets and increasing their tax burden and, in effect, shifting the burden of the income tax upwards. There is, consequently, a modest amount of tax reform going on automatically. We don't think it is necessary to take away certain tax advantages that are available to persons and take the increased revenues gained thereby and redistribute it to persons in th lowest tax brackets—as has been the practice in recent years when the Congress has designed tax cut legislation—in order to achieve some measure of tax reform. We think it is enough that some reform is being achieved automatically now. We would give the taxpayer the choice on this item in the administration's package.

I would like to comment briefly on some items that are not included in the package. First, it is the elderly tax credit. The second is the sick pay exclusion. The third is the 3-year rule on annuity income

Tax Credit for Elderly

With respect to the tax credit for the elderly, we would like to see as a part of this tax cut package an increase in the amount that can be taken into account for the purpose of computing the credit and hopefully some increase in the $7,500 trigger figure for the phaseout figure.

We have indicated our support for Senator Inouye's bill, which is sponsored on the House side by Congressman Bafalis. However, in view of the administration's strenuous opposition, as expressed this

morning, we would accept some modest liberalizations in the credit that would remedy some of the inequities in the current treatment of persons under 65 and persons over 65 under schedules R and RP. That should certainly be possible, considering the number of cosponsors that are interested in the Inouye and Bafalis bills.

Sick Pay Exclusion

As far as the sick pay exclusion is concerned, we would at least like to see the trigger figure for the phaseout increased in the case of married couples filing joint returns. At the present time, it is $15,000 for both single persons and married couples. We also would like to see a one-for-two phaseout for AGI in excess of $15,000, rather than the present one-for-one. I would add that the phaseout I have just described for sick pay should also be adopted for the elderly credit since both provisions are supposed to work in harmony.

Finally, you know that in the tax treatment of annuities under the Internal Revenue Code, section 72, persons who are not able to recover their contribution costs within 3 years must set up what is called an "exclusion ratio." In other words, they can only exclude from a gross income a portion of their cost from the payments they receive each year. The remainder of the payments have to be included in gross income. If the annuity is for life, the taxpayer has to use IRS life tables to set up the exclusion ratio. It seems to us that the Treasury could very well afford to suffer a modest revenue loss and allow the taxpayer to recoup his cost contributions before he is required to include any payments in gross income.

Tax Preparataion Problems of Elderly

Now I would like to deal briefly with the subject of tax preparation problems of the elderly. It has already been said here today that when a person retires the tax rules with which he is confronted change because their income sources are different. We have found that the elderly certainly are in need of tax preparation assistance. That is why our tax-aide program was begun. I think that, in view of the fact that last year our tax-aide program helped in the preparation 475,000 returns, you should have some idea of the need for this type of service.

I would like now to ask Arthur Stanat, one of our tax-aide counselors, to comment on his experiences helping individual senior citizens prepare their tax returns.

Mr. Affeldt. Thank you very much, Mr. Hacking, your prepared statement will be entered into the record at this time.

[The prepared statement of Mr. Hacking follows:]

Prepared Statement of James Hacking

I. the administration's tax reduction and reform proposal: in general

Four factors have motivated the administration to develop a tax cut package that will reduce Federal income tax liability for individuals and business by about $25 billion in 1979. First, there is need to strengthen and maintain the ongoing economic expansion and thus perpetuate the downward trend in

unemployment. Second, there is a need to offset the increasing income tax burden that results from the combination of inflation-induced income increases and the progressive tax rate structure. Third, business investment is in need of stimulus; it has lagged appreciably since the economy began to recover from the bottom of the recession in 1975. Finally, increases in payroll taxes for social security and unemployment insurance need to be offset.

Our associations have supported the individual and corporate income tax reductions that have been enacted during the past few years to facilitate economic recovery. But we would also point out that recent tax cut legislation, as shaped by the Congress, has not returned the same amount of real income to each household that it has lost as a result of inflation-induced increases in tax liability. Instead, tax reductions have been concentrated on lower and middle income households. The combined impact of inflation-induced increases in tax burdens and tax relief concentrated among lower and moderate income taxpayers has resulted in a redistribution of the income tax burden among income groups. If one of the objectives of tax reform is a shifting of the Federal income tax burden toward higher income households on the grounds that they have greater ability to pay, then this combination has already achieved some modest degree of tax reform.

Unfortunately, the context in which the present tax cut package is proposed is more complicated than in past years. We are seriously concerned about the consequences of a policy of increasing social insurance payroll taxes on the one hand and cutting income taxes on the other. First, such policy will increase the share of Federal Government revenue derived from regressive payroll taxes relative to that derived from progressive income taxes. Second, at a time when continued reduction in unemployment is a primary economic goal, it makes no sense to discriminate against labor by enacting legislation that schedules enormous increases in payroll taxes. Higher payroll taxes increase the cost of labor (relative to the cost of capital) and make reducing employment that much more difficult. Third, many households will lose more from payroll tax increases than they will gain from income tax cuts; households not subject to the payroll tax increases will gain a windfall via the income tax cuts.

Rather than scheduling enormous increases in payroll taxes to shore up the social security system and then cutting income taxes to offset the adverse economic consequences of the initial policy choice, it would have made better sense and created fewer problems to have introduced some limited use of "general revenues" into the cash benefit programs to deal with the short-term financial imbalance problem. The excess of outgo over income—a situation that has existed since 1975—is primarily attributable to the impact that elevated rates of inflation and unemployment have had upon the social security programs. Since benefits move up automatically with inflation, the higher the inflation level, the higher the outgo from the system. As consumer purchasing power declines (as a result of inflation, higher taxes, etc.) unemployment increases and payroll tax contributions to the system fall below anticipated levels. The public policy answer to the social security short-term financial imbalance should have responded, but did not, to the economic causes of the problem.

Beginning in 1975, our associations have advocated a limited (and hopefully temporary) use of general revenues to fund a portion of the cost of automatic benefit increases to the extent that those increases exceed a specified level (for example, 4 percent). As the rates of inflation and unemployment decline and the difference between the rate of inflation and the rate of increase in average covered wages in social security covered employment increases, the annual general revenue contribution should gradually phase out automatically. In addition to our own proposal, last year we endorsed the administration's proposal that would have used general revenues to replace income lost to the social security system as a result of unemployment rates in excess of 6 percent. As unemployment declines below that figure the annual general revenue contribution for this purpose would also phase out automatically.

Our associations continue to espouse these two specific uses of general revenues for the cash benefit programs. First, these two general revenue devices—one on the outgo and one on the income side of the social security ledger—will serve to protect the system from the two-fold threat posed by high rates of inflation and unemployment. Second, they will assist sound financial planning for future payroll tax needs by assuring a minimum amount of income to the system each year. They will also assure that the payroll tax mechanism will only be called upon to fund the cost of automatic benefit increases up to a

specified maximum level; the annual cost of automatic increases in excess of that level would come from the general fund. Third, by desensitizing the social security system to adverse economic developments, not only would the system be better protected, but beneficiaries and workers would have greater assurance of its ongoing viability. Fourth, by introducing general revenues into the cash benefit programs, some of the inflationary pressures that payroll tax increases cause could be avoided.

We would not wish to leave this topic without some comment on the source of the "general revenues" which we propose to use for social security purposes. In our view, these "general revenues" can come from: (1) Increased and non-earmarked revenue derived existing or new tax mechanisms; (2) deficit financing through the sale of Federal securities; and (3) the shifting of expenditure priorities within the context of the Federal budget. To the extent that general revenues are needed for social security purposes in any year, the choice of the source for those general funds should be made in the light of the needs of the economy at the time. We hasten to add that since our associations believe the Federal budget ought to be balanced over the business cycle, no single source for those general revenues should be relied upon year after year.

In view of the foregoing, it should be clear that our associations believe the Congress, by choosing to rely almost exclusively on payroll tax increases to deal with the short-term financial imbalance in the social security system, made a serious mistake. We felt compelled to acquiesce in what the legislative process produced in order to avoid the interruption of benefit payments (the D.I. trust fund was projected to run out of assets next year). Nevertheless, we urge new legislation to introduce some general revenues into the system as a substitute for at least some of the payroll tax increases now scheduled under current law. We would add a note of urgency to our entreaty. We fear that, if our recommendation is ignored, a crisis between the generations will be precipitated as scheduled payroll tax increases become effective and FICA payments become larger and more visible on pay stubs of current workers.

II. COMMENTS ON SPECIFIC ITEMS CONTAINED IN THE ADMINISTRATION'S TAX CUT PACKAGE

Before advancing certain proposals of our own, we would like to address certain items contained in the administration's 1978 tax reduction and reform package. Some, we specifically endorse. First, we support the administration's proposal to reduce the marginal tax rates for individual income taxpayers. This proposal will help to counteract the tendency of inflation to increase the share of personal income that taxpayers pay in Federal income taxes, thus diminishing the fiscal drag that, automatically, rising tax collections have on the economy. Second, we support the proposal to reduce corporate tax rates and strengthen the investment credit. Reducing the effective rates of tax on income from capital and providing business with additional incentives to invest should help to promote long-term capital formation, improve productivity and strengthen and maintain the current economic recovery. Finally, we endorse the repeal of what remains of the communications tax and the reduction in unemployment tax rates. These proposals should help to reduce both business and individual living costs.

Certain items in the package, we specifically oppose.

First, we oppose the administration's proposal to eliminate the existing deduction for medical care expenses and substitute a single hardship loss deduction (with a high threshold amount) for such medical care expenses and casualty and theft losses. We would point out that in taxable year 1974, 27 percent (2 million) of all returns filed by persons age 65 and over (7.4 million) claimed the medical expense deduction. The rising cost of health care is imposing an increasing expenditure burden upon the elderly, among whom the incidence of chronic illness is high. That same cost trend is diminishing any real prospects for a significant expansion of health care protection through the existing medicare program or through a new national health program.

We recognize that the administration's proposal to curtail the medical expenses deduction was advanced, in part, in the name of tax simplification. We propose that the medical expense deduction be retained but, in order to achieve some degree of simplification, the 1 percent floor for medicine and drugs (IRC section 213(b)) and the 3 percent floor (IRC section 213(a)) for other medical expenses should be eliminated at least with respect to elderly taxpayers.

Our associations also oppose the administration's proposal to eliminate the deductibility of non-business sales and personal property taxes. While it is true that these deductions entail a substantial recordkeeping burden and that eliminating them would make tax reporting simpler for the taxpayer, that simplification would come at a price of higher tax burdens on the taxpayers affected. We are certain that the elderly taxpayers who, in 1974, filed 1.9 million returns claiming deductions for sales taxes and 800,000 returns claiming deductions for personal property taxes would prefer to endure the administrative burden and spare themselves the increased taxes.

Finally, our associations are opposed to the administration's proposal to tax interest earned on premium payments for deferred annuities as that interest accrues during the accumulation period prior to the annuity starting date. We believe this proposed change would discourage persons from saving for their retirement. Indeed, not only do we think that current tax treatment of deferred annuities should remain unchanged, but we also believe that interest on long term savings bank and savings and loan association certificates (that are specifically designated as sources of retirement income) should be treated the same way. Incentives (in addition to those available under current law) that encourage persons to accumulate assets to provide themselves with additional sources of income during their later years are needed to reverse the trend among the elderly toward increasing income dependency on public programs and to offset any antisaving bias that long-term high rate inflation may cause.

The final item on which our associations wish to comment specifically is the administration's proposal to substitute a $240 credit per exemption for the present deduction of $750 per exemption and the general tax credit. Our associations would modify this proposal to give the taxpayer a choice between the combination of the deduction for personal exemptions and the general tax credit and the proposed new $240 credit per exemption. We agree that credits are more in accord with ability-to-pay principles than deductions in that they grant equal tax relief at all levels of income (whereas the value in terms of tax savings for exclusions from gross income and deductions depends upon the marginal rate of tax which would otherwise apply to the income that is excluded or deducted), but the administration's proposal will help lower income taxpayers at the expense of higher income taxpayers. Since (middle) and higher income workers are being penalized more heavily by scheduled payroll tax increases and since all taxpayers are being penalized by the combination of inflation-induced income increases and the progressive rate schedule, we see no reason to penalize higher income taxpayers even further in the name of tax reform at this time.

III. ADDITIONAL ITEMS NOT INCLUDED IN THE ADMINISTRATION'S TAX CUT PACKAGE

There are certain issues which the administration's package fails to address but which are of importance to the elderly. We hope that the legislation will address these issues by the time it reaches the end of the legislative process.

A. Tax credit for the elderly

Under the 1976 Tax Reform Act, Congress attempted to update and restructure the old retirement income credit. This credit was originally enacted in 1954 to provide non-social security retirees with roughly the same tax relief provided social security recipients. Although the original credit did achieve this objective, the non-social security retiree, with the passage of years, began falling behind his social security counterpart as a result of periodic increases in tax-free social security benefits. In addition, many elderly taxpayers found the credit extremely difficult to compute and some were not even aware it existed.

Finally in 1976, Congress tried to simplify the credit and increased the maximum amounts used in computing it from $1,524 to $2,500 in the case of individuals and from $2,284 to $3,750 in the case of couples. Unfortunately, the new provisions also introduced a phaseout of the credit in the case of taxpayers age 65 and older who have adjusted gross income in excess of $7,500 ($10,000 in the case of married couples.) This new AGI phaseout feature has the effect of denying many retirees all or a substantial portion of the tax credit they used to receive under the old retirement income credit.

Furthermore, the AGI phaseout penalizes taxpayers when they reach age 65 (and when their income tend to be greater) compared to retirees under age 65

who are not subject to the same phaseout when computing their credit. Because these changes in the credit were enacted in October 1976, but were effective beginning January 1976, the taxpayers adversely affected by the changeover to the new law experienced retroactive tax increases. An amendment attached to the 1977 Tax Reduction and Simplification Act by Senator Church temporarily corrected this problem by permitting these taxpayers to file amended returns using the provisions of the old retirement income credit.

Our associations are still dissatisfied with the maximum amounts used to compute the credit. These amounts should be increased to at least $3,000 and $4,500 for single persons and married couples, respectively. These amounts would be more in accord with average social security benefit levels. In addition, the amounts as so increased should be automatically cost-indexed to eliminate the need for constant updating. The $7,500 AGI feature should be eliminated from the law or at least increased so that it meshes more closely with the phaseout feature of the sick pay exclusion (taking into account our recommendations on this item herein below).

Our associations support legislation introduced by Senator Daniel Inouye (S. 2128), which would increase the maximum amounts to $3,000 for individuals and $4,500 for couples, cost-indexing the base amounts and eliminate the AGI phaseout feature. An identical bill sponsored by Representative Bafalis (H.R. 8818) is pending in the House and has a large number of cosponsors. Pending reform of the tax credit for the elderly and, in anticipation of extended debate on the issue, our associations would urge Congress to renew the "Church amendment" so that taxpayers hurt by the 1976 changeover to the new credit will continue to receive some measure of tax relief.

B. Sick pay exclusion

The 1976 Tax Reform Act revised the rules governing the use of sick pay exclusion. These changes had the effect of restricting the exclusion's availability to persons retired on disability. Now the $5,200 maximum exclusion is available only to persons under age 65 who are permanently and totally disabled; moreover the amount otherwise excludable must be reduced dollar-for-dollar for all adjusted gross income in excess of $15,000 (in the case of both single persons and married couples).

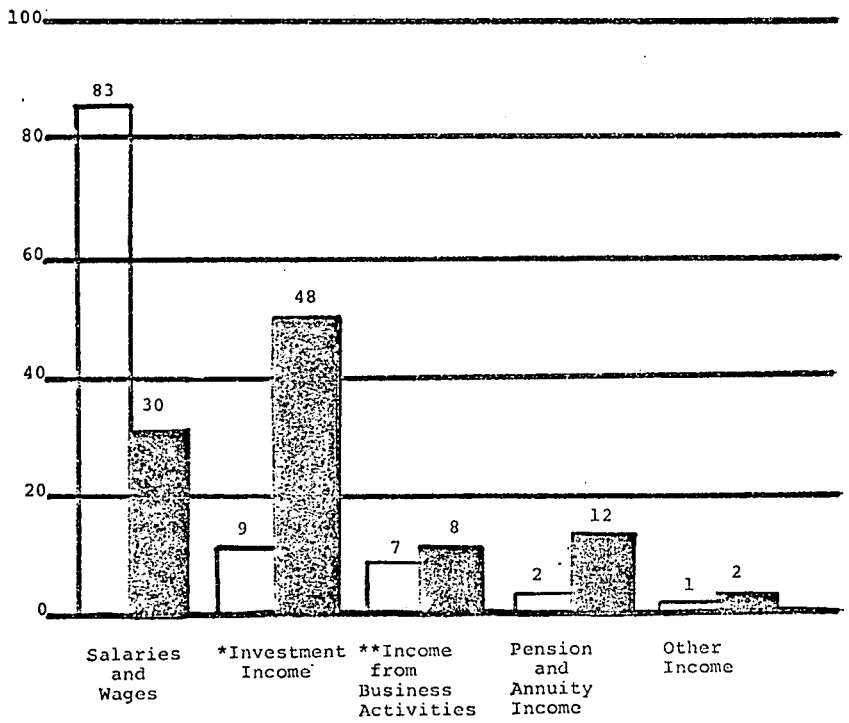
Although our associations understand what prompted Congress to impose these restrictions, we feel that some of the new provisions result in overly harsh tax treatment of certain disabled persons. We suggest the following liberalizations. First, if the current $15,000 trigger figure for the income phaseout feature is retained for single persons, it ought to be increased to at least $20,000 in the case of married couples filing jointly. Second, the reduction of the $5,200 maximum exclusion on a dollar-for-dollar basis should be liberalized to a $1 for $2 reduction.

IV. TAX PREPARATION PROBLEMS OF THE ELDERLY

As you are aware, for over 9 years our associations have been providing free, counseling assistance to older adults in preparing their tax returns through sponsorship of the NRTA/AARP tax-aide program. Our extensive experience with this program provides us with a special insight into this subject.

When a taxpayer reaches the age of 65 or retires, he is suddenly confronted with an entirely new set of Federal income tax provisions which make reporting his income and computing his tax liability an extremely difficult and frustrating task. The increased difficulty which the retired taxpayer has in filing a return is caused by a dramatic change in the source of his income. As illustrated in the following chart, IRS data on the elderly's sources of income indicate that, in 1973, salary and wages—the easiest type of income to report—constituted only 30 percent of the elderly's total adjusted gross income (AGI), as compared to 83 percent of the total AGI for taxpayers under age 65. Other forms of income, from investments, business activities, pensions and annuities, become dominant when the taxpayer reaches age 65. The provisions governing these forms of income are some of the most complex contained in the tax code, and require use of multiple supporting schedules in addition to the 1040 (long) form. Statistics for 1973 indicate that only 5 percent of elderly taxpayers could use the 1040a short form, while 27 percent of all taxpayers were able to use it.

PERCENTAGE DISTRIBUTION OF ADJUSTED GROSS INCOME: ALL RETURNS AND RETURNS WITH AGE EXEMPTIONS



* Includes dividends, interest, and net income from sales of capital assets, rents and royalties.
** Includes net income from a business, profession, farm, partnership, and small business corporation

(Reproduced from Department of Treasury, 1973 Statistics of Income, Page. 121)

The long form must also be used in order for the elderly to benefit from special tax preferences, such as the tax credit for the elderly, and sick pay exclusion. The tax credit for the elderly (formerly the retirement income credit) is an excellent example of a special tax provision specifically designed by Congress to provide tax equity for certain retired persons. Yet, any benefit from the credit depends on the taxpayer's knowledge of it and ability to calculate it. In 1974, IRS Commissioner Donald Alexander offered the following statistic: "Almost four out of ten taxpayers eligible for the credit either don't claim the credit or make errors in computing the amount allowed."[1]

Congress recognized the severe burdens placed on large numbers of elderly persons by the format and rules of the old credit and consequently attempted to simplify them under the 1976 Tax Reform Act. Many complicated calcula-

[1] Hearings before the Senate Appropriations Subcommittee on the Department of Treasury concerning taxpayer assistance and compliance programs, April 1974, page 689.

tions were eliminated (which allows the use of a more simplified schedule R), however, complexities in the credit still exist. Furthermore, it has been estimated that the 1976 liberalization of the credit increased the number of returns claiming it from 400,000 to 2.4 million.[2]

In 1977, due to Senator Church's efforts and those of other members of the Aging Committee, Congress corrected the retroactive tax increases it had imposed by the 1976 revision of the tax credit and sick pay exclusion. This action required thousands of elderly taxpayers to file amended returns so that they could recoup the extra taxes they had been forced to pay.

Filing and making payments of estimated tax is another requirement that can be particularly burdensome to retirees. Upon reaching retirement age, the taxpayer—who is previously accustomed to having his tax withheld by his employer—now receives income in the form of pensions, interest, dividends, etc., not subject to withholding. Many retired taxpayers must file a declaration of expected AGI and estimated their tax for the year. Quarterly declaration vouchers must be submitted along with tax payments. If the taxpayer fails to comply with these estimated tax requirements, IRS may impose interest and penalty charges. Older persons in the first few years of retirement experience the most difficulty with these requirements since the rules are new to them.

Expenditures for health care represent a substantial portion of an older person's budget. Therefore, they are frequent users of the medical expenses deduction (27 percent of elderly returns claimed the medical deduction in 1974). Computation of this deduction is very complicated, often involving five separate calculations to arrive at the net amount of medical expenses to be deducted.

A. Recommendations for form improvements

In recent years, the IRS has taken several administrative actions with respect to form improvement that have been beneficial to all taxpayers as well as the elderly. First, the standard form 1040 and certain support schedules were improved to take account of special needs and limitations of the aged. For example, additional deductible items, such as hearing aids, dentures, and eyeglasses in the case of the medical expense deduction, are now listed on schedule A to help assure full tax advantage. Form 1040 also allows for a simplified method of reporting income from fully taxable pensions and annuities; consequently, many pension and annuity recipients are not required to file a separate schedule E.

Second, the IRS has continued to publish and distribute informational materials designed to assist elderly taxpayers. These include "Tax Credit for the Elderly," "Tax Benefits for Older Americans," and "Tax Information on Pension and Annuity Income." All of these publications are available free of charge at IRS offices as well as through some local social security offices and are used extensively in taxpayer education programs. We might suggest the further development of pamphlets which provide tax return preparation information using a line-by-line format. This simplified approach would be more useful to the aged taxpayer. I am attaching a copy of an NRTA/AARP publication, entitled "Your Retirement Income Tax Guide" which utilizes this format.

Third, the IRS has continued and expanded its various programs of direct taxpayer assistance. A toll-free telephone service is available to assist taxpayers with specific questions. Taxpayer representative service personnel are also available at local IRS offices. Furthermore, according to a report submitted to Commissioner Alexander to the Senate Aging Committee,[3] the IRS plans to institute computer preparation of form 1040 on a trial basis during 1977. This will permit IRS to provide a complete return preparation service rather than limited self-help presently available to the older taxpayers and other individuals less able to prepare their own returns. Our associations endorse this effort and hope in the future IRS will take on more responsibility for preparing tax returns and computing tax liability for elderly taxpayers.

Fourth, in 1977, IRS—for the first time in its history—tested out the new long 1040 on a pilot group of taxpayers before releasing it for the public's use this year.

The IRS contacted our tax-aide program and arranged for approximately 20 older adults to work out sample tax returns on the new form. This pretesting revealed that certain problems and errors kept reoccurring with use of the

[2] S. Rept. No. 94–938, 94th Congress, 2d session (1976), page 131.
[3] S. Rept. No. 95–98, 95th Congress, 1st session, (1977), page 199.

new form. This prompted the IRS to make two major changes in the final 1040 form. Our associations encourage IRS to continue this practice of trying out new forms on test groups of taxpayers.

In the interim, however, several tax areas which create special problems for elderly taxpayers demand IRS attention. In the area of pensions and annuities, an administrative effort should be made to encourage the development of methods by which payers of pensions and annuities can more readily inform payees of the taxable portion of the gross annual payment. Since the computation of the taxable portion of income from a pension or annuity under IRC section 72 often requires the use of materials such as annuity life-expectancy tables not readily available or understandable to the average retiree, IRS should therefore increase its technical assistance to pension and annuity plans so that these plans may in turn assist the aged taxpayer. An increased number of IRS technical staff personnel and increased budgetary allocation should be devoted specifically to the achievement of this recommendation. The Civil Service Commission, the largest payer of retirement annuities, has undertaken to supply annual statements to annuitants showing the taxable portion of their annuities. Certainly this constitutes significant progress and we hope IRS would encourage and assist other retirement systems in doing the same.

Insuring the availability and use of Form W–4P so that retirees may have income tax automatically withheld from their pensions and annuities should be another IRS objective. This form eliminates the need to file estimated tax forms and make quarterly tax payments on pension and annuity income. IRS should require the distribution of the form to retired annuitants by payers.

Changes made by the 1976 Tax Reform Act and 1977 Reduction and Simplification Act should also be widely publicized by IRS. Efforts to reach the additional elderly taxpayers who can qualify for the revised tax credit for the elderly should be made through the electronic and printed media and through taxpayer assistance programs.

V. THE NEED FOR TAX PREPARATION ASSISTANCE FOR THE ELDERLY

This testimony has covered only a few of the complex tax provisions the elderly are forced to use. It must be remembered, however, that many elderly taxpayers must not only contend with these intricate rules, but must often do so under substantial physical and mental limitations. Impairments, such as declining visual or hearing accuity, decreasing physical mobility and mental alertness, are often part of the process of aging. In the special case of the aged widow taxpayer, all of these problems are aggravated by an additional factor—lack of experience. Not only is she confronted by all of the problems which confront the aged taxpayer in general, but she usually lacks even the advantage of having had experience working with the Federal income tax return prior to becoming a widow since the deceased husband probably prepared the tax return for the family.

Considering all of these problems combined with a maze of forms and calculations, it is no wonder that some informed individuals have concluded that the older taxpayer tends to overpay his taxes. In 1970, the Senate Aging Committee undertook an extensive investigation of this situation and concluded that the elderly often over-report their income and do not claim special tax benefits intended for them.

A 1971 IRS survey of taxpayer experience with the standard form 1040, revealed that approximately 80 percent of aged taxpayers sought outside assistance in preparing their Federal tax returns—a substantially greater percentage than in the case of the nonaged. While certainly this 80 percent includes many who were assisted without charge by friends and relatives, it must include many who had to purchase their assistance. This type of commercial assistance can be a financial burden to lower-income elderly persons since it is likely to be expensive due to its complexity.

A. The VITA/tax-aide programs

The alternative to expensive commercial assistance is free tax counseling offered by the IRS and cooperating organizations through the volunteer income tax assistance (VITA) program. Our associations' tax-aide program is the only nationwide program working with IRS in assisting older persons and contains two-thirds of the total number of elderly volunteer counselors participating in VITA. During 1977, 6,300 volunteer counselors were trained under our program and approximately 475,000 tax returns were assisted.

Based on our experience with this program, we are convinced that this volunteer approach is the most effective and efficient method for counseling older adults. Tax-aide services are free to the taxpayer and available at local sites which are easily accessible to the elderly. Furthermore, since the program is run almost entirely by volunteers, the costs to IRS are low relative to the costs of other types of taxpayer services. It is our informal understanding that it costs approximately 67¢ to 85¢ to handle one telephone call to an IRS service center (depending on the complexity of the telephone equipment and number of personnel). In comparison, tax-aide's cost in 1975 was 43¢ per return assisted and was reduced to 36¢ per return in 1977. We expect this cost per return to continue dropping as our volunteer counselors become more experienced with their work and tax aide receives more widespread publicity.

When seeking advice at a local IRS district office (usually located in downtown, heavily developed areas), the older taxpayer must compete against other taxpayers and is often required to stand in line for hours after traveling a long distance to get assistance. The pace at tax-aide sites is much slower and volunteers generally have more time and patience to provide thorough assistance. In contrast, to tax-aide counselors, IRS taxpayer service representatives are oriented toward responding to specific questions rather than providing comprehensive assistance in preparing the taxpayer's entire return, making sure taxpayers take advantage of their full legal tax benefits.

Another factor contributing to tax-aide's success and effectiveness as a part of the VITA is its centralized administration. For the 1977 tax year, our national tax-aide coordinator directed 110 overall coordinators (who operate on a statewide or county basis) and 915 local coordinators who were responsible for utilizing our 6,300 volunteer counselors.

This organization or "chain of command" has proved to be the key to our effectiveness. Once IRS trains volunteers to provide assistance, followup organizational structure must exist to ensure that tax assistance sites are set up, publicized, and the trained volunteers are scheduled to provide counseling. To the best of our ability, we have encouraged our counselors to volunteer a minimum of three hours per week during the Federal filing season. We also attempt to ensure that older taxpayers use the program to its capacity by stressing the need for conducting advertising campaigns at the local level.

This high level of coordination and centralized administration proves its value when one examines the average number of returns assisted by each of our volunteers. In 1976 volunteers in the entire VITA elderly program assisted with an average of 18 Federal returns, while our tax-aide volunteers assisted with an average of 35 Federal returns. During 1977, tax-aide counselors improved and assisted with an average of 42 Federal returns, far above the national IRS average.

B. Problems with the current VITA program

Despite the rapid growth of our program and its improved effectiveness and efficiency, our potential has been continually hampered by insufficient funding. Our associations would like to see a larger portion of the total taxpayer education funds allocated to elderly VITA programs so that they can be expanded and improved. We note that the IRS plans to increase fiscal year 1979 funding for elderly VITA assistance by only $4,000 (or 2 percent) over what was budgeted for fiscal year 1978. In addition, IRS should devote increased effort and resources to its taxpayer education program in the context of its provision of taxpayer services.

IRS personnel have certainly been as supportive of our program as possible, but it has been handicapped by serious lack of funds. For instance, during 1976, we repeatedly faced the situation where no funds were available at the district level to teach VITA courses. Recognizing the IRS's budgetary limitations in many regions, we piloted a program of volunteer instruction where carefully selected volunteers would participate in district instruction training workshops. In this manner our own volunteers took responsibility for training other volunteers in tax counseling. This method of operation allowed us to provide instruction and counseling in many areas of the country where IRS training assistance was unavailable or extremely limited.

Related to the problem of insufficient funding, VITA has experienced administrative problems in overseeing volunteers and ensuring they are fully utilized. At the district office level, the taxpayer education coordinator (TPEC) is responsible for setting up VITA programs in that area. All too often this coordinator has other responsibilities of a higher priority and cannot allocate the

necessary time to VITA pojects. The coordinator can usually only devote a part of his time to VITA and is likely to be transferred to another assignment within the district office after one year. This lack of priority and constant turnover do not promote the stability and administrative oversight needed to effectively coordinate a volunteer program. A national organization such as ours, in cooperation with IRS, seems better equipped to provide the effective administration, followup, and oversight that the program's local operation needs.

Due to the efforts of Senator Frank Church and several other Senators, an additional $300,000 (or 60 percent increase in funds over last year's budget) was secured for VITA's fiscal year 1978 operations. Already, this additional funding is permitting VITA to overcome some of the administrative problems and limitations it has faced in the past years, but there is still a need to increase the program's priority within IRS.

C. Older Americans Tax Counseling Assistance Act

Legislation (S. 835) that would overcome both the administrative and funding problems faced by the VITA/tax-aide program has been introduced in this Congress by Senator Frank Church. This bill would build upon the VITA program by authorizing IRS to enter into training and technical assistance agreements with nonprofit agencies to prepare volunteer counselors. The measure would also permit these counselors to be reimbursed for their out-of-pocket expenses incurred in providing assistance.

Our associations strongly endorse this bill because we believe it will permit IRS to place the emphasis on elderly taxpayer problems which is necessary and long overdue. Despite the many budgetary and administrative constraints of the past, VITA/tax-aide has managed to expand remarkably in the past several years—training more and more volunteer counselors each year who are able to assist increasing numbers of elderly taxpayers. Since 1973, our tax-aide program has experienced a 244-percent increase in the total number of tax returns assisted (from 138,000 returns in 1973 to 475,000 returns in 1977) and a 117-percent increase in the number of volunteer counselors trained (from 2,900 counselors in 1973 to 6,300 in 1976). This extremely rapid growth in our program is evidence that elderly taxpayers do have a significant need for tax return preparation assistance and that there is a high demand for this type of special assistance which accommodates the aged's particular needs.

Demographic trends indicate that the size of the target population for this program will substantially increase throughout this century from 23 million today to 31 million by the year 2,000. And, as Congress continues to move toward providing improved tax equity and special benefits for the elderly, the number and complexity of the tax rules and provisions they must use will grow as well.

Mr. AFFELDT. We shall now hear from Arthur Stanat.

STATEMENT OF ARTHUR STANAT, WASHINGTON, D.C., TAX-AIDE COUNSELOR, NATIONAL RETIRED TEACHERS ASSOCIATION/ AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. STANAT. My name is Arthur Stanat. I have been with the NRTA/AARP tax-aide program for 4 years and have been trained by the IRS during those years. In fact, I have had about 100 hours of instruction. I am not a tax expert, and do not hold myself as being so. Nevertheless, when I go to assist people, they immediately categorize me as an IRS person and I have to explain this.

I have prepared some comments which I would like to submit for the record. I shall make additional comments on them.

Mr. AFFELDT. Your statement will be incorporated in the record.[1]

Mr. STANAT. As I listened this morning, certain thoughts came to mind relative to my own experience. I think we should be cognizant of the persons we are trying to serve; namely, the elderly. The tax instructions in the IRS forms may be quite clear to a tax expert and

[1] See p. 41.

to a person who studies their publication and understands them, but I would like to describe the comprehension problems that elderly persons often have with these publications.

One of my services to the community was to assist high school students in mathematics for a short while. One morning a high school sophomore came to me with her problems with algebra. I said: "Well, what are your problems?" She said: "I dont' understand one of the assigned problems." She opened the book and showed me a problem about a rectangle. The problem was to define the width, length, and area where given. I said: "What is so hard about that?" "Well," she said, "I don't know what a rectangle is."

This is part of the problem that older people have with IRS publications. They don't understand some of the words; they don't understand some of the phrases; they don't understand some of the sentences. Consequently, they need the kind of assistance we are giving. They need somebody alongside them to explain and answer their questions and help them understand what is required or described.

Even if the IRS continued to improve its publications and forms, it would never achieve the level that is necessary for some old people to understand. So, I think it is a futile avenue for improvement.

I think what we need are neighborhood helpers for older persons, and I don't think there is any other recourse, because they won't read and they won't study. They do not have the attitude that they must make themselves tax experts to fill out their tax forms. They do this once a year, and they don't spend any time getting prepared for it.

It is very easy to do something if you repeat it every day but these people don't repeat tax forms every day and they have problems in January, February, and March. They just don't understand.

Tax-Aide Counselors Render Essential Services

I think tax-aide counselors like myself do render a very essential service to older people near their homes, where they don't have to get on a bus, spend all day at the IRS, and fight the crowds on the way home. I would also add that they can't even get service over the telephone during the critical period of the year. I have tried it myself. You try all day, and all you get is a busy signal. Regardless of the phones the IRS has, and the trained people it has to answer the phones, you just can't get through.

Getting on a bus and coming down to the IRS office often requires that you get there before it opens; otherwise there are 100 people ahead of you, and you spend all day sitting in a chair waiting. Older people just can't put up with that.

I think for that reason the neighborhood service that a program affords is essential for the limited type of taxpayer that we are talking about. I am sure, as I stated in my prepared statement, that every taxpayer I have assisted was thoroughly appreciative of the service we rendered. I think we can continue to help them out.

That is all I have to say.

Mr. Affeldt. Thank you very much, Mr. Stanat. I am sure you do a very effective job in assisting older people with their taxes.

Mr. Stanat. Thank you.

[The prepared statement of Mr. Stanat follows:]

PREPARED STATEMENT OF ARTHUR STANAT

Senator Church, fellow Senators, and members of the committee, it is a privilege to appear before your committee in behalf of the older citizens of this country who have earned their stripes. I am Arthur Stanat, currently a counselor with NRTA/AARP tax-aide program and assigned to the Guy Mason Recreation Center of this city. I have assisted the tax-aide program for 4 years. In prior years, I have worked at the U.S. Soldiers and Airmens Home in Northeast Washington, Cleveland Park Library, and the Presbyterian Center in Northwest Washington.

NRTA/AARP TAX-AIDE PROGRAM

The tax-aide program is a volunteer counseling program that is conducted by older citizens for senior taxpayers. I was trained along with 45 other tax-aide volunteers through the Internal Revenue Service volunteer income tax assistance program. Currently, we are working at various libraries and other public facilities within the District. There are currently 17 regularly scheduled counseling locations. My site is under the supervision of a volunteer coordinator, Mr. Burt Werner. Mr. Werner is responsible for the administration of five specific locations. He, along with three other local coordinators work in conjunction with the overall coordinator for the District, Miss Margaret Packer, and with the national tax-aide office. This "chain of command" has proven to be effective and reflects the program's success. In the 4 years that I have served, the program has improved its administrative procedures, as well as in its outreach. For example, in 1973, 25 counselors helped persons in filing 895 returns. This past year, 48 counselors assisted in the filing of 2,268 returns. (It is too early to project the final results for this current season, as our busiest time of assistance is in the final 6 weeks of the Federal filing season.) In addition to providing assistance with Federal returns, I was trained by the District of Columbia Revenue Office to assist individuals in filing District returns, as well as assisting low-income older adults in claiming the special property tax rebate benefit allowed this year by the District of Columbia.

In addition to better organization, the reason for the program's growth has been the improved training that we have received from the IRS and better publicity in the local media. Each year the training class provided is more comprehensive and helpful. The IRS instructors are better prepared, and more knowledgeable of the senior taxpayers' problems each year. It has helped me and the other counselors provide more capable assistance to the persons we serve. This is critical, for there are many complex problems that older taxpayers face. In addition, due to their own circumstances, many of them are ill-equipped to deal with the tax laws. For example, 2 years ago a man's wife died; she had always prepared the family tax return, and he was at a loss to file his own return that year. As a tax-aide, I was able to assist him that year and the next year when his filing status was again different. He called me on the telephone this week and asked when I could help him this year again.

As a tax-aide counselor serving the U.S. Soldier's and Airmen's Home, I found that many men did not realize the benefits available to them, and if they were aware of them, were often unable to properly claim them, due to the changes in the tax law. This is particularly true in regard to the credit for the elderly. Many of the men there did not know that they could benefit from it, and a great deal of my time was given to the correct filing of schedules R and RP. The men also did not realize that they could claim the credit for past years by filing an amended return. I was able to help them obtain refunds for previous years when possible.

The Tax Reform Act of 1976 changed the status of individuals qualifying for disability payments. This has never been an easy area for an individual to properly claim his benefits, due to the changing natures of the laws affecting disability benefits. I helped them apply the law to their own situation, and where possible, obtained the current benefits.

As I served there, I discovered that certain residents in the home would assist other residents with their tax returns for a fee, usually $5 or so, whereas our volunteer program provides it free. Knowing the incomes that these men and other senior citizens have, I realize that they are hard-pressed to pay for preparing their returns. Most of the older taxpayers we assist must survive on limited incomes and cannot afford to pay a professional preparer to correctly file the necessary tax return. Through our work, we can help them save precious dollars.

I understand that one of the long established income tax services in this city charges a minimum of $13 for the simplest return. Additional charges are made for filing additional schedules such as A, B, R, and RP, and when other problems are involved.

Tax-aide program is a peer counseling program. Just as many of the older taxpayers that we assist have to deal with a limited income, we as counselors do also. After 2 years of serving in the home, I asked to be transferred to a site that was closer to my own home. The expense and hazards of driving across the city in adverse weather and road conditions was more than I wanted to bear on my own as a counselor. I am pleased that you, Mr. Chairman, have introduced a bill, S. 835, that will allow for the reimbursement of volunteer counselors in providing peer group tax assistance. Such funding will help to further our program's outreach to those in need.

In conclusion, Mr. Chairman, I appreciate the opportunity to speak to you about the needs of older taxpayers. It is a source of satisfaction to me that I can help to meet these needs through my volunteer work as a counselor in the tax-aide program. This committee's hearings on the older taxpayers' situation should highlight the need to expand present programs and reinforce our efforts to secure passage of S. 835. I am confident that every taxpayer that we have assisted was thoroughly appreciative of the service we rendered. It no doubt helped alleviate the feeling that he was a forgotten citizen and once again could reflect on the thought that the U.S. Government was concerned with his welfare.

Mr. AFFELDT. Now we shall hear from the National Association of Retired Federal Employees. Stephen Skardon, who is a legislative assistant, will testify. He will be accompanied by Judy Park who is also a legislative assistant.

STATEMENT OF STEPHEN SKARDON, WASHINGTON, D.C., LEGISLATIVE ASSISTANT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, ACCOMPANIED BY JUDY PARK, LEGISLATIVE ASSISTANT

Mr. SKARDON. Our president, John McClelland, asked us to send his regrets and asked that his statement be inserted into the record. He is out of town today and wanted very much to be here.

Mr. AFFELDT. The statement of Mr. McClelland will be entered into the record.[1]

Mr. SKARDON. In summary, Mr. McClelland's statement touches on two major legislative goals of our organization. The first is the 1976 tax credit for the elderly which has been discussed to some extent today, the other is the recent changes in the sick pay exclusion. We have some specific recommendations on both. All of that is included in the statement, so I will very briefly run over some of the highlights.

TAX CREDIT FOR ELDERLY

The purpose of the tax credit for the elderly, as was its predecessor, is to provide some form of tax relief to elderly persons with little or no social security income on the level roughly comparable to that received by persons with substantial social security income. The problem, of course, is that social security income is tax exempt.

The reason for this very lucrative tax break is that the Federal Government considers the ability of elderly taxpayers to meet basic financial needs of such social significance as to warrant this special tax consideration. We agree with this and we have no problem with it.

[1] See p. 45.

as far as it goes. However, we believe very strongly that the ability of elderly persons not substantially covered by social security to meet these same financial needs is of no less social significance.

It is our belief that tax treatment of elderly persons should apply equally, across the board. Just because a person is entitled to social security income does not make him any less elderly or any more capable or meeting the financial demands of old age. It is our position that every elderly American should be entitled to either a tax exemption under social security or a tax credit under an amended tax credit for the elderly.

As noted in President McClelland's statement, the current highly restrictive nature of the provisions of the tax credit have rendered it inadequate and prevented it from even coming close to achieving its original purpose.

The "Means Test"

Our major objection to the current law is the "means test" or phaseout provisions which require a phaseout of the taxpayer's credit for every dollar of adjusted gross income above $7,500 for single persons, and in case of married taxpayers, $10,000. Our association finds this particularly inequitable in light of the fact that social security income is tax free at all income levels. It is ludicrous to think that under current law, former Vice President Nelson Rockefeller would receive full tax-free social security benefits while a 70-year-old public pensioner is considered too affluent for the tax credit with an income of $12,500.

Our association believes very strongly that the Inouye proposal speaks specifically to this problem and goes a long way in correcting this inequity. Specifically the Inouye bill would raise the amount of the maximum credit from $375 to $450, it would also insure that that amount would increase annually with the cost of living as do social security payments and, third, it would eliminate the phaseout all together.

Presently, the Inouye bill has seven cosponsors, including two members of this committee, and on the House side we have 119 cosponsors, 11 of whom are members of the House Ways and Means Committee.

On behalf of our association I would like to ask this committee to join us in a vigorous effort to secure passage of this bill. We feel it is particularly important to the financial livelihood of the people that we represent and we hope that the Senators on this committee can make a sustained effort as has happened on the House side.

Medical Deductions

I would like to simply add on the related question of medical deductions, which has been mentioned briefly here, that we do oppose the President's proposals in this area specifically in terms of the administration's concept of tax simplification. Mr. Hacking pointed out that every time the administration talks about tax simplification it inevitably results in greater taxes for the taxpayer and increased revenue for the Treasury Department.

In the case of medical deductions, this seems to be the case. I am still not sure what they mean by this statement in the analysis of the President's program. I would like to——

Mr. AFFELDT. You are reading from what page?

Mr. SKARDON. Page 47. They are talking about the impact that the President's proposals on medical deductions would have on the taxpayers. I think that I would just like to read directly from it.

Adoption of the new hardship deduction will reduce by 11.1 million or 83 percent the number of taxpayers who itemize their medical expenses and nonbusiness casualty and theft losses under the current laws.

Skipping to page 49:

Over 35 percent of amounts currently deductible on account of medical expenses and casualty and theft losses will continue to be deductible by these individuals. All other taxpayers will be spared the administrative burden involved in claiming and substantiating the medical, and casualty and theft loss, deductions.

Most significantly, these changes will cause 2.3 million taxpayers to switch to the standard deduction. For these taxpayers the burden or compliance will be vastly reduced since they will be relieved of the numerous difficulties encountered in itemizing deductions.

That might be simpler but I can assure you I speak for those 2.3 million people who would much rather fill out a form than be "relieved" of a substantial tax savings.

I was a bit alarmed after I saw this. I got a letter from IRS asking if we had any suggestions for simplification of schedule R and schedule RP. I don't know if they are trying to tell us something about future tax proposals, but I hesitate to complain about the complexity of any forms now.

TAX CREDIT FOR ELDERLY

As a final note, I would just like to respond a little bit to what Mr. Sunley said about the tax credit to the elderly. As you know, the main problem that has precipitated the Inouye proposal is the fact that social security is tax free and that there are lots of elderly people who are not on social security and not receiving a comparable tax break. That is the question, that is the problem.

Mr. Sunley didn't even deal with that for some reason. Frankly, I was surprised, because the administration had been very concerned about this in the past, and made a determined effort to come up with some kind of corrective legislation.

It is interesting at the beginning of his statement, Mr. Sunley said how wonderful the President's tax program would be for elderly people. He pointed out, I think, that some $925 million in tax relief would go to elderly people and how terrific this was; and yet on page 7 he dismisses the tax credit for the elderly by saying the elderly already have too many tax benefits and, therefore, it is unreasonable to go ahead and try to consider anything further. That seems rather peculiar logic to me.

I was interested also in the cost figures for S. 2128, which in previous months he has been unable to come up with. These cost figures differ significantly from the figures that have been furnished us by the Joint Committee on Taxation. I would be very interested in seeing the anlysis and how they came up with this proposal. I also would point out that we do have the joint committee's analysis and would be glad to furnish them for the record.

Mr. AFFELDT. We would appreciate it if you would furnish the Joint Committee on Taxation analysis in reaching that $578 million figure.

Mr. SKARDON. Fine, no problem.

Finally I simply would like to say that Mr. Sunley's statement on the equity problems involved with the Inouye proposal totally escapes me. As I said before, the administration willingly admits there is a problem here. When you have two retired individuals both earning $15,000, both living in the same situation, yet one has $5,000 in social security income, you find that there is a difference of $1,400 in the taxes that the two are paying. We feel it is simply not right that people similarly situated have to pay different tax bills and such a substantial difference.

For that reason we feel strongly that some action has to be taken by this conference on this equity question.

We have commitments from nearly half of the Members of the House to support some form of the Inouye bill. As I said, there are 109 cosponsors of H.R. 8818 on the House side, 11 of whom are on the Ways and Means Committee. That indicates there is substantial interest in Congress that something be done and I am very disappointed that the administration has not tried to come up with some alternative proposal that would enable us to at least begin to deal with the problem.

Mr. AFFELDT. Thank you very much for your presentation. The statement of Mr. McClelland will be entered into the record now.

[The statement of John F. McClelland follows:]

PREPARED STATEMENT OF JOHN F. MCCLELLAND

Mr. Chairman, I am John F. McClelland, president of the National Association of Retired Federal Employees (NARFE). The association is 57 years old and composed entirely of retired Federal employees, their spouses and survivors. We have a dues-paying membership of nearly 300,000, representing the interests of 1.5 million retired Federal workers, their spouses and survivors.

Mr. Chairman, we very much appreciate the efforts of this committee to raise various issues of tax reform as they affect the Nation's elderly, particularly since Congress plans to pass major tax reform legislation this year. Since our organization has been deeply involved in the development of some of these issues, we welcome the opportunity to comment publicly.

Let me say initially that our organization does not argue that Federal tax policy is not reasonable in its treatment of the elderly relative to the rest of the population. Indeed, the tax code contains numerous helpful tax relief mechanisms for seniors which effectively place them on par with their younger counterparts.

However, it is the position of NARFE that the recent enactment of certain tax laws has created inequities and difficulties for older Americans which we hope will be addressed in the anticipated tax reform bill. Again I stress that our argument before you is one of simple equity and fundamental fairness.

TAX CREDIT FOR THE ELDERLY

As I am sure you are aware, a primary legislative concern of our organization has been the tax treatment of elderly persons with little or no social security income.

Under current law, social security income is tax exempt. The rationale behind this lucrative tax break is that Congress considers the ability of elderly persons to meet basic medical and economic needs of such social significance as to warrant this special consideration. This exemption is not something that is earned nor is it a benefit for which one must otherwise qualify. It is automatic and given to everyone on social security.

We have no problem with this. However, we do feel that the ability of nonrecipients of social security to meet basic medical and economic needs is no less important than that of persons receiving social security. Ever since 1954 Congress has agreed with this concept, and evolved the current tax mechanism

known as the tax credit for the elderly (TCE). It is the purpose of the TCE to provide roughly comparable tax treatment to those elderly without substantial social security income. However, it is our position that the TCE, enacted as part of the Tax Reform Act of 1976, is inadequate and fails to even come close to accomplishing its purpose.

CURRENT LAW

Perhaps it would be well to briefly summarize the current law:

Under the TCE, an individual is allowed to subtract 15 percent of a maximum base figure (otherwise known as the "section 37 amount") from taxes owed for a given tax year. However, the maximum base figure is reduced by the amounts and sources of income.

An individual's base figure is determined in the following manner:

a. Individuals 65 and over (IRS schedule R) are allowed to take into account for purposes of computing the maximum base figure up to $2,500 of adjusted gross income ($3,750 for couples filing jointly) to be reduced by:

(1) the amount of social security and/or railroad retirement income the individual has received during the tax year, and

(2) $1 for every $2 in adjusted gross income over $7,500 ($10,000 for couples filing jointly).

b. Public retirees under 65 (IRS schedule RP) are allowed to take into account for purposes of determining the maximum base figure up to $2,500 of retirement income ($3,750 for couples filing joint returns) to be reduced by:

(1) the amount of social security and/or railroad retirement income the individual received during the tax year, and

(2) $1 for every $2 of earnings over $1,200 and below $1,700, and dollar-for-dollar over $1,700.

(3) for persons under 62, dollar-for-dollar for earnings over $900.

In other words, for persons 65 and older only those with adjusted gross incomes under $7,500 and no social security income are eligible for full $375 credit (15 percent of $2,500). Those persons with modest incomes ($7,500–$12,500) receive little or no credit, while those with incomes above $12,500 receive nothing. Of course, the maximum base figure is reduced by any social security income (or railroad retirement income) up to $2,500, at which point the individual's credit is completely eliminated. ($3,750 for couples filing jointly.)

For persons under 65, there is an earnings test instead of the phaseout rule, although the social security offset still applies.

An important innovation of the TCE is the inclusion of all persons 65 and older among those eligible for the credit. Under the pre-1976 rules, only those receiving public retirement income were eligible. The primary beneficiaries of this policy shift were elderly persons whose social security income was below the $2,500/$3,750 maximum base figure, and whose adjusted gross income fell below the $7,500/$10,000 phaseout level.

CURRENT LEGISLATIVE PROPOSALS

In the first session of this Congress Senator Inouye of Hawaii introduced S. 2128 which is designed to upgrade the TCE and narrow the gap between those receiving social security and those with little or no social security income. This bill has the full support of our organization along with that of many other groups.

The Inouye bill is premised on three main points:

(1) The maximum base figure ("section 37 amount") used in computing the TCE be raised to $3,000 for individuals and $4,500 for couples filing jointly.

(2) The maximum base figure be cost-indexed to reflect changes in the cost of living each year, and

(3) The phaseout figures on the adjusted gross income of persons 65 and older be eliminated (schedule R only).

Currently, there are seven Senate cosponsors on this legislation, including Senator Domenici and Senator Chiles of this committee. On the House side there are 108 cosponsors of an identical bill (H.R. 8818) including 11 Members of the Committee on Ways and Means and House Aging Committee Chairman, Claude Pepper of Florida. The Inouye proposal, if enacted, will rectify the major deficiencies of the current law:

First, it would increase the amount of maximum credit available to qualified persons from $375 to $450. This is a result of increasing the maximum base

amounts. Historically this amount has been arbitrarily fixed at a level roughly equivalent to the average annual primary social security benefit.

Second, the Inouye bill would insure that the maximum credit amount will be increased each year to keep pace with the cost of living. This has been a major problem in previous years in that Congress' agenda has often squeezed out consideration of relatively insignificant updating legislation.

Third, the Inouye bill insures that all persons 65 and older will be eligible for either the tax exemption under social security or a tax credit under the TCE. Due to the $7,500/$10,000 phaseout figures on adjusted gross income, the TCE excludes all but low-income elderly. Since social security income is tax free at all income levels, our membership feels that TCE should also be available to all other taxpayers who would otherwise qualify. (The attached chart demonstrates the profound inequity created by this double tax structure.)

Fourth, the elimination of the phaseout rule would remove what is, in essence, a penalty against savings and investment income, and active employment earnings by persons 65 and older. Since the phaseout rule is based on an individual adjusted gross income, limiting income from these other sources often pushes an otherwise qualified taxpayer above the phaseout level causing him to lose all or part of his credit.

Currently, the TCE results in a revenue loss of $303 million each year. Official estimates of the additional loss effected by enactment of the Inouye proposal range from $300 million to $578 million.

TAX TREATMENT OF DISABILITY ("SICK PAY") INCOME

Mr. Chairman, Congress has a long-standing policy of granting special tax treatment to a portion of an individual's income received as a result of sickness or disability. Qualifying individuals are allowed to exclude up to $100 a week in income received as a result of sickness or disability. The maximum exclusion is $5,200.

While the $100-a-week exclusion was continued, the Tax Reform Act of 1976 severely restricted eligibility for the exclusion. Specifically, the new law requires that persons seeking to qualify for the exclusion must (1) be "permanently and totally" disabled, (2) submit a doctor's certificate to that effect each year, and (3) file a joint return if married. In addition, Congress imposed a dollar-for-dollar phaseout of the exclusion at $15,000, while lowering the maximum allowable age for eligibility from 70 to 65.

PROBLEMS

Obviously, as a result of the new eligibility restrictions, many persons who had been using the exclusion suddenly found themselves with enormous increases in their tax bills. This prompted criticism of nearly every aspect of the new law.

(1) The focus of much of the public dissatisfaction with the new law was that it affected persons who were already retired on disability. These people had gone on disability with the expectation that "the rules of the game" would not be changed on them, and became embittered at the prospect of a substantial change in their tax liability.

(2) While requiring eligible taxpayers to be "permanently and totally" disabled, the Tax Reform Act of 1976 failed to define the term—particularly as it relates to "substantial gainful employment." To date, IRS has refused to issue any guidelines on the subject, preferring instead to wait for a court challenge. This has caused endless complications for many disabled persons who simply do not know if they qualify.

(3) Critics have also argued that the requirement of an annual doctor's statement certifying "permanent and total" disability is a needless hardship.

(4) Criticism of the new law has also centered on the requirement that married persons can only file for the exclusion on a joint return. Since the exclusion phases out when the couple's adjusted gross income reaches $15,000, this has caused a significant hardship. (This same phaseout is also used for a single taxpayer.) Disability income seldom is enough to meet necessary medical and social needs and, thus, often forces the employable spouse to go to work. In many cases, it is the additional income generated by the spouse that pushes the couple's adjusted gross income above the $15,000 phaseout figure. Mr. Chairman, at the very least, I would suggest on this question that Congress establish a second phaseout figure for couples filing jointly, and eliminate the requirement of a joint return.

The major "sick pay" tax legislation in the current session focuses on the following:

H.R. 1826 (Fisher) would "grandfather" all those on the disability rolls prior to enactment of the Tax Reform Act of 1976. Essentially, this would mean that such persons would continue to be governed by the eligibility rules in effect prior to enactment.

H.R. 3927 (Mikulski) and H.R. 9529 (Risenhover) would simply repeal the new sick-pay rules enacted as part of the Tax Reform Act of 1976.

COSTS

According to the Joint Committee on Taxation, the increase in tax receipts obtained by enactment of the 1976 law amounts to $380 million in fiscal 1977; $357 million in 1978; and $450 million by 1981.

Income	Current law			Proposed law	
	Taxes paid by single person [1] with no social security income		Taxes paid by single person [1] whose income includes $5,000 social security	Taxes paid by single person [1] with no social security income	
$5,000	$520	[2] ($375)	0	$445	[2] ($450)
7,500	1,089	(375)	$403	1,014	(450)
10,000	1,896	(188)	895	1,634	(450)
12,500	2,768	0	1,464	2,318	(450)
15,000	3,512	0	2,084	3,062	(450)
17,500	4,332	0	2,768	3,899	(450)
20,000	5,221	0	3,512	4,771	(450)

[1] Person 65 or older/does not include other exemptions or credits.
[2] Amount of credit used in computing taxes owed.

Mr. AFFELDT. Now I would like to call back to the witness table the representatives from NRTA/AARP to pose some questions for both of you.

I will direct my first question to the National Association of Retired Federal Employees. The AARP representatives may also respond.

ALTERNATIVES TO S. 2128 (INOUYE BILL)

If it would not be possible to enact S. 2128 because of administration opposition, would you accept other alternatives to improve the tax credit for the elderly and, if so, what would they be? I realize your association is very strongly committed to S. 2128.

Ms. PARK. Certainly we feel there should be an increase in the computation base; and, second, if phaseouts could not be eliminated totally, we feel they should be substantially increased. I agree with the comment Mr. Hacking made earlier that they should be more in line with the phaseout figures on the sick pay exclusion. It was assumed at one time that the sick pay exclusion would be phased out at age 65 because people would then be able to take advantage of the tax credit for the elderly.

There is no correlation between those two, now.

We feel very strongly about the phaseouts. We think they should be eliminated because of the lack of a "means test" in the tax treatment of social security. We look at that as the point of equity. If they are not eliminated, we definitely feel they should be increased considerably.

Mr. AFFELDT. Mr. Hacking.

Mr. HACKING. I have already said pretty much the same thing—a substantial increase in the base and liberalization and correlation of

the phaseout features of the tax for the elderly and the current sick pay exclusion.

Mr. AFFELDT. This is also directed at the National Association of Retired Federal Employees.

Mr. Sunley, in his testimony, indicated that most of the relief in the Inouye proposal would be directed at upper income persons. For example, of the $963 million in tax relief, he said approximately one-half would go to persons with incomes of $15,000 or more and one-fourth would go to taxpayers with incomes of $30,000 or more. How do you respond to that point?

Mr. SKARDON. Not knowing how he arrived——

Mr. AFFELDT. Let's assume for purposes of responding to the question the accuracy of the statement.

Mr. SKARDON. The tax relief mechanism that we are talking about is a tax credit. Credits inherently favor lower income people because of an across-the-board credit means that a person can subtract a greater percentage of his tax liability at the lower end of the income scale rather than at the higher levels.

So while benefits will be distributed evenly throughout all income levels, the persons who will be helped the greatest are the people who are at the lower end of the scale rather than at $20,000 and above.

SIMPLIFYING TAX CREDIT FOR ELDERLY SCHEDULE

Mr. AFFELDT. I know you are a little apprehensive about responding to the administration's request for simplifying the schedule for the tax credit for the elderly. But let's assume that it would not produce something detrimental to the members of your association. Would you have any thoughts about simplifying the schedule R or schedule RP?

Mr. SKARDON. The Inouye proposal would go a long way toward simplifying both schedules. We could condense it to about four steps.

Mr. STANAT. I have a comment about lower income elderly taxpayers and the fact that their credits give them a higher percentage of relief. The comment is that the price of bread and groceries for old people is the same as for higher income younger people. The elderly need that higher percentage of relief based on their income.

Mr. AFFELDT. Mr. Stanat, you assist quite a few elderly tax preparers with their returns. Do you find that some of the new concepts incorporated in the tax forms this year create confusion or doubt among elderly persons or would you say that the tax forms represent an improvement?

Mr. STANAT. Well, it is pretty early in the tax filing season, but my impression is that the tax forms have never been too complicated if one spends enough time trying to understand them. Also, I think there is a limit as what can be done by way of simplifying the forms.

I do believe that older persons don't take the time to study these forms and don't want to study them and the instructions when tax filing season comes along. Consequently, they need some assistance. That's why I think that programs that VITA makes possible ought to be deemed essential and expanded. Our own tax-aide counselors are located at points in neighborhoods where the elderly live so that they don't have to commute and spend all day in town or try to get somebody on the telephone.

Advantages of Volunteer Service

Mr. Affeldt. I gathered that you feel that there are some advantages that a volunteer, nonprofit, private organization would have in delivering this service compared with a governmental agency such as the Internal Revenue Service.

If so, would you care to elaborate?

Mr. Stanat. Well, I think the Government is getting a good return on its investment in VITA. If the IRS had to hire people to go out into the neighborhoods either on a part-time or some other basis it would cost much more. Also, certain types of older persons, like myself, are interested in volunteering their services for purposes needed by the community.

Mr. Affeldt. Mr. McMorran.

Mr. McMorran. We find that it is better not to advertise the fact that the training is provided by the IRS, because people tend to distrust, at times, some of the service that the IRS provides. Consequently, we just claim that we are trained to assist individuals with their tax returns. This approach is more effective.

Mr. Affeldt. It is my understanding that the IRS provides about 2 days of training for counselors who have worked in the program and 3 for new counselors. First, is that correct?

Second, if it is correct, do you think that this is an adequate amount of time devoted for training? If it is not correct, do you think that the time that the IRS does provide for training counselors is sufficient?

Mr. McMorran. The average last year for our tax aid program, which is generally more extensive, was 3 days. There is an experienced training class for capable volunteers of 2 days and a basic training course of 3 days. In some cases, this training goes on for 4 or 5 days. If you add to that training in State taxes, some of our volunteers end up being trained for 6 full days.

Mr. Affeldt. Mrs. Fayé, do you have any questions?

Mrs. Fayé. No.

Funding Level Needed for VITA

Mr. Affeldt. Mr. Hacking, Mr. McMorran may want to assist you on this question. The administration budget request is $800,000 for the volunteer assistance program and it is estimated that $324,000 of this amount will be allocated for elderly tax counseling assistance. This will enable about 12,000 elderly volunteers to be trained. What level of funding do you think is needed by the volunteer income tax assistance program, taking into account budgetary constraints and the overall need for the program?

Mr. Hacking. Let me defer to Mr. McMorran on that.

Mr. McMorran. We presented testimony last summer before the House Ways and Means Committee's Subcommittee on Oversight, to the effect that there was a need for increased appropriations simply because the IRS wanted to do a good job, but didn't have the funding. We were very pleased that Senator Church obtained an additional appropriation last year. That added funding has already had a viable effect. However, there are still some areas that we need to address, like increased outreach, so we seek additional funding. Additional

funding would allow us greater training and extended growth for the program.

Mr. AFFELDT. The question I have is: What amount is reasonable? The administration is requesting $800,000. Would $1 million be reasonable? How about $1.2 million or $1,250,000? Do you have any idea at this juncture?

Mr. MCMORRAN. It is difficult to give you an exact figure. One of the problems is that the program is not a priority. The national IRS staff has done their best, but they do need increased staff positions. Certainly, $1.2 million or $1.3 million would give it a higher rating in the district office and thus give us a greater priority in terms of IRS staff commitment to the program locally at the grass roots.

SOCIAL SECURITY TAX RELIEF

Mr. AFFELDT. Mr. Hacking, if Senator Church were to work for the enactment of a substitute to President Carter's tax proposal, using general revenues to finance all or a part of medicare or perhaps some other approach, do you have any thoughts concerning how this should be targeted? From your statement I gather that you would be very supportive of efforts to ease the payroll tax burden for workers in view of the 1977 social security financing amendments. Do you have any thoughts on this?

Mr. HACKING. Well, first of all my statement indicates quite clearly we are very supportive of efforts to introduce general revenues into the social security program. We have also made it quite clear over the last 3 years that we believe that the manner in which those general revenues are introduced should take account of the economic circumstances that have caused the short-term imbalance in the first place and, in effect, insulate social security from those economic causes.

If this were done, we could deal with economic problems on the one hand without having all kinds of adverse ramifications in terms of the OASDI programs.

Now I am quite aware that there is growing support for the use of general revenues to fund at least a portion of the cost of the hospital insurance program of medicare and to transfer over some of the scheduled increases in the HI portion of the payroll tax to the cash benefit area to offset some of the future increases scheduled under last year's financing legislation.

This proposal is not new. I believe it was first advanced by the Social Security Advisory Council in 1975. That was the same council that first identified the short-term problem, as I recall. Now if it were to appear, after having had a full and fair discussion through the hearing process of the issues and options available, that a proposal to fund part of the cost of medicare out of general revenues would indeed clear the legislative process, but other options, even though preferable on the merits, would not, then our association would support the option that was possible. Certainly that would be better than what we presently have in place.

We are very much afraid that as those scheduled payroll tax increases become effective we are going to encounter a very serious and substantial reaction against the elderly and against the program that served the elderly. Our aim is to avoid a crisis between generations.

We are quite aware, of course, of the demographics. We are simply going to have many more older people in this country. Sole reliance on the payroll tax mechanism to generate all the revenues for the income transfer programs of social security is just not going to work.

At some point we would be confronted with the choice between practically confiscatory levels of taxes on workers or substantial cuts in benefits with a concomitant increase in the incidence of poverty among the elderly.

General Revenues for Medicare or Entire Social Security System

Mrs. Fayé. Are you restricting your use of general revenues to the medicare program or are you suggesting that general revenues be used for the entire social security system?

Mr. Hacking. Let me make that clear. We support introducing general revenue financing to fund a portion of the cost of automatic cost-of-living benefit increases in excess of a specified amount. As I said earlier, if that specified level were 4 percent, then general revenues would only fund the cost of automatic increases in excess of that level.

We also support using general revenues to replace payroll taxes that social security loses as a result of unemployment in excess of 6 percent.

Now we like those devices, one on the outgo side and one on the income side of the social security ledger, because they tend to insulate the system from inflation and unemployment—the very factors which have caused the short-term problem in the first place. The higher the level of inflation, the higher the benefits. The higher the benefits, the higher the outgo. The higher the level of unemployment the greater the shortfall in expected revenue from payroll taxes.

The scheduling of large payroll tax increases does not guarantee that the cash benefit programs will be adequately funded. The reason why is that you cannot know from any point in time what the trend in inflation is going to be over the 75-year projection period and you don't know whether we are going to have another series of international commodity shortages and petroleum price increases by other cartels that are going to aggravate our current problems of inflation and unemployment. That is our concern.

Mrs. Fayé. It just becomes a transfer of funds.

Mr. Hacking. That's right. If we were to find that our proposals were not legislatively possible for HI. We would certainly go along with that because that is better than what we have.

Mrs. Fayé. Senator Domenici would agree with you, of course, in regard to the tax burden on the employees of today and the future. There is also a problem of where the general revenues are to come from.

Mr. Hacking. My statement deals with this matter of the source of the "general revenues." As a matter of fact, every time we advanced our proposal in the last 3 years before the members of the House Subcommittee on Social Security, the question has always been asked: "Where do the general revenues come from?"

Well, general revenues can come from one of three sources:

First of all, income from increased revenue derived from existing nonearmarked tax sources like the income tax or from new tax sources.

Second, they can come from deficit financing through the sale of Government securities in the marketplace. That is how we make ends meet in the context of the Federal budget when Government outgo exceeds income.

Third, they can come from a shift in expenditure priorities within the context of the Federal budget.

Now the choice of sources for any general revenue contribution to social security in any given year should depend upon what the economy needs at the time. Our association supports a balanced budget over the business cycle. We still have a business cycle. Despite the efforts of the Federal Government to "fine tune" the economy, the business cycle still exists. We have economic upswings and downswings. If we are on the upswing of the business cycle, it may be appropriate to introduce a temporary tax mechanism—like a surtax on the income tax, perhaps to raise the needed general revenues.

On the other hand, if we are on a downswing and it is appropriate to resort to deficit financing, then that should be the source for the general revenues. But if neither is possible then by all means shift around the expenditure priorities in the context of the budget.

We have a budget process in the Congress now and that is where the decision with respect to the source should be made and it should be made on the basis of what the economy needs at the time.

I would also add that we are not talking about permanent infusions of general funds into the cash benefit programs. We would hope that these two devices would phase out. If unemployment declines below the specified level, the general revenue contribution on the income side is eliminated. If inflation declines below the specified level and the revenue coming into the system form the automatic increases in the taxable wage base—which, by the way, is supposed to fund automatic benefit increases in the first place—is suffiient to offset the aggregate cost of the automatic benefit increases, then any need for general revenues on the outgo side is also automatically eliminated.

These devices would be there to safeguard the system and prevent the kind of roller coaster economic experience we have had—where unemployment shoots way up and cuts way down the payroll taxes going into the system—from causing a problem. People get upset and tend to lose faith in the financial viability of the system. Workers say, "Why should I put money into this system, and even more in the future, when there is a very strong likelihood that there is going to be nothing for me when I reach age 65."

We strongly urge that what was done last December be in part undone and corrected.

Mrs. FAYÉ. Thank you.

GREATER PAYROLL TAX RELIEF VERSUS SMALLER INCOME TAX DEDUCTION

Mr. AFFELDT. One more question. Mr. Sunley indicated that if greater payroll tax relief were granted and we operated within the administration's ceiling with regard to a total tax reduction, this

would mean a smaller amount of the tax reduction would go to elderly taxpayers. What are your thoughts about that? Would it be worth the tradeoff?

Mr. HACKING. In the first place there is nothing in the law that requires the administration to come up with a tax cut. The administration has done so for some very good reasons, most of which are economic. You know, I should think that introducing some general revenues into the social security system would make more economic sense, since we still have this problem with unemployment and are facing a downturn in the business cycle. If the administration came in now with a proposal for some general revenues for social security and payroll tax cuts, but reduced the magnitude of its proposed income tax cuts, then the elderly taxpayers would have to accept that.

I think that is the situation. Besides, if we ever had to choose between a pragmatic approach to the funding needs of the social security system over some immediate short-term tax cuts, that would probably be quickly offset by the combination of inflation and the progressive rate structure of the income tax, I would have to say that we would have to come down on the side of a more sane, rational and pragmatic approach to the financial needs of social security. Social security, not income tax cuts, is the cornerstone of the elderly's income.

Mr. AFFELDT. We are nearing 1 o'clock. I would like to continue, but I am sure many of you would like to eat.

I thank all of you for participating. The hearing will be concluded until the call of the Chair.

Thank you again.

[Whereupon at 12:50 p.m., the hearing adjourned.]

APPENDIX

LETTER AND ENCLOSURE FROM C. O. YOUNGSTROM, CHAIRMAN, LEGISLATIVE COMMITTEE, IDAHO FEDERATION OF NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, TO SENATOR FRANK CHURCH, DATED MARCH 6, 1978

DEAR SENATOR CHURCH: I am pleased to transmit to you a statement relative to tax reform and the tax credit for the elderly.

This is presented on behalf of our NARFE members in Idaho and is submitted to be a part of the record of the hearing convened by your committee on February 28.

We appreciate being advised by your office of this hearing and that the record is still open permitting this testimony to become a part of that record.

Sincerely yours,

C. O. YOUNGSTROM, *Chairman.*

[Enclosure.]

STATEMENT OF THE IDAHO NARFE FEDERATION LEGISLATIVE COMMITTEE ON TAX REFORM AND THE ELDERLY

The Idaho NARFE Federation Legislative Committee wishes to express its sincere appreciation for the opportunity to present this statement to the Senate Special Committee on Aging and to its chairman, Senator Frank Church.

Tax reform and particularly modification of the tax credit for the elderly are matters of substantial concern to Federal retirees and we are pleased the hearing record is still open to permit this statement to be entered on behalf of the Idaho NARFE Federation, its eight chapters, and their members.

The Idaho NARFE organization has had a continuing concern in securing the updating of retirement income credit and preserving it as a matter of fairness and justice for civil service annuitants as an equitable offset to the tax-free benefits available to social security recipients. This has been the subject of repeated expressions to the chairman of the Special Committee on Aging as well as to other members of Idaho's congressional delegation.

As an accepted goal of our Idaho NARFE organization, updating and modernization of retirement income credit was the principal thrust of the testimony offered by the Idaho NARFE Legislative Committee to the hearing of the Special Committee on Aging held in Twin Falls, Idaho, May 16, 1974.

We are particularly grateful to the chairman and to those members of this committee who helped restore for 1976 returns the optional use of retirement income credit on the same basis as available to taxpayers prior to the tax credit for the elderly.

When the tax credit for the elderly became a part of our income tax code in 1976, the changes made in the statutes provided for a substantially broader income definition on which to base the credit for those over 65. At the same time, it greatly limited its availability for those with modest incomes of $7,500 for single persons and $10,000 for couples making joint returns. This results from the credit phaseout applied at those income levels.

There was differential and favored treatment for those public retirees under age 65 who did not have the credit reduced by the phaseout, in effect retaining for them the principal features of the pre-1976 retirement income credit while denying it to those over 65.

We place our emphasis on three principal points as we have sought to improve retirement income credit and since 1976 to modify and make more useful the tax credit for the elderly:

(1) We urge updating the dollar amounts used in determining the credit base. From 1962 until 1976, when a small upward adjustment was made, no change had been made in this figure despite repeated increases in social security benefits which this credit was originally intended to offset. The current amounts do not provide for equity or comparability with the justified improvements made in social security benefits.

(2) We recommend an automatic adjustment or indexing of this credit base to provide for a continuing level of comparability with changes in social security benefits resulting from increases in cost-of-living. This would avoid a long period of inattention to such needed adjustments as occurred from 1962 to 1976, when the credit base amount remained unchanged despite the sharp inflation which took place particularly during the later years of that time frame.

(3) We recommend elimination of the phaseout currently applied to the credit when the adjusted gross income of persons over 65 reaches even the moderate levels established under the provisions of the tax credit for the elderly. Our argument here is simply that no such phaseout applies to social security beneficiaries at any level of their adjusted gross incomes. Fairness and equity justifies similar treatment for Federal annuitants.

We urge adoption of legislation which would accomplish these three objectives. A measure was introduced in the first Session of this Congress by Senator Inouye as S. 2128 which would produce those results. It embodies the three general objectives we have outlined and in our judgment would correct the major shortcomings in the Tax Credit for the Elderly.

We are hopeful that this or a similar measure will receive favorable attention by this committee and subsequently by the Senate. We do wish to point out an identical bill was introduced in the House last year as H.R. 8818.

We wish to acknowledge with appreciation this opportunity to present the views of Idaho NARFE members to the Senate Special Committee on Aging.

○

OLDER AMERICANS IN THE NATION'S NEIGHBORHOODS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 2—OAKLAND, CALIF.

DECEMBER 4, 1978

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CONTENTS

Page

Opening statement by Senator Dennis DeConcini, presiding 93

CHRONOLOGICAL LIST OF WITNESSES

Terner, I. Donald, Sacramento, Calif., director, Department of Housing and Community Development, State of California; accompanied by Paul Dempster and Ian Robertson, Sailors Union of the Pacific, and Mary Ellen Shay, California Department of Housing 95
Wilson, Mayor Lionel, Oakland, Calif 109
Drasnin, Charles G., president, Oakland, Calif., Community Housing, Inc. 111
Jones, Carl, Shingle Springs, Calif., president, Congress of California Seniors 113
Hamilton, Wilbur W., executive director, San Francisco Redevelopment Authority, San Francisco, Calif 116
McKibben, Glenn B., executive director, Commission on Aging, San Francisco, Calif 117
Chin, Gordon, San Francisco, Calif., director, Chinatown Neighborhood Improvement Resource Center 121
Nunn, Kenneth, director, Oakland Neighborhood Housing Services, Oakland, Calif 126
Davis, George, director, Bayview-Hunter's Point Senior Center, San Francisco, Calif 128
Rivers, Mary, office manager, Economic Opportunity Council, San Francisco, Calif 130
Nakajo, Steve, executive director, Kimochi, Inc., San Francisco, Calif 131
Inouye, Hisao, board chairman, Kimochi, Inc., San Francisco, Calif 131
Levy, Janey J., Sacramento, Calif., director, California Department of Aging 134
Regnier, Victor, chief, Environmental Studies Laboratory, Andrus Gerontology Center, University of Southern California, University Park, Calif. 137
Sneed, Michael, Los Angeles, Calif., Planning and Program Development, County of Los Angeles Area Agency on Aging 140
Ervin, Sam L., director, Senior Care Action Network, Long Beach, Calif. 144

APPENDIXES

Appendix 1. Letters and statements from individuals and organizations:
Item 1. Statement of Eddie J. James, director, Alameda County Department on Aging, Oakland, Calif 153
Item 2. Letter from Deanna Lea, director, Area 4 Agency on Aging, Sacramento, Calif., to Senator Dennis DeConcini, dated December 18, 1978 154
Item 3. Letter from Burns Cadwalader, AIA, the Ratcliff Architects, Oakland, Calif., to Senator Dennis DeConcini, dated December 27, 1978 155
Item 4. Letter and attachments from Tito A. Cortez, Council on Aging of Santa Clara County, Inc., San Jose, Calif., to Philip S. Corwin, staff member, Senate Special Committee on Aging, dated December 18, 1978 156
Item 5. Letter and enclosure from Richard Livingston, Reality House West, San Francisco, Calif., to Senator Dennis DeConcini, dated December 20, 1978 161

Appendix 2. Statements submitted by the hearing audience: Page

Abbott, William T., Oakland, Calif---- 168
Bray, S. W., Alameda, Calif---- 168
Day, Clarence, Alameda, Calif---- 168
Eliott, Mitchell, Oakland, Calif---- 168
Friedl, Jim G., Concord, Calif---- 168
Gaines, Susie P., Berkeley, Calif---- 169
Lawrence, Thalma, Oakland, Calif---- 169
McCartor, Marjorie, Hayward, Calif---- 169
O'Neill, James E., Alameda, Calif---- 169
Skurdenis, Birute, Oakland, Calif---- 169
Volg, Viola, Berkeley, Calif---- 170
Zukas, Kilroy, Berkeley, Calif---- 170

OLDER AMERICANS IN THE NATION'S NEIGHBORHOODS

MONDAY, DECEMBER 4, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Oakland, Calif.

The committee met, pursuant to notice, at 10 a.m. in the council chambers of the Oakland City Hall, Senator Dennis DeConcini presiding.

Present: Senator DeConcini.

Also present: William E. Oriol, staff director; Philip S. Corwin, professional staff member; Jeffrey R. Lewis, minority professional staff member; Shirley Wilson and Robert Maynes, personal staff of Senator DeConcini; and Theresa M. Forster, fiscal assistant.

OPENING STATEMENT BY SENATOR DENNIS DeCONCINI, PRESIDING

Senator DECONCINI. The Special Committee on Aging of the U.S. Senate will come to order.

Good morning. Today, the Senate Committee on Aging holds its first field hearing on the subject of neighborhoods and the elderly. It is most appropriate that our initial inquiry takes place in California and the bay area, for several important reasons.

The committee's interest in this topic came about directly through the 1977 investigation ordered by Chairman Frank Church of the eviction of the residents of San Francisco Chinatown's International Hotel. That examination alerted us to the severe housing problems affecting the elderly residents of Chinatown, problems that are being aggravated by domestic and foreign speculation, and which have received a woefully inadequate response from Federal housing officials. It alerted us to the sometimes destructive results of Federal urban renewal policies, and their local implementation, on many neighborhoods in years past. And it let us know of the desperate situation which many bay area seniors face in finding decent and affordable housing, be it public or private.

These problems extend beyond the bay area. The low vacancy rates and speculation are more the rule than exception in many urban and suburban areas of this State. There is no doubt that many of California's elderly pulled the "yes" lever for proposition 13 as a means of controlling one aspect of the inflationary pressures which threaten their major capital assets and the basis of their well-being; that is, their home.

Finally, we have come to California to hear firsthand about this State's urban policy, and other innovative responses to these pressures which are taking shape in neighborhoods throughout the State.

While the shelter and service dilemmas confronting California seniors have their own unique shape and cast, they are but one part of a massive shift in urban dynamics which are occurring throughout the Nation. This past Friday, at our opening hearing in Washington, the committee learned that new economic and demographic pressures are resulting in the displacement of low-income individuals from neighborhoods in both the blighted cities of the Northeast and the rapidly expanding urban centers of the Sun Belt—and that it is the elderly who are the most often displaced, who are in the leading ranks of the new urban nomads. We heard that Federal programs and policies have often contributed to the decline of sound neighborhoods, and that the massive infusion of Federal dollars to urban areas, which currently exceeds $80 billion annually, is not always being utilized in an efficient manner consistent with changing urban dynamics. And we found that older Americans have the greatest need of any group, without a doubt, within our society for the informal support systems, the good housing, the ease of access to stores and health and social services, and the secure and familiar neighborliness which sound city communities provide.

The committee also learned that there are constructive, cost-effective, and nonbureaucratic programs, operating with the advice and assistance of government at all levels, enlisting the support of neighborhood and voluntary organizations and private sector, which are capitalizing on the new urban dynamics and the unprecedented opportunity they offer to revitalize cities while maintaining economic, racial, and age group diversity.

The possibilities confronting policymakers are thus contradictory. If we fail to understand what is happening in our cities and to seize upon those changing circumstances, we face a future marked by stratification by age and income, and wholesale displacement of the elderly. There will be growing demand for massive new Federal housing, and social programs for which the funds may never be adequate, and which can never replicate the quality of shelter and support which the elderly can find in diverse, healthy neighborhoods.

Or, in the alternative, we can examine old programs for inefficiency and relevance to today's problems. We can reallocate resources to innovative efforts which help elderly homeowners to rehabilitate and keep their properties. We can help renters to find decent and affordable apartments, and even to become homeowners. We can better utilize the resources of the "aging network," which has been established under the Older Americans Act, to encourage and coordinate new shelter and service strategies at the local level and become a vital part of the neighborhood support system for older Americans.

Thus, it is with great anticipation that we begin today's hearing. For we will hear of the housing, service, and crime problems confronting seniors from all walks of life throughout the bay area region and California. But we will also learn that efforts fostered by all levels of government, by branches of the aging network, and by community groups are pragmatically and successfully responding to these difficulties, and are building stronger neighborhoods in the process. I can

promise you that we will use the information gathered today and in subsequent hearings to devise policies which effectively and efficiently assist older Americans in responding to the new pressures facing them now and in the years ahead.

Before calling our first witness, I do want to note that State and congressional Representatives from the bay area were invited to participate in today's hearing. Congressman Philip Burton was extremely helpful to us, as was Senator Cranston. Unfortunately, our hearing coincides with the start of the winter session in Sacramento and with caucus activities in Washington.

I also know that I speak for the entire membership of the committee in expressing our shock and regret at the tragic circumstances which so recently claimed the life of Representative Leo J. Ryan. His devotion to his constituency and his quest for the truth inspire us all, even in his absence. We will endeavor to conduct today's inquiry in the same spirit of sensitivity and response to the needs of all citizens which marked his career.

The committee also extends its heartfelt condolences to the family of Mayor George Moscone, and to the people of the city of San Francisco. Mayor Moscone championed the cause of the elderly and of all those who make up in need what they lack in power. His office lent invaluable assistance to us when we undertook to understand the evictions at the International Hotel, and as we engaged in preparation of today's hearing. I know that it was his goal as mayor to shape a city which could offer decent lives in thriving, vital neighborhoods to all its citizens. Mayor Moscone's work has been cut short, terribly and without purpose, but his spirit is with us today as we seek the means to better the lives of the poor and the elderly who seek only the basic dignity that is due to every human being.

I want to introduce on my left Phil Corwin of the Committee on Aging staff; Jeff Lewis sitting on my extreme right, and from the committee minority staff; and Shirley Wilson of personal staff.

We will proceed today with testimony from various witnesses. We would ask that the witnesses attempt to keep their oral testimony to no longer than 10 minutes. I realize that is a short period of time, but I can assure you that the entire printed statement not only will appear in the record, but will be delivered to each committee member and made a part of the permament files and report from these hearings.

The first witness today will be Donald Terner, director, California Department of Housing and Community Development.

Mr. Terner.

STATEMENT OF I. DONALD TERNER, SACRAMENTO, CALIF., DIRECTOR, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, STATE OF CALIFORNIA; ACCOMPANIED BY PAUL DEMPSTER AND IAN ROBERTSON, SAILORS UNION OF THE PACIFIC, AND MARY ELLEN SHAY, CALIFORNIA DEPARTMENT OF HOUSING

Mr. TERNER. Senator DeConcini, ladies and gentlemen, I wish I could say that it was a pleasure to be here today. I think all of us, in fact, regret that there is any need for these hearings or for any testimony. I think the plight of the Nation's elderly and those elderly

citizens living in California is certainly one that causes us all extreme anxiety and regret and we are here today to work with you to, in fact, do our very best to eliminate this tragedy.

The State of California, Governor Brown, and those members of his administration, have been working hard through our department, the department of housing and community development, through the California housing finance agency, through HUD, through the State department on aging, to put together a coordinated program to give elderly residents of this State a fair and fighting chance to obtain decent housing.

We have over 1¼ million elderly households in California and by and large their incomes are lower than those of other Californians. Unfortunately they are fixed. They don't float with the economy. They don't float with inflation. For that reason, as housing prices escalate and their incomes fail to keep pace, a widening gap opens between their ability to pay and the cost of decent affordable shelter.

Our housing costs in California are extremely high, among the highest in the Nation. The cost right now for a medium-price used house is over $70,000 and for new construction we are beginning to go over the $80,000 level. In fact, we are now into the low $80,000. Forty percent of all the homes in California are now priced at $80,000 and over. This compares to 10 percent in the rest of the Nation. You can get some sense of the extreme escalation of our housing costs.

Elderly people in California are averaging about $7,000 a year. This is compared to some $18,000 a year for nonelderly citizens in this State. You can see that there is a great discrepancy between that $7,000 and $18,000. Both of those figures, whether it be median income of the elderly or median income of all Californians, are simply not able to keep pace with the cost of housing. Two-thirds of our elderly citizens pay more than a quarter of their income for housing. A quarter of income seems to be a number derived at as a rule of thumb, but basically the data shows that when an elderly family is paying more than a quarter of income for housing, then they are not getting proper nutrition, proper medical care, proper clothing, and all the other necessities of life.

We have been delighted with the Federal response in terms of the kind of programs that they offer. The section 8 program is exceedingly important. While we are delighted at the concept of the section 8, the numbers have been far too small. We now know that although there are some 60,000 section 8 participants here in this State, that covers only 10 percent of the need in terms of people who are paying more than a quarter of their income for shelter. What we need, really, is a great expansion of the section 8 authority. We have cities and towns in California now where over 4,000 names are on waiting lists for section 8 apartments. Those cities and towns find themselves in such a futile position that they have stopped taking names on the waiting list because, in fact, there are many years of backlog in terms of section 8 allocations.

We would strongly urge the committee to recommend a section 8 program in the Congress to meet a more significant portion of the need for rent subsidies. We know the President's budget message has given us an early signal that there is going to be greater austerity and we would urge the Congress and members of the administration to pay particularly key attention to this very high priority program.

One of the Governor's priorities is to keep elderly people in their own homes as long as they want to remain there, and have the social and economic resources to do so. We don't want to see the elderly shunted off to institutions. As the cycle of aging occurs, we have many elderly in their own homes, yet they do not have the income, nor the personal physical strength and energy, to keep up their homes. So we have our many elderly occupied homes that are in dire need of rehab and we do not have the kinds of funds for rehabilitation that will help these elderly families maintain and stay in their own homes. The fact that these homes are deteriorating means that many of them will have to be institutionalized simply because they can't keep up their own places. If we could just extend assistance to elderly families so they could keep up and maintain and rehabilitate their houses, keep them in the communities longer, that is where they belong, that is where they are the happiest, and, in fact, that is where we want to see our communities go. We are going to lose the elderly out of our communities unless we can help them maintain the houses that they are in.

We have some State programs that are designed to do that, but the fact is that our State programs really only provide a drop in the bucket. It is the Federal Government, with its very large tax revenue base, that really needs to come in and help the States and communities to offer assistance to their elderly in maintaining their homes.

Another particularly critical source of housing for the elderly happens to be in residential hotels. The cycle of downtown life is such that many of our cities around the Nation have very large hotels that were built in the early part of this century. Those hotels are no longer the kinds of places that tourists will stay in when they come to the city. They stay in the more modern motels and hotel construction. What is happening is that the downtown hotels have become places for the elderly.

We have over 16,000 downtown hotel spaces in California that are occupied by the elderly, but are unfit for human habitation. They represent fire hazards, safety hazards of all kinds. Basically it is critical that we recognize, as you said in your opening statement, the value and importance of congregate housing. We don't have to have a kitchen in every single unit. The elderly are living that way now. It is not the greatest situation in the world. In fact, what we need to do is to get out of the catch-22 and say you are in a residential hotel now, there is no kitchen in your apartment, therefore, you don't qualify for any assistance.

What we want to do is bring these residential hotels up to standard, particularly fire standards. That is an impending tragedy and we are all well aware of it and very concerned. We want to bring these hotels up to standard and we need the Federal Government to recognize that this is an important de facto source of housing and not to deny us Federal assistance simply because these hotel rooms do not each come equipped with a kitchen. There are ways to feed the families and households in these hotels. We are doing that now. What we do need is to be sure that we can qualify these units for Federal assistance.

We also are very encouraged by the HUD section 202 program. We have moneys here in California under 202 to build nearly 5,000 units. Again, though, the problem is the help is too little and too late. It turns

out to be just a drop in the bucket and we urge the committee to recommend the expansion of the 202 program in coming years. We further urge the committee to seek inclusion of an $80 million appropriation for congregate housing under the 202 program, currently being deferred by OMB. We wish that to be incorporated into the 1978 housing program.

Let me finish this portion of my testimony by saying we recognize there are three phases of the elderly cycle. What we are hoping is that each of these phases can be recognized for its unique aspects.

The first one we might call the preventive phase. That is when the family head reaches his fifties, his or her fifties. The children grow up, leave the house, and there is a whole new set of housing needs that fall upon the household head in his fifties. What we want to see and what we are doing now in State government is getting some counseling to those families, looking at different ways that the family might make a transition perhaps from a house with empty bedrooms where the kids might have once lived to tighter quarters, but tighter quarters still within the community, more affordable, but still relating to neighbors and friends.

We also recognize that there comes a point in time when the widow or widower or even the elderly couple moves on in years and cannot stay in a private home. What we are doing now is, we are looking to increase the production phase so that we produce more new apartment units for the elderly with rents that are affordable, that will not take more than a quareter of their income. We are trying to work under the section 8 program and the section 202 programs and others. That is again where we seek and urge your help.

The final phase is that we realize in this continuum of care there are families who will sometimes need medical attention and so forth. We are looking for a third transition into housing that might be semi-institutional. You might say that it is kind of a housekeeping arrangement with close and easy access to medical facilities. This transition of housing from the counseling to the production of new units, to the integration of housing and medical care facilities, is a theme that we are pursuing in California that we think is very important.

I would like, if I may, to touch on one innovative program that we are pursuing right now. That is why these people are at the table with me.

This is Paul Dempster, president, Sailors Union of the Pacific; and vice president, International Seafarers Union; Ian Robertson, on my right, of the Sailor's Union of the Pacific; and Mary Ellen Shay of our State department of housing, who is the project manager for this particular program that I want to talk to you about.

We have an opportunity in San Francisco, I think, to take the unique step. It is a product of happenstance, but the situation is something like this. We have two cruise ships, the last two American cruise ships, luxury liners, that have been retired from service. Basically these vessels could be converted to some 460 units for the elderly and would house over 700 people. The interesting thing about this project is the fact that these vessels were never designed for housing. They were designed for luxury fantasy vacations. They have swimming pools, dance floors, lounges, libraries, reading rooms, hospitals with an op-

erating room, banks, so on and so forth, all the things that make a vacation fantasy the high-priced commodity that it is for so many Americans. The sad part of it is that these boats are going to be retired and possibly sold for scrap in the Far East. We have an opportunity to convert these to units for the elderly. We can house the elderly on these vessels for some $29,000 per apartment. This compares to $35,000 and over for comparable apartments on land, with none of the vacation luxury amenities that these vessels now provide at no charge, a 400-seat theater, so on and so forth.

I would like to show you, if I might, a few slides of these vessels, and mention to you four things. The first is that the vessels can provide housing, decent and safe housing, right in the heart of San Francisco. We have no buildable land for new elderly projects. They provide unprecedented recreational facilities because they were built as vacation resorts. I had the great sadness for a project here in Oakland, St. Mary's housing for the elderly, just a few blocks from this building, to have to cut out of the construction budget card systems that would allow greater security in the buildings, and a very modest sauna bath and jacuzi for the elderly people in the basement of this building, which would have been kind of a therapy for those with arthritis and other things, a very modest cost, totaling less than $8,000 in a multimillion-dollar project. These are the facilities that are on these ships for free, for the asking, on board these vessels.

The other aspect of these vessels is that they offer unique employment opportunities for the elderly. The kitchen facilities on board these vessels are self-contained to produce 60,000 luxury meals, a huge butcher shop, a bakery shop almost as big as this room and within the bakery shop a fancy pastry shop. These are the kinds of places where the elderly could work. They could produce bread and pastry for San Francisco. They could produce meals on wheels for other elderly and the food capacity is so great that people from other parts of San Francisco could come to the vessels to eat and take part in the public amenities and facilities.

Finally, and most importantly, the vessels have a kind of built-in security. The tragedy of our elderly is that they are afraid to come out of their apartments, they are locked in. They are afraid to even go to the mailbox for a monthly social security check. The Social Security Administration has responded to this by depositing their checks in the bank, but that even keeps them more cooped up and locked up in their apartments.

With these vessels we could have complete safety and security so that the elderly could interact with one another, roam the vessel freely and in complete safety and have all of these facilities.

If I might, I would like to ask you to sit in this chair and take a very brief look at the slides. I will show you the vessels. I will show you some of the facilities on board and try and give you some sense of how the conversion might proceed.

And that will end my testimony.

Senator DECONCINI. Mr. Terner, we appreciate that very innovative idea, and it is one that certainly should be given serious consideration.

I am advised that in your statement, you make mention of the appropriation for congregate housing under section 202. Mr. Corwin advises me that the White House has approved that.

Mr. TERNER. I am delighted to hear that.

Senator DECONCINI. We are pleased to know that this is acceptable to the administration. I have to admit that the Special Committee on Aging did recommend very strongly that the President approve it, and that there would have been great resistance, at least from the Senate side, if it was not.

In your statement, you obviously feel it is necessary that the Federal Government participate. You talk about the Federal Government tax base being such that they could participate greater in section 202 and many other areas. It occurs, to at least this junior Senator, that these are some of the problems California has faced, the Federal Government is going to face or is facing. I think the fact the President is moving toward what he considers a balanced budget by reducing the 1979 deficit to $30 billion—raises a question to me—I concur, first, that the Federal Government has to reallocate some funds, but what is the State of California willing to contribute to this? I am going to ask the same questions in Arizona when I hold hearings in that State. What kind of commitment can we expect from the State to enter into a partnership in this with the Federal Government, and not look solely to the Federal treasury for their resources?

Mr. TERNER. That is a fair question, Senator. The first commitment we make is the authorization of some $750 million worth of revenue bonds that we are selling. Much of this money is going into housing for the elderly. The remainder, which is not going into housing for the elderly, is going into housing for low- and moderate-income families.

Senator DECONCINI. How much of that is going to elderly, do you know?

Mr. TERNER. We are on a 40-to-60 split there. It is roughly $300 million. We are using the State's credit to finance elderly housing. That is an important commitment that we have made.

We are also involved in a large number of other programs. If I could just mention one, the Governor just signed Senate bill 966, the deferred payment rehab bans. One of the things that we are seeing is that in areas that are upgraded, as you mentioned in your opening statement, there is often displacement of families who are elderly in those areas because generally property values are going up. Under Senate bill 966, we will be able to allow elderly families in those upgraded areas to make the improvements that will bring their homes up to code, but, in fact, the payments on those improvements would be deferred until time of sale of their house. In essence, it is like a grant program where their home situation will be improved, but they will not be paying any more in their monthly payments.

That is an important kind of program. I will admit to you that I am not satisfied with the appropriation that followed that, but at least we have got some money to make these loans now and we will be making them this fiscal year, and we will be going back to our State legislature for increased funding in future years.

We have a number of State programs. California has been a leading State around the Nation with respect to taking elderly people who have been institutionalized temporarily and who might, without this program, generally remain in an institutionalized setting, and Mary Ellen Shay, who is with me, and others have been instrumental in integrating elderly people back into their communities after a brief

institutional stay and not letting the trauma of being institutionalized at an old age tip the balance so that the person is caught and never goes home. That is one of the things that we want to see stopped. We want to get those families home. If they can't go back to their original homes because, in fact, they are only semimobile or semiambulatory, we still don't want to keep them out of the community. We want to get them into a continuum-of-care situation so that their lives can be as normal as possible after the institutionalization.

Mary Ellen, you might want to mention to the Senator one or two other things that we are doing in California in terms of commitment of State resources and funds for the elderly.

Ms. SHAY. One of the other things that we are trying to get started is what we call a housing assistance counseling service for the elderly. We have been working on a housing assistance location service which would help older people who are inappropriately placed in homes right now that may be too large for them, to help them relocate to something that is more suitable. It would be a service that doesn't put any biases on the recommendations that are made, rather than going to a real estate agency who immediately counsel somebody to sell. We are talking about a more open-ended kind of a counseling service which we think would be very, very helpful.

We also have committed money to the serving of the elderly through assembly bill 998, which I am sure will be talked about later on when Janet Levy gives her testimony, but A.B. 998 is a multipurpose senior service center. The department of housing is working in close conjunction with the staff of the A.B. 998 project to develop housing that is as appropriate for the needs of elderly people as the social services that are being developed for the 998 project.

We are very excited about our relationship with the department on aging. It gets closer all the time. We feel that no longer are we just housers interested in bricks and mortar, but we are also interested in the people that live there. That is a big step for us. Builders traditionally are interested in building and nothing else, but we feel that we have gone beyond that.

Senator DECONCINI. Let me move on to another question. One problem that we face in Congress is getting the right transmission of the message from the local communities. I think one of the worst things that the Federal Government can do is impose something that may work in one part of the country and not in another part. I am certainly not being critical of communities in the bay area. How do you think we can generate that interest from the local governments to come forward to us? We specifically need to line-item some of the HUD money or, more specifically, line-item some of this for housing of the elderly, rather than letting the local government make that decision. If we do that without their direction or request, you know the kind of problems that we run into. Do you have any suggestions on how we can solicit that information from the local communities, the local governments?

Mr. TERNER. Senator, that is the problem that we in State government share with you, of course. While we have our own goals and those things that we would like to see done in the local communities, we also recognize that the local communities need a maximum amount of flexibility so that they can design those programs that are exactly

right for their local situation. I applaud the Federal Government's block-grant program in that you do in the block grants give the local communities large amounts of latitude with respect to what they do, and at the same time you have a mechanism in your A–95 reviews and in your own block-grant award procedures at HUD where, although you are not looking at this line by line, you do have the latitude to allow the communities to deal with what they consider to be the most important. You also evaluate what they are saying they are going to do with these dollars along some general guidelines, that there be an emphasis on low and moderate income and so on and so forth. I think that that is an important way to go. We are trying to work within that at the State level. We review these block-grant applications. The Governor's office specifically signs off on every block-grant application that every community makes through the A–95 review process, and on behalf of the Governor our department does a lot of that reviewing.

I think we are quite happy with that kind of balance. You set up the rules. You tell us not what we must do, but in general terms what we must achieve. We are happy with that kind of an approach. I would urge that the Federal Government maintain that kind of strategy with respect to soliciting out of the localities their ideas for what makes sense in their communities, not restricting them and not rubber stamping one successful idea from one part of the country on every other community. It is important at the same time to tell the communities what you expect them to achieve, what parts of their population they must cover, what kinds of results you are going to be looking for at the end. I think if we can refine the existing block-grant mechanism that we will have a mechanism that will, in fact, not stifle local initiative, but will give us a shot at the goals that we all feel are important.

Senator DeConcini. Thank you.

Mr. Corwin?

Mr. Corwin. I have two questions for Mr. Terner. The first is that our hearings are alerting us to the fact that things are changing in terms of what is going on in the urban areas, that there is a lot of money going in for reinvestment, and that the market is changing. Can you give us some suggestions or examples of how we can help community organizations and neighborhood groups get some benefit from the revitalization in their neighborhoods and to participate in that for the benefit of the people living there now? Second, what can we at the Federal level do, either through a tax incentive or other mechanism, to encourage the private sector to lend some of its resources and some of its management expertise in developing housing resources for elderly people in these areas?

Mr. Terner. Mr. Corwin, I am particularly happy that you asked that. Before I came to California to join the department of housing and community development, I was director of a community group and have a strong sense of what community groups need. I am thoroughly convinced, from my former vantage point as director of a community group, I was director of the urban homestead board in New York City, which dealt with a lot of self-help rehab in that city, and from my vantage point as director of housing and community development from the State of California, that in many cases community groups can do far better in terms of being sensitive to the

particular issues of people in those neighborhoods, people on those blocks, then we can in government.

For example, HUD just now, through Assistant Secretary Geno Baroni, made a series of technical assistance grants to community groups. It is astounding when you think that sometimes moneys on the order of magnitude of $7,000 or $10,000 can make the difference between an operational community group and one that simply can't get off the ground because there isn't a telephone, there isn't a storefront, there isn't a secretary there to answer that phone.

Tiny amounts of technical assistance moneys to these community groups can accomplish great things. I, once again, feel that when the Federal Government can make its dollars available to people at the grassroots level to enable them to do for themselves, we are a lot better off than with a paternalistic type of view that says, OK, here is the program, here is the cookbook and here is how you do it. That enabling kind of funding, I think, is critical. Again, my criticism of it would be that it is too little and too late. That is the kind of thing that we need more of and maybe less of the big paternalistic type of spending programs.

With respect to the private sector, I think you yourself suggested the one thought that I have on that, which is to get or give the private sector some tax advantages for doing these things.

I might add that the Sailor's Union of the Pacific in a sense is a kind of private sector situation where we in State government and they in the private sector are in partnership. I think they are doing some amazing things. They have some tax-free status. It is the tax-free status of their moneys that enables them to do socially responsive things.

I think what they are doing with respect to the *Mariposa* and the *Monterey* is exceptionally important because you have got the port cities of the Nation, all the way from Boston to Miami, from Seattle down to San Diego, cities along the gulf, Galveston, New Orleans, et cetera, these are some of the older cities, because we settled our coastline first, these are the cities that have concentrations of elderly and these are the cities that have shortages of buildable land near the center.

What we are doing with the private sector in California in a partnership with the State government and the union is that we are trying to set up a model that may, in fact, work for other port cities around the Nation. This is coupled, of course, with the fact that many cruise ships are coming on the market because the nature of the vacation industry is changing. You have the SS *United States* for sale, you have the *Queen Mary* for sale, and many others. Vacations are now oriented toward jet travel and not toward the large steamships.

What I am saying is we are looking to the initiative of the private sector, the Sailor's Union of the Pacific, in partnership with State government, they have the tax-free status, we have a situation where small amounts of technical assistance money is producing some detailed feasibility studies and I am very hopeful that this particular partnership between government and the private sector can bear fruit, not only for California and San Francisco, but for other old port cities around the Nation.

Mr. CORWIN. I have one other quick question. I know in California you have established a good working relationship between the housing department and the aging department. But, in general, do you think the Federal laws we have on the books now in regard to housing and in regard to programs for the aging require enough coordination of this type. Or should they be stronger on that?

Mr. TERNER. Let me say this. Whether they require it or not, any State housing director worth his salt knows that this is one of the critical problems that he must face. The housing for the elderly is one of the real tragedies, I think, of our Nation. It is a privilege to grow old and to have those extra years of life. The fact that we have—and I hope that I have that privilege too, but the fact that those families who attain elderly status don't have the wherewithall to live in decency is really a disgrace. What we are trying to do—perhaps you don't require us to coordinate with them, but, as I say, if we have any sense of responsibility in State government we know we have to coordinate because, in fact, the two problems are so integrally locked. It would be crazy for the department of aging not to coordinate with the department of health. It would be crazy for them not to coordinate with the department of housing. Health and shelter and food and nutrition, these are the necessities of life. With respect to our abilities to coordinate these programs, I am happy with the fact that we can take our own initiative. Perhaps in some other States, which I am less familiar with, you may feel you have to require it. I don't think the requirement is necessary in California, but I also wouldn't object to it because we are doing it anyway.

Senator DECONCINI. Mr. Lewis?

Mr. LEWIS. I have one question.

Recently California passed landmark legislation in proposition 13. Has your department any idea what the impact of that legislation will be in terms of the State's commitment toward housing services for the elderly and have you begun any analysis of what that impact will be?

Mr. TERNER. Proposition 13 is a two-way story in that you have elderly families who may be homeowners, and particularly long-standing homeowners whose tax burden will be reduced. That is a benefit. Their net shelter costs decline. The sad part is that we have so many elderly renters in California. One of the things that concerns me greatly, and concerns renters throughout the State—half of our population are renters—is that the benefits of proposition 13 were not uniformly passed on to renters. In some cases they were, in other cases they weren't. In most cases it is the sentiment of renters that the fact is they did not get their share of the proposition 13 savings.

What that has brought on in California is a great many local initiatives toward rent control. That is a very serious situation. We now have rent control in the city of Los Angeles. We have it in the city of Berkeley. We have it in the city of Davis. We have ballot initiatives qualifying other cities around the State. We have still other cities that are considering rent control. Rent control as one of the impacts and fallouts of proposition 13 or the move or sentiment for rent control is something that we must reckon with.

It has got a secondary impact that I think is even more profound on the lives of the elderly. When you have got the situation of rent

control, as we do in many cities, you have also got the situation, the secondary impact of the housing industry, the landlord industry, taking the rental units and converting them into condominiums. The conversion to condominiums is displacing elderly families. They are the ones who can't buy into condominiums. We are finding that some 85 percent of the tenants in apartment buildings which are being converted to condominiums are being displaced. This is an incredible hardship.

We took testimony from an 89-year-old woman in Oakland a few months ago that she had been displaced three times. She was a retired teacher on $375 a month social security and a $300 a month teacher's pension. She had moved into apartment after apartment only to find that they were being converted to condominiums. She was telling us at 89 years of age, she sat at the witness table and said "I moved with two other teachers that I retired with. We asked if they were going to convert to condominiums and they said no. They were ill and not as strong as I was." She said that in the three successive moves her two friends had died. They simply could not cope with the trauma and tragedies of these moves and disruptions. She was alive and hanging on by a thread and testifying about the condominium conversions.

This is an incredibly significant impact, I think, of proposition 13. There has been a chain of events that has done that. I think we have to do something about condominium conversion in two respects. No. 1, we have to somehow limit the conversion process. We are looking at many different mechanisms by which to do this. The other is that we have to give elderly families and low-income families that are young in age some assistance in buying into their former apartment which they are going to be thrown out of when the building converts. We are looking at a great many ways of doing this.

Senator, you asked what we are doing with California funds. We have a major proposal being drafted and they are being circulated now among HUD, where we want to go into partnership, the State government with the Federal Government, in bringing assistance to families who are being displaced by condominium conversion because, in fact, of that tragedy of being moved and disrupted continuously and that feeling of helplessness that sets in.

Those are some of the impacts of proposition 13. There are a great many, but I will say it is a two-edged sword. You have got some property tax reduction which lowers net shelter costs, but you also have a strong move for condominium conversions. That has a very negative impact on elderly families throughout the State.

Senator DECONCINI. Thank you very much, Mr. Terner.

We appreciate very much your testimony and participation this morning.

I also want to compliment Mr. Dempster and the Sailor's Union for their innovative approach toward something new. It is something that should be looked at carefully.

Mr. Terner, we are impressed with your testimony as to massiveness of the problem here and the statistics that you cite. I am sure that the committee will give careful consideration to your testimony and that of those who appear with you.

Thank you very much.

[The prepared statement of Mr. Terner follows:]

PREPARED STATEMENT OF I. DONALD TERNER

INTRO—GENERAL COMMENTS

California's housing problems, particularly with regard to the elderly, are not unique; but they represent a severe social ill which Federal, State, and local government, as well as private industry, are trying desperately to overcome. The department of housing and community development, in conjunction with the California Housing Finance Agency, HUD, the department of aging, and various departments of local government are all devising ways to provide housing for older people which is affordable, structurally sound, and suitable and supportive to the needs of specific elderly clients. The following testimony will outline the dimensions of the housing need for older people, describe programs which are already in place to meet these needs, and finally note the gaps in existing programs for older people and suggest possible programs to fill these gaps.

AFFORDABILITY

There are over 1,270,000 elderly households living in California today. These households characteristically live in older, poorer quality housing in less desirable areas. Incomes of the elderly, both owners and renters, are often fixed and substantially lower than other owner and renter incomes in the State.

Because of the extremely high cost of housing in California (median price of homes sold in November this year was over $70,000 and more than 40 percent of all homes sold in California in 1977 sold for more than $80,000 compared to only 10 percent nationwide), housing affordability in our State has become a critical problem. The problem is exacerbated for the elderly, whose median income is only one-third that of a nonelderly household, an estimated $7,000 per year compared to an estimated $18,000 for a nonelderly household.

While 60 percent of the elderly own their own homes, their monthly payments, including mortgage payments, home maintenance, and taxes often exceed 25 percent of their income. In addition, these homes are typically older, in deteriorating condition and worth less than the homes of the nonelderly. Of the 40 percent of the elderly who rent their homes, over 67 percent paid more than 25 percent of their income for rent, compared to a statewide total of 43 percent. At least 600,000 elderly people are paying more than 25 percent of their income for rent, and the tragic result is often inadequate funds for food and nutrition.

The section 8 rent subsidy program provides subsidies for some 60,000 participants through its existing, new, and substantial rehab programs, but the need to expand this program is self-evident since only 10 percent of those needing assistance are now receiving it. In some metropolitan counties the waiting list for section 8 rental assistance has over 4,000 names, and new applicants are not even being accepted any longer. We would urge the committee to strongly recommend expanding the section 8 program to meet a more significant portion of the need for rent subsidies.

STRUCTURAL ADEQUACY

In addition to the affordability problem described above, there is a critical need for the repair and construction of housing units occupied by elderly people. It is estimated that 35 percent of the substandard housing in California is occupied by older people—275,000 of the 785,000 units needing rehabilitation.

In 1970 households with heads over the age of 60 occupied over 40 percent of all dwelling units lacking some or all indoor plumbing facilities, and the incidence of elderly persons living in units lacking adequate plumbing is double that for the nonelderly. In addition, in 1970 older people lived in 36.8 percent of all housing units built prior to 1939, although they only comprise 25 percent of the total number of California households. By reason of age alone it is clear that these homes will need rehabilitation work more frequently than newer homes.

AN URBAN STRATEGY FOR CALIFORNIA

Governer Brown's key policy document with regard to the growth of cities in California urges infill development and rehabilitation of existing neighborhoods, before, considering the expansion of urban areas beyond existing boundaries. The department of housing and community development fully supports neighborhood rehabilitation, without displacement, and has developed several programs which address housing rehabilitation.

S.B. 966—Deferred Rehabilitation Loans. This program complements other rehab programs established by the Federal Government, such as the 312 program, the community development block grant (CDBG) rehab programs, and California's Housing Finance Agency neighborhood preservation program. All of these programs are designed to assist low and moderate income owners and renters to repair their homes and remain in their existing neighborhoods if they so choose. Funded at $2 million, S.B. 966 recognizes a critical need and establishes an important precedent; but at best it can only be considered as a "drop in the bucket."

S.B. 910—Housing Advisory Service. A demonstration program recently funded to provide self-help technical assistance through local governments and nonprofit groups for persons interested in repairing their own homes. The program which is already underway on a demonstration basis here in Oakland and in the neighboring community of Hayward takes special note of energy conservation and seismic and fire safety and looks to ways to reach elderly households through participation by younger people receiving technical assistance through the program.

In addition, many area agency on aging offices provide home repair and maintenance services for older people which not only provide employment opportunities for seniors but enable them to maintain the existing homes of their fellow older Americans.

A substantial expansion of all home repair programs is essential if suitable repairs for the 275,000 units of elderly housing which require it are to be made.

RESIDENTIAL HOTELS

A major rehabilitation problem, which affects the elderly more than any other segment of the population, is the severely dilapidated condition of most residential hotels in large urban areas. A survey recently undertaken by our department, which is by no means exhaustive, indicates that there are at least 16,000 substandard residential hotel units in major urban areas of the State. Our department is working to expand California Housing Finance Agency loan programs to include rehabilitation of these inexpensive and integral parts of inner city neighborhoods. HCD would also recommend that HUD's rehabilitation rules regarding private bathrooms and kitchens be modified so that Federal money might be expended to repair rooms with shared bath and cooking facilities.

NEW CONSTRUCTION

An additional 336,000 housing units in California are so severely dilapidated that they must be replaced over the next few years. Roughly half of those units are occupied by elderly households. It is difficult to estimate how many of the additional 280,000 units of newly constructed housing would be required for older people, since figures are not available, but one incontrovertible point emerges—more new units both owner-occupied and rentals must be built to accommodate the needs of all segments of the community, including the elderly.

Since its reinstatement in 1976, the HUD 202 program has committed moneys to build 4,800 units of elderly housing throughout the State in 52 separate projects. Although few of these projects are completed to date, the 202 direct loan program is clearly one of the best programs for providing new housing opportunities for elderly and disabled people to emerge from the Federal Government. We would also urge the committee to strongly recommend an expansion of the 202 program in coming years. We would further urge the committee to seek inclusion of an $80 million appropriation for congregate housing under the 202 program, currently being deferred by the Office of Management and Budget, to be incorporated into the 1978 housing appropriation.

The California Housing Finance Agency operates a program similar to the 202 program, funded through State revenue bonds. To date CHFA has funded 29 elderly projects, including two here in the city of Oakland, providing 3,010 units of housing for the elderly. Each unit is subsidized with section 8 rent subsidies, thus making them affordable for low-income elderly residents. The program is highly successful and applicants from throughout the State have indicated an interest in participating in the CHFA direct loan program. Unfortunately the program is limited by the number of section 8 subsidies granted by the Federal Government, and we would recommend that the committee urge the allocation of additional section 8 units to the CHFA in order to provide more loans for the construction of elderly housing.

SUITABILITY

We are housers, and housers typically look to the technical aspects of housing construction when building a project. Recently, however, the department of housing and community development has begun to work much more closely with the department of aging in the development of housing which is specifically designed to meet the needs of particular groups of elderly people. Using the three phases of housing need described by the department of aging in their long range plan, the department is actively developing a continuum-of-care philosophy which will serve the elderly through a transition from people who are active to people who are frail. The three phases are:

Phase I. Preventive Phase.—Families begin to change once the family head reaches 45–50. Children grow up and the housing needs of the families change also. The department of housing and community development is planning to introduce legislation in the coming session which will create a housing counseling service which will enable older people to consult with an impartial expert on ways to improve their housing situations. The service will include roommate referral services, advice on the pros and cons of selling existing homes and moving to condominiums or apartments. The service will describe all alternatives in helping people make the crucial decisions regarding their future housing needs.

Phase II. Production Phase.—As people grow older, their physical abilities and incomes generally decline. Thus a need for well-maintained and inexpensive housing opportunities develops. This need must be filled by new production, and by expanding the section 8 program and continuing to build new units under the section 8 new construction program, the 202 program, and CHFA direct loan programs.

Phase III. Protective Phase.—Finally, as people's ability to function in private settings diminishes, it is often necessary to support older people with the facilities of nursing homes or convalescent hospitals because they lack the ability to live independently. We believe that the construction of congregate living facilities and apartment units with medical and social services easily accessible will reduce the need for 24-hour care facilities for the elderly, and would be much more affordable than traditional nursing home care.

The Department has worked closely with the project staff for the multipurpose senior services center which was funded on a demonstration basis last year by the State legislature to develop a system of services and medical attention which will enable persons to live in their own homes and neighborhoods longer than is traditionally possible now.

MARIPOSA/MONTEREY

Finally, in keeping with the neighborhood theme, I would like to describe a concept which the department, in conjunction with the Sailers' Union of the Pacific and team of experts in the fields of aging, finance, and design, is currently developing—the creation of a floating residential community for the elderly on board the cruise ships the *Mariposa* and *Monterey*.

Senator DECONCINI. I want to take a moment to introduce William E. Oriol, sitting behind me, who is staff director of the Special Committee on Aging.

Our next witness will be Lionel Wilson, the mayor of Oakland.

We will take a 10-minute break at this time while the mayor comes out. We will be back at 20 minutes after the hour.

[Whereupon a short recess was taken.]

Senator DECONCINI. The committee will reconvene at this time.

We are extremely pleased to have with us today Mayor Wilson, of the city of Oakland.

We have Charles Drasnin, president of the Oakland Community Housing Corp., and Carl Jones, president of the Congress of California Seniors.

We are very pleased to have you here, gentlemen.

Let me once again, on behalf of the Special Committee on Aging, thank the city of Oakland for their hospitality.

Please proceed, Mayor Wilson.

STATEMENT OF MAYOR LIONEL WILSON, OAKLAND, CALIF.

Mayor WILSON. Good morning, Senator, ladies, and gentlemen.

It should come as no surprise to the committee to find that Oakland's elderly population has housing problems similar to the elderly in other urban centers. The causes of the senior citizen housing shortage are too numerous to fully detail. However, I do feel that it would be to the benefit of the committee for me to highlight four or five factors that have most affected the ability of Oakland's large elderly population to find and retain safe, decent, affordable housing.

First and foremost, it should be pointed out that a disproportionate share of Alameda County's elderly reside in Oakland. While only a third of the county's total population lives in Oakland, our 66,422 people over 60 years of age constitute almost half of Alameda County's elderly population. That is approximately 47.3 percent. Furthermore, almost 55 percent of the county's elderly poor, and 65 percent of the county's minority low-income elderly, are concentrated in Oakland. Of all Oakland residents 60 years of age or older, 20 percent have incomes below the poverty level. Of this last category, 25 percent are members of minority groups.

Oakland's housing assistance plan estimates that 47.5 percent of the low-income households in the city are composed of one- and two-person elderly or handicapped families. That is, almost half of the housing needs of low-income households in Oakland are generated by little more than 13 percent of the city's population. Put more succinctly, the demand for senior citizen housing in Oakland is greater than the demand for similar types of housing in our suburbs.

A second contributing factor to the housing problems of the elderly is inadequate income. Upon retirement, the elderly experience a sharp drop in income. With the enormous inflation rate of the past 10 years, the buying power of the elderly has been drastically reduced. For the fixed-income elderly, the situation grows worse with every passing year. Despite changes in mandatory retirement laws, the popular prejudice against hiring older persons and a scarcity of part-time employment restricts the ability of the elderly to supplement their retirement income and thereby pay for decent housing.

In fact, it has been estimated that more than 80 percent of the so-called problems of the elderly are income related. Older persons with adequate incomes can resolve the age-related problems associated with nutrition, transportation, public safety, health, and particularly housing. It is not unusual to find low-income elderly persons paying more than 50 percent of their monthly income for rent. And it does not appear that any relief will be forthcoming in the near future. Despite the major property tax savings received by landlords with the passage of proposition 13, the city has received complaints from senior citizens who have had their rent increased up to four times the past year. And although the problems of the older renter are the most dramatic and traumatizing, the elderly homeowner does not escape unscathed. Many older homeowners are forced to literally watch their homes deteriorate around them because they are unable to perform or cannot afford basic home maintenance and repairs.

Inadequate supply is a third factor that severely handicaps the senior citizen in his search for decent housing.

Oakland's stock of affordable housing is declining. Almost 7,000 housing units have been demolished over the past 10 years, an amount almost equal to the city's total assisted-housing stock of approximately 8,000 units.

Further disrupting the housing supply for the elderly is the trend toward the conversion of multifamily residences into condominiums. The impact to date has been felt by the elderly who cannot find comparable housing if they are unable to purchase the converted unit. In areas with low vacancy rates, conversion removes existing apartment buildings from the rental market, and thus causes a shortage of rental housing as demand outstrips supply. This forces rents to rise and puts pressure on the rental market as a whole.

In addition to supply and demand factors, and inadequate income, our senior citizens must also cope with a highly competitive housing market.

In the competition for housing between young persons just starting households, students, single professionals, and the elderly, the older person invariably loses. Their income does not allow them to meet increases in rent, or to adapt to different lifestyles and/or neighborhoods.

Lower income older persons have responded to this competitive disadvantages by seeking housing in residential hotels located for the most part in downtown Oakland. Because of their fear of crime, they are often unwilling to venture onto the streets and are thus cut off from normal social activities and access to social, medical, and nutritional services. A picture emerges of the older renter pushed from the peripheral suburban areas to an urban area with rising rents and increased demand for housing. Housing alternatives for the elderly renter thus becomes more severely constrained.

The city of Oakland's office of community development has responded to many of the forementioned housing problems with a variety of programs.

For rehabilitating our old and existing housing stock, the city offers the home maintenance and improvement program which provides rehabilitation loans for low- and moderate-income homeowners at 3 percent interest. For those homeowners who cannot afford an interest-bearing loan, the city offers HMIP, deferred payment loans. The deferred-payment loan is interest free and payment is required only upon transfer of ownership. In select cases, grants up to $4,500 are available to the low-income homeowner for health and safety repairs.

Complementing the rehabilitation loan program is the home repair program. CETA-trained personnel utilizing materials purchased through the grant program mentioned above correct health and safety problems associated with deferred maintenance. It is estimated that 85 percent of the recipients of the service are senior citizens.

Section 312 loans are also available at 3 percent interest for property owners in urban renewal, homestead and neighborhood strategy areas.

Other city of Oakland initiatives aimed at alleviating some of the housing-related problems of the elderly are the proposed downtown multipurpose senior center and a temporary moratorium on condominimum conversions. The moratorium for its part is designed to suspend conversions pending the adoption of an ordinance that will maintain the ratio of converted units to rental units.

There are several options that should be considered in the near future as further means of alleviating the plight of our urban elderly.

Land banking. Good sites for elderly housing are becoming scarce. As funds become available, it would be wise to acquire prime sites for the future development of senior citizen housing. These sites could then be sold to nonprofit developers as Federal funding for the construction of housing becomes available.

Rehabilitation of residential hotels. Downtown residential hotels are becoming an important resource for the urban elderly. Low-interest rehabilitation loans are made available with the stipulation that rents increase no faster than the cost of living would help insure our elderly safe, decent, reasonably priced housing in our downtown areas. This would be a positive step toward insuring that that last refuge of the displaced senior citizen is not eliminated.

Supportive services. There is an increasing need for facilities for the elderly that provide homemaking and shopping assistance, meals, and other nonmedical aid. The Congregate Services Act of 1978 will permit the development of housing for the elderly with these types of services incorporated.

In conclusion, the fact remains that regardless of the imagination devoted to program development, the efficient utilization of volunteers or the cutting and slashing of bureaucratic waste, progress in meeting the housing needs of Oakland's elderly will be slow without an increased Federal commitment. No matter how Oakland responds to the housing problems of the elderly without a serious reordering of national priorities and increased spending at the local level, things will not improve. The general housing situation for older persons will further deteriorate.

Many of the city's housing programs are oversubscribed or have been temporarily suspended because of the overwhelming demand for housing assistance. There is no hidden technique or administrative procedure that can take the place of federally financed housing assistance programs. The quality of life for our senior citizens in the near and distant future will depend in large part on Washington's commitment to housing assistance programs for the aged. In Oakland we look forward to working in partnership with the Federal Government to make our city a better place for all of our senior citizens.

Senator DECONCINI. Mayor Wilson, thank you very much.

Let me go on to the other witnesses before we get into the questions.

Mr. Drasnin, you may proceed, please.

STATEMENT OF CHARLES G. DRASNIN, PRESIDENT, OAKLAND, CALIF., COMMUNITY HOUSING, INC.

Mr. DRASNIN. Mr. Chairman, it is my purpose to discuss what happens to the elderly who are displaced because of local redevelopment. Our experience in Oakland is a classic case history.

In late 1972 a number of local community organizations became aware that in the planning for the city center redevelopment project no plans were being considered to develop replacement housing for those persons to be displaced. We also became aware that the redevelopment agency was seeking a waiver from HUD on section 105-H, replacement housing requirements, under the Federal Housing Act.

We began a series of meetings with the redevelopment agency and the city council during the course of which they were informed that we were prepared to bring legal action to protect the rights of the people to be displaced. I should indicate here that in the San Francisco Yerba Buena project that city has suffered a series of long and costly delays due to legal actions brought to secure replacement housing and that staff of the Oakland agency were painfully aware of the possibility of the same thing happening here.

We made clear our support for the city center project, but we said most emphatically that with a rental vacancy rate of less than 5 percent and a waiting list of 24 months in existing senior citizen housing apartment buildings, we were determined that new replacement housing be made available.

Finally in May 1973, the city council instructed agency staff to work with the community groups in developing a program for the new housing. By October 1973, we had agreed on the number of units to be developed: 170 senior citizen units, 100 units in congregate housing for singles who lived in the dilapidated hotels that were wrecked, and housing for 30 families. It should be noted that many of the residents of the area did not wait for relocation assistance, but began moving out on their own. Where they went is, of course, not known.

We then incorporated OCHI as a community nonprofit organization and were given the charge to find sites, develop architectural plans, hire consultants, and plan the projects. But what OCHI needed now was a disposition agreement with the city authorizing us to go ahead. This is where we entered the bureaucratic maze. Although agency staff was supportive, we had to contend with a number of factors—the death of the executive director of the agency, the reorganization of the agency, the resignation of the director of the agency, the election of a new city mayor and council members who were supportive of our programs, the resignation of the city manager, and the ever-present maze.

Draft after draft of the agreement was drawn and changes made. Finally with proposition 13 about to be passed, we accepted a proposal from the new city manager that the $3 million in accumulated tax increment funds, plus interest accrued, would be all the moneys to be made available by the city, plus the city pledged to assist in securing funding and section 8 rental subsidies.

Finally, after more than 5 years, on October 10, 1978, we have secured a signed agreement, and now the work begins anew and in earnest for OCHI, which is now the legal sponsor, developer, and utimately the owner of the planned project.

Mr. Chairman, my statement here is not complete. The tone upon which I end is too optimistic in view of the reality of the situation today. Only recently have we become aware of the fact that the Office of the Budget and Management and the national office of HUD are in conversation and discussing the proposed 10-percent cut in their budget. Now, the proposed 10-percent cut can take many forms. One of the forms is that there will be cuts in the insured programs, there will be cuts in the section 8 programs, the subsidized housing programs. If these cuts take place and these programs are not made available to us, our hopes and plans for the development of this housing is all in vain. We will not have housing in Oakland; we will not have

this replacement housing in Oakland if HUD is not in a position to render us support as necessary. I think the charge remains with your committee to do what you can on a national scale and see that HUD is able to carry out its duties. We need more, not less, support. I think you should carry this message back with you.

Thank you very much.

Senator DECONCINI. Thank you very much for your testimony.

The next witness is Carl Jones.

STATEMENT OF CARL JONES, SHINGLE SPRINGS, CALIF., PRESIDENT, CONGRESS OF CALIFORNIA SENIORS

Mr. JONES. Mr. Chairman and members of the committee, my name is Carl Jones and I am president of the Congress of California Seniors, an organization of senior citizen clubs in California.

Most seniors are on fixed incomes and they are faced with increases in costs which price them out of many necessities of life.

Older people who thought they were well prepared for their retirement are faced with double-digit inflation—increased costs of food, clothing, medical services, interest, and taxes, which have brought them to their knees. The thought that they might be obligated to charity is a black mark against our society.

Medical costs often cause the expenditure of life savings for that which used to be a simple illness. If the seniors are to enjoy any kind of retirement, there must be some controls on the costs of medical care. It is apparent that these controls can only be provided by legislation at the national level.

As you are well aware, there was a proposition 13 in this State that was supposed to have been a mecca for the retired people. For some reason this project is not working out the way the suede shoe salesmen explained it.

Homeowners were supposed to benefit above all others. In fact, owners of income-producing properties, 65 percent of former property taxes, are the primary beneficiaries. Within another 3 to 4 years, homeowners will be in the same old groove. Some local governments have increased fees for services in lieu of taxes.

This tax shift passes onto the middle-income homeowners and renters the major share of the tax burden.

Now interest rates have been increased by about 25 percent in 1 year. This charge for the use of money further deprives seniors on fixed incomes, as well as others, of a needed and adequate living standard. In El Dorado County there are 70,000 parcels, 32,000 of which have sold since the 1975 date and for that reason alone are on the old tax schedule.

The renters were promised relief by the proponents of proposition 13. In fact, they have received no benefit whatsoever, and in many cases rents have been raised. Most renters, and especially those on fixed incomes, can ill afford such increases. A report on San Diego County mobile home parks is fairly representative of the problems statewide.

A hasty survey of parks built within the last 2 to 14 years reveals that family parks charge more rent than adult-only parks. Effective on January 1, 1978, the lowest space rental was $107 per month and the highest was $225 per month. In every case electricity was extra and

gas meters were installed in many parks during the year, whereby the gas became an extra billing charge. No credit was given for the gas charge which had been included in monthly rent. Several parks have imposed a trash pickup charge recently. Again, no credit.

After proposition 13 passed, the State took surplus tax money and bailed out the counties. About 45 percent of the surplus tax money was initially paid by renters who had also paid increased rents to offset landlord taxes.

The renters paid excessive sales, State income, tobacco, alcohol taxes, et cetera, which made up the surplus.

These surplus taxes were used to offset the loss under proposition 13 in revenue from property taxes to the counties.

In addition, there are increased fares for municipal transportation and parking in the city- and/or county-owned facilities. Some of the counties are reducing tax-supported accommodations for senior citizens and their programs. The renters have been left out of tax relief.

Another area seriously affecting seniors is the conversion of rental units to condominiums and forcing renters to purchase or move out. Areas with practically a zero vacancy, such as San Diego, Los Angeles, Santa Barbara, and the San Francisco bay area, present serious problems. Renters are frequently required to pay substantial purchase prices in order to maintain a roof over their heads.

There are approximately 10 million people renting in California. There are approximately 1,500,000 senior citizens in the State who are renters. Thousands of rental units in California are owned by persons not citizens of the State and, in many cases, not citizens of the United States.

There is an urgent need for low-cost rental housing and for low-cost space for mobile homes. The logical solution would be the State and/or the Federal Government to provide adequate, reasonable, low-cost housing and mobile-home parks for the use of the citizens.

When a person on fixed income is faced with exorbitant increases in interest, exorbitant increases in food, clothing, medical, and hospital costs, exorbitant increases in cost of living, added charges for transportation use fees, admission charges, et cetera, it is quite evident that something has to be done to correct the situation. That correction is overdue. It must be done immediately, not next year. To delay will force more of the population into Government-provided programs which will do violence to the entire economy.

Senator DECONCINI. Thank you, Mr. Jones, Mr. Drasnin. We appreciate your comments. I get the message, but let me ask you a question about that message. It seems to me also that one thing you did not touch on was the inflation pressures that hit people on a fixed income. I happen to believe that one of the biggest causes of inflation is the deficit spending the Federal Government has indulged itself in for a number of years. Where do you think the priorities should be, in your judgment, either one of you, as to the shifting of Federal expenditures? Should we shift away from the military? Should we shift it away from education? How do we meet this urgent need that you point out that is present and getting worse instead of better?

Mr. JONES. There should probably be a shift from military. I hate to put myself in the position of speaking for those that know how to

run a military establishment, but there is a lot of money going into that particular area and there are a lot of other supplemental programs for various people, including large industry. If it comes down to whether a person eats and lives well and there has to be a priority, then the priority should be made in favor of the senior and not in favor of the other establishments. Too long or too many times when there is a cut in programs the seniors immediately get the cut. This is going on now in this so-called operation to implement proposition 13. The truth of the matter is that I doubt if anybody knows what the hell proposition 13 means. Every day they come out with a different solution. It always hurts those on a fixed income worse than it does the others. Naturally everything that I have mentioned has to do with cost of living.

Mr. DRASNIN. Mr. Chairman, I think you have asked a very important question that is basic to the whole functioning of our society at this time. We have responsibilities as a people. The question is where shall our priorities go? It is not that we don't have money. Nobody, I think, in his right mind will say that we are a poor nation, that we don't have the resources to do that which must be done. The question is how do we allocate our resources.

Let me ask you this, Senator. How can we, in all decency, speak in terms of abridging and curtailing the development of social programs that our people must have and, at the same time, blindly accept the notion that we can spend all or we should spend all this money that is now being made available to the military. I am not a military person. I, no less than many other people, can judge this, whether or not the military is doing the right thing. I submit to you, and I think every American recognizes that if we had the necessary forces at this time, military force, to maintain the integrity of our country, and we do have, how many times must we be prepared to kill our presumed enemies? I think we have to at this time consider that we have to be aware of the very important responsibility that we have to our own citizens and direct our priorities in that direction.

Senator DECONCINI. Thank you very much.

This is constantly a struggle that those of us in Congress have, because of the military and nonmilitary are constantly telling us that we must maintain our technological superiority in order to maintain the quality of life that we have, even though it is disappearing certainly in the area of aging. I struggle with that each year because I am cognizant from this hearing, and other hearings, that what you are telling us is so true. The needs are there and we can't afford to reduce the Federal commitment, nor can the States and the local governments afford to reduce their participation in funding good quality programs for the elderly. Your message is clear, gentlemen. I thank you for your time and your participation today.

The next panel of witnesses can come forward. Wilbur Hamilton, Glenn McKibben, and Gordon Chin.

Gentlemen, let's proceed. If you can, limit your remarks for us to our time constraints of 5 to 7 minutes. It would be helpful.

I will start with Mr. Hamilton, executive director, San Francisco Redevelopment Authority.

STATEMENT OF WILBUR W. HAMILTON, EXECUTIVE DIRECTOR, SAN FRANCISCO REDEVELOPMENT AUTHORITY, SAN FRANCISCO, CALIF.

Mr. HAMILTON. Thank you very much, Senator and members of the staff.

The San Francisco redevelopment agency's housing programs to a great extent are designed to fit the needs of people that reside or did reside in the areas prior to redevelopment. If the area was mainly populated by families, it follows that the housing program will include a large component of family housing. If the area was or is populated by the elderly, the housing program will include a large component of elderly housing. And, of course, if the areas are mixed, the housing reuses will be mixed.

I should also point out that San Francisco's redevelopment agency operates on less than 4 percent of the total land area in San Francisco. Our housing programs are also designed to serve the income levels of the resident population. That is why Hunters Point has a large component of lower income family housing and YBC has a large component of lower income elderly housing. It is true that that elderly housing program is as a result of long and difficult legal struggles that could have and should have been avoided by appropriate planning on the front end.

Currently the agency is the only city producing agent developing significant numbers of subsidized housing units for families. The private sector, operating through OCD, produces mostly elderly housing. The housing authority in recent years has produced mostly elderly housing. Without the agency's program, lower income families in San Francisco would be going unserved.

Notwithstanding we have managed to devote a significant percentage of our total housing program to elderly needs and have made a considerable contribution to the city's total supply of subsidized housing for the elderly.

We have done an effective job of getting low-to-moderate income housing for the elderly built in San Francisco, both inside and outside of redevelopment areas. That has to do with the unique settlement of litigation in YBC which gave us the authority to find and provide units outside our redevelopment areas. We have more than 2,800 units so far, with another 400 under construction and another 825 in the planning stage.

In fact, low-to-moderate income housing for the elderly built in San Francisco accounts for 30 percent of our subsidized housing program inside renewal areas. We could do more and we would like to do more. The only way that can happen is for the city to continue a sensitive but active use of the tool of redevelopment. We proposed a new coalition and working arrangement between neighborhood and community groups, housing development corporations and the agency under which we would provide technical assistance to these groups to avoid the inordinate administrative costs of staffing each of these groups in every neighborhood. We would become a technical resource center providing that assistance.

An example of this is Nihonmachi Terrace in the western addition area A–2 project, which combines low-to-moderate housing for the

elderly along with families and does it in a way that provides privacy for both—neighborhood and community when each desires.

At present we are planning to build 100 to 200 units of low to moderate senior citizen housing under the section 8 program, complete with kitchens, laundry, and recreational facilities in Hilltop Plaza, atop Hunters Point. All told, 1,613 homes will be built in Hunters Point.

This is appropriate because the agency's rehousing caseload at the Hunters Point project involved only 63 elderly at the time. Of that 63, 38 moved into new Hunters Point housing under either section 8 or 236, five into new western addition housing, and 20 outside of renewal areas. The 20 who moved out can elect to return should they exercise their certificates.

The section 8 program is favorably tilted toward profit-motivated developers of housing for the elderly who can earn greater profit from tax shelters and lower risks. The section 202 program is a good vehicle for solvent, well-established nonprofit corporations. Under either of these programs, developers of elderly housing can easily be attracted so long as there are sufficient Federal subsidy dollars.

As a demonstration of the tremendous need for further subsidy dollars, on or in February 1978, when approving the assignment of the city's 1978 section 8 allocation to projects, HUD placed strict limits on the number of elderly housing projects that could be funded because it felt the city's program was already too heavily weighted in that direction. In the spring of 1978, a HUD offering of section 8 family units was only marginally successful. Unexpectedly in July, HUD received additional section 8 money for San Francisco and agreed to release it for elderly housing.

The HUD offering of 245 section 8 units for elderly housing in July 1978 elicited proposals from 18 developers encompassing or proposing 1,500 dwelling units. Most of these proposals were good and many were outstanding, but because only 245 units could be funded, 16 proposals, or some 1,120 units, had to be turned down.

We would suggest to you that as a public entity involved now in the development of housing for all income levels in the city, that an appropriate level of Federal funding is essential if we are to meet these housing needs.

Senator DECONCINI. Thank you, Mr. Hamilton.

I also want to welcome Abe Papkoff to our panel.

Mr. McKibben, you may proceed.

STATEMENT OF GLENN B. McKIBBEN, EXECUTIVE DIRECTOR, COMMISSION ON AGING, SAN FRANCISCO, CALIF.

Mr. MCKIBBEN. Senator DeConcini, staff members of the Senate Special Committee on Aging, citizens of the bay area, as the director of an area agency on aging, it is my purpose today to remind you of our mandated responsibility to provide for the housing needs of the elderly, to apprise you of the local condition, and to suggest that despite the mood of austerity developing in our country we cannot afford to turn our backs on these needs.

Our responsibility is clearly set forth in title I of the Older Americans Act of 1965. Under this act, "it is the joint and several duty and

responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives * * *" Housing, after income and health, is listed as the third ranking priority among 10 objectives. Thus, the mandate reads that we must help provide "suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford."

In San Francisco, 13 years after these words were written into law, we cannot escape the irony of a situation wherein the city joyously lays down a red-carpet welcome to thousands of visiting senior citizens who stay at the best hotels, eat in some of the finest restaurants and enjoy a wide range of entertainment while only a stone's throw away from these tourist centers thousands of our local senior citizens live in virtual captivity in the tenderloin, crammed into one of the most ghastly and dangerous ghettos for the aged in this Nation.

I would just like to indicate to those present that I was part of a tour that Senator DeConcini and his staff took yesterday in the tenderloin.

The housing need in San Francisco is critical. The social climate is explosive. And, still, there does not exist a comprehensive citywide needs assessment of elderly housing supported by scientifically collected hard data. Nevertheless, the housing need of San Francisco's elderly is perhaps the most highly visible need of any unassessed need I have ever encountered, plainly apparent to all segments of the population. The daily experience of citywide and neighborhood social agencies and groups confirms what is self-evident, that many problems of the aged can be traced to the taproot of insufficient or poor housing. Further evidence of this awareness is the recent formation by some 45 nonprofit organizations and agencies of San Franciscans for Better Housing, a vehicle originally coordinated by the Catholic Social Services agency to search for solutions to the housing problems of the low-incomed and the elderly. The commission on aging is cooperating with this new effort and one of our staff members serves on the organization's steering committee.

A housing crisis for the elderly does indeed exist in San Francisco. Elderly people on low or moderate fixed income are digging into their food money to pay a disproportionate amount of their income on highly inflated rents that continue to inflate. The commission's information and referral service receives a monthly average of 300 telephone calls that are related to housing needs of the elderly. As property speculation continues unabated, the statistics of tragedy mount in our office and in all agencies dealing with the elderly. They are the most helpless victims of the housing shortage.

Elderly tenants, some who have lived in the same apartment 20 or 30 years, are being forced to move because of rent increases as high as 100 percent. Many landlords are enforcing these drastic rent increases with eviction proceedings. In the first 5 months of this year, landlords have gone into court 649 times to seek evictions, with 159 actually being carried out. Since then evictions have escalated and the sheriff's department reports an average of 40 evictions per week. Over the past 2 years, evictions of senior citizens have risen 400 percent. Is this not

the ultimate indignity to inflict upon our senior citizens. Symptomatic of this deplorable situation is the emergence of a new business enterprise, professional evictors, who, for a flat fee, handle the entire matter for the landlord. I have an exhibit from local newspapers illustrating this development. To the elderly, tenant eviction is a traumatic experience, sometimes irreversible. It is interesting to note, in passing, that in the country of West Germany it is illegal to terminate the residential lease of a retired elderly person for any reason.

The cruel fact of life in San Francisco is that the evicted or displaced older person on fixed income has nowhere to go, no suitable, acceptable alternative—the tenderloin is not a viable option—not for an elderly person trying to preserve his life and dignity. There are no programs to adequately provide for the victims of this housing crisis, no emergency program or facility to provide a senior citizen with safe, sanitary, and comfortable quarters for an unlimited period of time to adjust to the dislocation.

Of San Francisco's population, 22 percent is age 60 or older, an increase of 3.6 percent from 1970 to 1976, and all projections indicate the rate of increase will continue and escalate despite the increasing rate of displacement. More than 65 percent of the elderly here are renters, compared to 35 percent renters statewide. The elderly pay from 35 to 48 percent of their income for shelter unless lucky enough to live in subsidized housing as compared to an average of 22 to 28 percent by the general population. On an SSI income of $306 per month, this leaves little for food or other necessities. Outside the tenderloin, a virtual zero vacancy factor exists for low-income elderly seeking decent housing they can afford. In the general market, because of the lack of sufficient new construction, the vacancy rate for housing is about 2 percent. About 44 percent of the units available to the elderly are single rooms without kitchens in high-crime, low-security areas. At least 70 percent of San Franciscans who need better housing are elderly.

While the San Francisco Housing Authority is the city's largest provider of senior housing, 1,677 units in 19 buildings specifically designated for seniors and handicapped persons, the demand far exceeds the supply. Often the location, design, and services are undesirable and inadequate. About 60 percent of these buildings are located in the tenderloin, south of Market or inner Mission districts. The largest of the buildings, Clementina Towers with 276 units, has for years stood in stark isolation south of Market surrounded by the redevelopment no man's land of Yerba Buena, virtually under siege by the most unstable, socially disoriented elements of the city's displaced population—the elderly living in fear in an environment of crime, drugs, muggings, and rapes.

Because of the concentration of public senior housing in the central areas, the few private developers of senior housing often tend to look to the same neighborhoods for building sites. Part of the problem in San Francisco is this stratification. We need to open all desirable residential areas to our senior citizens. At any given time the housing authority has more than 3,000 elderly persons on the waiting lists for apartments. This constitutes about 60 percent of all San Franciscans on the housing authority's waiting list. Persons on this list have waited as long as 3 years for a vacancy. Another 1,500 to 2,000 elderly are on waiting lists for various types of nonprofit housing. The private sec-

tor, for the most part, does not maintain waiting lists, despite requests from the elderly.

Out of some 82,000 households determined to be eligible for some kind of programmatic assistance, 27,000, or 33 percent, are headed by elderly persons. An estimated 14,000 to 17,000 elderly persons are trapped in the tenderloin, many living in high structures lacking elevators, without private baths, and no cooking facilities.

With current construction costs of new housing in San Francisco coming to about $40,000 per unit, the city is rapidly becoming affordable only to those households where everyone is employed to help pay the rent or mortgage payments. The only American city with higher building costs is Anchorage, Alaska. And as the rental squeeze continues in traditional senior residential areas, such as the Richmond and Sunset districts, we see a sociological disbalance taking place along two lines of movement in opposite directions.

The "invisible" exodus to other counties or to the few outlying fringe areas in search of the holy grail of low rents, and the visible reverse exodus to the heart of the city, to the tenderloin, and other central areas, where a form of life can sometimes be geared to daily, weekly, or monthly rental rates.

In any case, there appears to be no doubt that the elderly are the primary victims of what appears to be an unofficial master plan to change the character of San Francisco from a city of gracious living for all segments of the population, to a monolithic service unit for the tourist industry and a paper-shuffling headquarters for multinational corporations. The elderly and low-income persons are thus bereft of housing options, deprived of a sociocultural environment of their own choosing.

What can we do? In the short term, the overriding needs are: Legislation to protect the elderly from eviction, stop the evictions and the patterns of outrageous displacement, and an immediate infusion of direct rental assistance to the elderly. In another time we provided a food stamp program to needy persons who could not afford proper nutrition. Perhaps the time has arrived for some sort of rent stamp program for the needy elderly. The existing structured approach to rental assistance through section 8 subsidies are not enough to meet the need—new vehicles are needed.

In the long term, we must first recognize that no existing Government programs were designed to cope with the present housing crisis. The linkage between rhetorical, and even statutory commitment, with the pursestrings is essential—this, despite the proposition 13 mentality that would curb all social programs regardless of need. But let it be understood that housing is not a social program. It is an obligatory investment in the economy, in the system, in the present and in the future.

Surely, if the public sector is to be restrained and limited in its spending for public good, we must look to the private sector. In this respect it is worth looking into the feasibility of enacting mandatory housing investment programs, such as exist in certain European countries, notably France, where the private sector carries the burden of housing development through such mandatory investment programs. A logical source of such investment funds, among others, is the approximately $145.6 billion in private pension funds now being administered

through decisions of a tiny fraction of the banking institutions, with little or no acknowledgement that these huge funds are legally the property of workers who paid into them.

Meanwhile, let us explore the possibility of appropriating funds to help capitalize local public/nonprofit senior housing corporations for new construction and research and development. Local tax policies should also be encouraged through the leverage of Federal funds to block-grant moneys for such housing corporations. Top priority in the disposition and/or conversion of surplus Federal, State, and local lands should be given to the development of housing for the elderly. Not to be overlooked is that the elderly also need legal protection against being displaced through the invidious process now underway in San Francisco; that is, the conversion of existing rental units to condominiums.

In conclusion, permit me to make these observations. San Francisco's elderly are not a homogeneous group. They are composed of individuals who need a vast complex of new housing appropriate to different stages of the aging process, from conventional single family units to multiunit congregate living arrangements with full supportive services. We don't want to replace an old ghetto with a new ghetto. The statistical solution of increasing the housing stock is not enough. San Francisco needs a demographic resculpturing; entire areas must be reshaped to accommodate the elderly within a mixed environment. We must free the elderly from the vicious procrustean bed of the inner city and start reshaping the physical environment with sufficient housing options to serve their human needs. We should create senior living centers with the same community fervor that creates shopping centers.

I thank you very kindly for your attention and for the opportunity to air these views.

Senator DeConcini. Thank you very much.

We will now hear from Gordon Chin, director, Chinatown Neighborhood Improvement Resource Center.

STATEMENT OF GORDON CHIN, SAN FRANCISCO, CALIF., DIRECTOR, CHINATOWN NEIGHBORHOOD IMPROVEMENT RESOURCE CENTER

Mr. Chin. Thank you. My name is Gordon Chin and I am the director of the Chinatown Neighborhood Improvement Resource Center.

We are a community planning organization working on housing, open space, community centers, transportation, and public housing problems in San Francisco Chinatown.

One of the major reasons the resource center was established was to address issues such as displacement, which affect all of these problem areas. We came to realize that the impact of excessive commercial expansion, property speculation, foreign investment, and financial district encroachment were all contributing to the loss of housing, open space and small businesses in Chinatown, driving up both residential and commercial rents, and making it very difficult to develop new housing.

As such, we are faced with a very unique displacement problem in Chinatown. We do not have abandoned housing and we do not have a lot of Victorians. Instead, we are faced with a very real threat to the future of our residential community. The problem of displacement is

especially a hardship for our elderly. There are 10,000 elderly in the Chinatown area who lack the economic, cultural, and language mobility to move out.

In the past 3 or 4 years, displacement pressures have forced our existing elderly to choose between doubling up in already overcrowed and unsanitary hotels, moving into other poor areas such as the Tenderloin, or staying and enduring excessive rent increases.

Speculation has led to tremendous rent increases in Chinatown. The past few years have seen land values in Chinatown approach $200 a square foot. We are probably the most expensive ghetto area in the country. Our proximity to high-income areas such as Nob Hill, Telegraph Hill, and Russian Hill, certainly do not lower the property values in Chinatown. There has been widespread concern that foreign investment has induced some of this speculation. However, it is very difficult to determine because very rarely do property transactions list the actual buyers of property.

One thing is clear, though. The intense competition for Chinatown's 15 square blocks of real estate has created an almost impossible market situation where realtors have told me that there is no such thing as fair market value.

About 40 percent of our property owners are family and fraternal organizations who place an intrinsic cultural value on property ownership. In general they are a better class of owners than the individual owners in Chinatown. Yet they are also feeling the squeeze and when speculators come in, everybody's taxes and everybody's rents do go up.

One case study which I feel exemplifies some of these problems, involves a building which formerly housed 149 single rooms, and 10 storefronts. In October of 1977, the building was sold for $1.5 million cash. The new owner proceeded to convert 30 ground floor units into sewing factories, evicted those residential tenants, some of whom moved upstairs at average rent increases of $40. The owner then put the building on the market for $2.4 million in May of this year.

The remaining upstair units, mainly occupied by elderly men, still lack heat, adequate wiring, and hot water. Significantly, this particular landlord, who owns a total of eight buildings in Chinatown, has never sold off properties before and has never been a speculator as such. He has remained a contented slumlord and millionaire.

We feel that his decision to sell the building was a direct result of a speculative real estate market in Chinatown. He may be looking for a buyer from the Orient. Even with the rent increases, the building has a negative cash flow. We know the problem is serious when new buyers see their primary financial gain through resale value. If the building is sold, the new owner will undoubtedly raise the rents again.

Commercial development pressures have also intensified in the last few years. We live in a community with less open space per person than any other area of San Francisco, yet a few years ago some local businessmen tried to put an underground garage at our only public playground. We live in a community where the waiting list to get into public housing is 20 years for a family unit. Yet last year a plan was raised to convert all of the ground floor units in the projects to commercial storefronts, utilizing the public housing courtyards as open air shopping malls. Chinatown already has the highest residential

density outside of Manhattan. Yet every year or so some businessmen advocate raising height limits on Grant Avenue so that high rises can be built.

Chinatown's 15 square blocks now contain 14 financial institutions and 42 jewelry stores. We are losing many groceries, small restaurants, and repair shops. Commercial rents on Grant Avenue go for $1–$2 per square foot, with public auctions held for leases. Often the winner of these auctions pays front money. One storefront went for $20,000 just for the rights to the lease. In the previous case study I mentioned, after community people criticized the owner for converting residential space to commercial use, the owner offered the space to one of our social agencies serving the elderly, with the "minor request" of $40,000 up front.

Some people, particularly local realtors, tell us that the commercialization of Chinatown is inevitable—that big money is coming in and there is nothing we can do about it. A more common reaction is one of confusion and frustration in confronting so-called private property rights. This is particularly true for the business community. On the one hand, their own small businesses are being displaced. On the other, there is a distrust of government control over private development.

In terms of community education, we've tried to raise a number of operating principles for consensus building. The primary of which is that Chinatown must be maintained as a mixed use residential community. Second, that commercial growth must be neighbohood serving and not displace tenants. Third, that Chinatown must be involved in development decisions that occur in surrounding areas such as Nob Hill, North Beach, and the waterfront. Related to this principle is our belief that new housing with supportive social and commercial services must be developed in other areas of San Francisco. And last but not least, that government at all levels must make a commitment to allocate funds and adapt programs to meet our unique needs.

We have worked on a number of projects to address these principles. We have researched ownership, speculation, and tax trends in Chinatown. For instance, we have determined that Chinatown property owners will save at least $2.5 million in taxes due to Jarvis-Gann.

We are advocating to HUD to waive section 8 guidelines so we can feasibly plan rehabilitation of our 132 residential hotels. Given the high density and low vacancy rate in Chinatown, to impose HUD requirements for separate bathrooms and kitchens would enable rehabilitation only at a great loss in total units. We do not yet have the new housing which could serve as relocation resources for rehabilitation.

We are advocating to HUD to relax seismic requirements which are seriously hindering the financial feasibility of our ongoing, existing, new construction projects. The contradiction here is that Chinatown residents already live in the most seismically dangerous neighborhood in the country, with most of our buildings of brick-masonry construction.

We've set up our own entity, the Chinese Community Housing Corp., to acquire any land-bank sites for new construction, as the city agencies have not been able to acquire property for housing.

We're working on a comprehensive historical survey which will evaluate Chinatown buildings for historical significance and Chinatown's potential for historic district designation.

We have worked with other groups in the city to implement, thus far unsuccessfully, such measures as an antispeculation transfer tax, a renter rebate initiative, an antidemolition ordinance, and efforts to prevent the conversion of rental housing to condominiums.

In summary, what Chinatown needs is an entire range of resources to combat displacement, including effective land use and speculation controls, and a Government commitment to fund and adapt programs to suit our unique needs.

I have two last comments to make. I think it is significant that this series of hearings by the committee was spurred by your inquiry into the International Hotel situation last year. The hotel still stands. We are continuing to work toward the maintenance and rehabilitation of the hotel for elderly housing.

Last, I would like to echo Mr. Hamilton's point that section 8 allocations are sorely needed in Chinatown and in San Francisco. The major project that was approved in San Francisco recently for section 8 is in the waterfront area and we do support that project. However, we do realize that much, much more is needed in the entire city.

Thank you.

Senator DECONCINI. Mr. Chin, thank you.

I would like to ask you and Mr. Hamilton just a quick question as to a particular clause in Mr. McKibben's statement. He indicated that there appears to be no doubt that the elderly are the primary victims of what appears to be an unofficial master plan to change the character of San Francisco from the city of gracious living for all segments of the population to a monopolistic service unit for the tourist industry, et cetera. That is an interesting observation from someone who is so close to the particular problem. Do you think that there is a master plan, or is it just coincidental that these things are happening in the free enterprise system?

Mr. CHIN. I don't know if people are meeting in smoke filled rooms to develop the plan. I do know that by default we have lost a tremendous number of housing units for the elderly in the last 10 years. Official records by the city planning department show that in the North Beach-Chinatown area there has been a net loss of around 700 housing units in the last 10 years. However, that does not take into account the fact that many of the new construction projects that have occurred have been luxury high-rise condominium projects. So the actual net loss of low-income elderly units is tremendous. It is probably closer to 3,000 to 5,000 units that we have lost in the last 10 years.

I think the argument can be made that we have lost these units sort of by default, since we have not been able to land-bank sites, to acquire sites for new housing for low-income people. The Government agencies have not been able to move quickly enough. Therefore, the private sector has moved in and built a lot of condominiums. Even market rate housing is very difficult right now in San Francisco, and middle-income families have been moving out.

Senator DECONCINI. Are you saying that the local government needs to attend more to responding to these needs so that the speculative market won't be so tempting? Is that what you feel ought to be done?

Mr. CHIN. I think the Federal Government has an obligation to provide a substantial amount of resources both in terms of block-grant moneys and section 8 subsidy units. I think the local government has an obligation to move quickly enough to acquire sites when they become available.

Senator DECONCINI. So if the resources were there, then the responsibility shifts to the local government to put it into elderly housing?

Mr. CHIN. Right.

Mr. Hamilton mentioned that we need to develop innovative mechanisms of neighborhood development housing corporations. We have developed such a corporation in Chinatown. The city has to be flexible to work with neighborhood base organizations in order to acquire property and build new housing.

Senator DECONCINI. Mr. Hamilton, would you respond to that, please.

Mr. HAMILTON. I think the point made by the speaker to my left is well taken. With respect to the agency's involvement in the provision of housing for the elderly and the necessity to avoid the circumstances he described, I would first like to point out that in the areas where we operate we are under charges for having just done the opposite, one in particular is having built elderly housing to such an extent that we are overconcentrating elderly housing in our project areas.

It has to be recognized that redevelopment areas cannot bear the brunt of the responsibility for housing the elderly citywide and that, to some extent, was what was beginning to occur in the western addition where there is a tremendous concentration of eldely units.

Nevertheless, there is another issue that I think must be recognized and that is the obvious conflict between the regional concern to which many of our programs are addressed, that is, economic stabilization of areas that were on an economic downtrend. That goes with the new words around HUD of economic displacement where on the one hand we adjust ourselves and create programs and invited investors, invited the market rate and even speculators to come back. We have by that program in many cases displaced, in terms of the economics of trying to live there, people who were indigenous to the area, and that included the elderly.

By the way, I have met with Cabinet level HUD officials on that issue and they don't have the answer to it. One of the things we are going to have to do is to be very careful in designing programs and recognize that and address it, one of the things that Mr. Chin pointed out, and which we are definitely concerned about, is developing a coalition and cooperative relationship between housing development corporations and the neighborhoods so as to take advantage of our technical expertise and capacity in a way that the priorities for housing development in the community are established by the neighborhood corporations, but we provide the wherewithall to do it.

I think a city like San Francisco is one that has to recognize a number of things in terms of its economic base. On the one hand it needs to be concerned about the primary industry of tourism, but it has to be people oriented and recognize the needs of humans in terms of housing.

Senator DECONCINI. Thank you very much.

Mr. CORWIN. We were glad to see that the resource center received the study grant through the help of Father Baroni at HUD. We are

looking forward to seeing the plan formulated. We will lend whatever support we can to your plan for improving housing alternatives, then, in Chinatown.

I understand that there are two sites in Chinatown which have been approved for a rather lengthy period of time for federally assisted housing for the elderly. I would like to know from you what the status is of these projects and what your experience has been in working with the local office of HUD.

Mr. CHIN. First of all, I would like to say that of the projects you are referring to, one is a section 236 project. That is the last 236 project in the country. We also have two section 202 projects that are still in the development stage. One is the YWCA resident hall sponsored by the San Francisco Metropolitan YWCA. The other is sponsored by the On Lok Development Corp. Together they have probably run into more bureaucratic problems from HUD than any other project that I can recall. The 236 project has been going on about 5 years. There was a host of different types of problems, starting with a serious lobbying effort to acquire funds from the city to purchase that property. Second, the Nixon moratorium on these programs in 1974. Third, the number of lawsuits filed by some of our friendly neighbors on Nob Hill who claimed that the project would block their view of the waterfront, despite the fact that downtown has already blocked that view.

Some of the problems the other projects have faced, the 202 project relates to HUD's inability to recognize some of the unique problems in Chinatown, the tremendous land costs, which really make some of the statutory limits unreasonable, the seismic costs which are a special hardship in Chinatown, and also the need to coordinate social and health services with our housing. We have had very good relationships with HUD back in Washington, D.C., and with the regional office, but with the area office it has been a different story.

Mr. CORWIN. That 236 project, what was the estimated cost back in 1972, and what would the cost be today to build that same project?

Mr. CHIN. In 1972 it was around $6 million and it has doubled.

Senator DECONCINI. Thank you very much, gentlemen. Your testimony has been very helpful to us.

Our next panel is of agency directors and assisted older individuals on bay area service programs. We would ask that they come forward. Kenneth Nunn, director of the Oakland Neighborhood Housing Services; George Davis, director of the Bayview-Hunter's Point Seniors Center; Steve Nakajo, executive director, Kimochi, Inc., a nutrition project in San Francisco; and Hisao Inouye.

We will start with Mr. Nunn.

STATEMENT OF KENNETH NUNN, DIRECTOR, OAKLAND NEIGHBORHOOD HOUSING SERVICES, OAKLAND, CALIF.

Mr. NUNN. I am Kenneth Nunn of Oakland Neighborhood Housing. Oakland Neighborhood Housing is located in East Oakland. We are a nonprofit, neighborhood-based corporation. The composition of our program is made up of a partnership of lenders, that is, banks and savings and loans, neighborhood residents and city of Oakland officials.

We find in our neighborhood one of our major concerns is home improvement, neighborhood revitalization, that the senior citizens in our

area, the ones that own their own homes, are better able to cope with living conditions than those who may not, but they have no money. Those seniors on fixed incomes or social security simply do not have any money. The condition of most of their homes is poor. There is need for maintenance, serious maintenance often, faulty wiring, faulty plumbing, hazarous health and safety violations in many of these homes.

What we have tried to do is to offer to seniors a program of either grants or loans that would help them to deal with this problem. We have been able to use through foundation funds a demonstration program of offering zero to market rate interest loans, zero to 100-year term. What it allows is a loan program that a senior can plug into which offers no payment or some payment to get these repairs done. Through our city of Oakland community block-grant funds we also have been able to provide a deferred loan program that will provide up to $7,500 for emergency repairs.

We also, because of recent approval by the Oakland City Council, are now able to offer for emergency repair up to $4,500; the idea being that we need to reach these people, we need to encourage them, we need to get them interested in home maintenance. We need to make it acceptable to them.

An additional problem we find in our area is the need for rental housing. We work with our seniors where we can to help qualify them for section 8. We also have worked with a local church and joined in promoting a new senior citizens housing facility of our Elmhurst area of East Oakland.

I have submitted a prepared statement, which has been distributed, but I would like to say that we find a need in our area typical of the need in most urban areas, and that is senior housing is critical, senior housing is related to problems. Not only that, if they don't own their own home they have to rent. There is just not enough available to rent anywhere in this country. This is of serious concern.

I thank you for the opportunity to be here today.

[The prepared statement of Mr. Nunn follows:]

PREPARED STATEMENT OF KENNETH NUNN

BACKGROUND OF ONHS

Oakland Neighborhood Housing Services is a private, nonprofit corporation created to reverse the trend of neighborhood decline in the Elmhurst area of East Oakland bordered by East 14th Street and Bancroft between 73d Avenue and 109th Avenue.

Since 1973 program operations have combined neighborhood residents, financial institutions and city government in a unique partnership that provides assistance with housing rehabilitation and neighborhood preservation.

Basic elements of the program include:

Financial counseling, referrals to lending institutions, loan packaging, direct loans,

Administration of a revolving loan fund for low income and senior residents unable to meet normal credit standards through ONHS foundation funds (high risk loans with varying terms and interest rates) and through ONHS administration of assigned community development loan funds,

Rehabilitation assistance: work writeups, cost estimates, bids, construction monitoring,

Participation in various revitalization efforts: park development, stimulation of public improvements, exterior design services, street tree planting, upgrade of abandoned properties, commercial improvement, housing development, zoning ordinances, and

Block by block housing surveys in cooperation with the city of Oakland Housing and Conservation Department.

The ONHS board of directors includes representatives from banks and savings and loan associations, city government, and neighborhood residents.

ONHS PROVIDES SERVICES TO SENIOR HOMEOWNERS

Oakland Neighborhood Housing Services has provided a model for similar types of programs developing in California and throughout the Nation.

A program of neighborhood revitalization and home rehabilitation reaches senior citizens in the ONHS target area through efforts of neighborhood residents working with ONHS to acquaint seniors with the services available to them.

Seniors who own their own homes need to be able to remain in their own homes.

Senior homeowners on a fixed income are unable to afford repairs for health and safety problems or code violations.

ONHS provides a variety of services to senior home owners including:

Low interest loans (0 percent to market rate) and flexible terms (0 years to 100 years) for home repairs to fit repayment ability.

Packaging of grant application for emergency repairs through special circumstance grants designed for SSI recipients administered by local welfare departments. SSI recipients are entitled to a $750 grant (one time only) for emergency repairs, and $350 once each year for emergency repair.

Grants to a maximum of $4,500 are available for emergency repair and code violation removal to seniors in Oakland through the city of Oakland community development program and Oakland Neighborhood Housing Services.

Deferred loans for code violation removal to a $7,500 maximum do not require a monthly payment but repayment upon sale or transfer of the property only.

Stimulating revitalization of declining neighborhoods clearly requires special attention to its older residents and with emphasis on preventing displacement and encouraging health and safety maintenance of senior housing facilities.

STATEMENT OF GEORGE DAVIS, DIRECTOR, BAYVIEW-HUNTER'S POINT SENIOR CENTER, SAN FRANCISCO, CALIF.

Mr. DAVIS. Good afternoon. The topic of discussion of this field hearing is "Older Americans in the Nation's Neighborhoods." It has a far more reaching definition than is indicated.

If one examines the older person in the neighborhoods, they would immediately notice that crimes against the elderly still exist, poverty unarrested still prevails, older Americans' homes are destroyed without consultation, displacement of seniors from their roots is practiced by the Government without regard to the overall general welfare of the older person, and zoning laws in the community where older persons reside historically prohibit them from developing more than a two-structure housing unit.

The older person in America's neighborhoods, especially in the Bayview-Hunter's Point area, has witnessed a progressive decline in their neighborhood and they have witnessed an unwillingness by the Government to eradicate that fact.

Let me address two critical issues of which concern is the greatest: Adequate housing and an immediate restoration of social programs, or why there are social service deficiencies.

In regards to housing, the Government must make a clear distinction between low-income housing for the poor and housing for seniors, even though both have low incomes.

Housing for low-income seniors should reflect their social and cultural lifestyles and not the expediency of the designer and contractor. Housing for low-income seniors should reflect the general environment of the community at large.

Currently, most low-income housing units resemble, in truth, pre-war housing units. Little concern is given to physical comfort or the changes that occur within the aging process that will change the older person's mobility within their house.

One must remember, as well, that a well senior, in time, could be a homebound elderly person, and houses or apartments must reflect this fact. Within any area of senior citizen low-income housing, a skilled nursing facility, as well as a board-and-care facility, should exist. Both facilities are an integral part of senior housing because they are homes for the disabled senior and should be within the housing structures, as opposed to being an isolated housing unit.

By having these units as part of the whole, it would provide greater integration between the disabled homebound and the well senior in various socializing events and settings.

Some seniors have indicated that they would like front porches, kitchen windows, and automatic wall beds in studio apartments to enlarge their living rooms. Some seniors wish to have parlors or back porches. One immediately recognizes that these desires of seniors should be met that have historically gone unmet.

The second issue is that of social service deficiencies which, to say deficiencies, is to quote a euphemistic term at best.

Social services were never really prevalent for seniors, historically, and yet the majority of social services were cut back in the early 1970's, and now proposition 13 is perhaps viewed as the "nail in the coffin," especially for fiscal year 1979.

The overwhelming areas where seniors live, along with other disadvantaged groups, were labeled ghettos. By sociologists and anthropologists definitions, a ghetto is an area that is a high-crime rate area, high unemployment, low income and economically underdeveloped. One does not disagree with such an articulate definition, nor does one disagree that such ghettos still exist. Therefore, it is logical to state that once social services exist, we then can determine if they are deficient.

One examines some social services seniors would like to see in existence. One prefaces that remark by saying those programs mandated by law for seniors are not necessarily social programs that provide a resulting service, that is, research programs to determine how many seniors live in area A rather than area B, how many seniors like mashed potatoes rather than french fries. Such opulence by the Government has always escaped the logic of the seniors and community residents at large.

In identifying proposed effective solutions, one suggests that private industry be encouraged to participate to a greater level in resolving some of the social problems of the senior citizens. Many companies are subsidized by the Federal Government, and when they increase their prices a percentage of that profit should be contributed to social programs.

In fact, all companies subsidized by the Federal Government should appear in a quartely journal so that community organizations serving seniors could approach them for social obligations.

Private industry should subcontract part of their work to community organizations serving seniors so that the funds could be used to develop perpetual social programs, rather than the historical terminal program concept.

The Federal Government can play a greater role in correcting social services deficiencies. One sees the first step as bringing decaying neighborhoods up to parity with growing neighborhoods. It is one thing to have inadequate social services in a prosperous neighborhood and another thing to have inadequate social services in a decaying neighborhood.

There are other factors involved that keep decaying neighborhoods decaying. Such an example is the legislation initiative by Evan White through channel 7's program "Old Age Do Not Go Gentle." Over 200,000 older Americans in our Nation's neighborhoods stated they wanted better housing and programs related to housing communities. The bill was passed and signed by the President.

Yet the Office of Management and Budget has recommended that the spending of the money is too expensive at this point, even though the bill actually represents a savings. Consequently seniors have a law and no money to carry out that law. Therefore, one would suggest maximum political advocacy as a method to arrest social service deficiencies.

Another factor that needs to be examined and corrected in order to bring about an arrest of social service deficiencies is to reduce the cost charged by the Government to administer aging programs. Close to 40 out of 100 percent of the funds earmarked for senior programs is used up in administrative costs.

This same theory ran rampant and unchecked during the war on poverty, except it was more like 75 percent to administer the program and 25 percent for the poor. Evidence of this is clearly documented when one examines the current positions of the administrators of the poverty programs of the 1960's and early 1970's and the social position of the then and still poor.

In conclusion, seniors and those serving seniors have always proposed cost-effective realistic solutions, and the Government has always labeled them too expensive and generally develops a program that costs three times as much, hires and employs more bureacratic "job fillers," gives more raises to those making over $25,000 plus per year, and still gives the seniors less than 60 percent for programs.

As long as the Government continues this practice, the senior citizen will continue to be America's metaphor.

Thank you.

Senator DeConcini. Mary Rivers, do you have any comments?

STATEMENT OF MARY RIVERS, OFFICE MANAGER, ECONOMIC OPPORTUNITY COUNCIL, SAN FRANCISCO, CALIF.

Ms. Rivers. Thank you, kindly.

I am in full support of Mr. Davis' composition on what is happening.

I am Mary Rivers, office manager with the Economic Opportunity Council for the past 13 years addressing the problems of the low-income persons for that length of time with no special specifics on seniors. They are just part of the group.

However, in the later years of our work, it has been made obvious that seniors need help. I work with these people that he speaks of, constantly and daily. There isn't housing for people who are sleeping in cars and whom I encounter daily.

In the area of Bayview-Hunter's Point there has been addressed several times housing for the elderly, but nothing has been exclusively

set aside for them, one, because of the indication of facilities that have not been in that area; two, the population living in this kind of suggested situation does not feel safe in that existence; and, three, the level of cost and expense entailed to live within their means, and the eradication of the fear of unsafe conditions existing in the area.

As I see it, the removal of the safety measures, the police-community relations were one of the most important factors that caused the removal of people from the area.

In a population of 725,000, 19,600 are seniors and 3,000 are living in the Bayview-Hunter's Point area, over a period of 13 years there has been a decrease in agency facilities for this area.

Seniors do not and are not complemented in the conditions that exist.

There is a need to increase the facilities for those older Americans living in this area, one, in flat-level housing applicable to the ability for those 55 and over to move freely and safely and comfortably in their daily lives, and, two, to have your rent gaged to meet the crisis of fixed income upon which the senior citizens in the Bayview area are encompassed with high rents. At present this presents a definite problem in being able to acclimate in their communities and to find housing facilities in other communities. They cannot move because of the increased expense and fixed income.

I would like to say that these needs and the emphasis on the senior population is the important factor at this time and that those in authority to handle this should put forth an effort to specify community purpose to this extent.

Senator DeConcini. Thank you very much, Ms. Rivers. We appreciate that testimony.

Mr. Nakajo?

STATEMENT OF STEVE NAKAJO, EXECUTIVE DIRECTOR, KIMOCHI, INC., SAN FRANCISCO, CALIF.

Mr. Nakajo. Thank you very very much. Good afternoon.

I would like to welcome you personally, Senator DeConcini, and members of your staff, to the bay area.

My name is Steve Nakajo. I am executive director of Kimochi, Inc., Kimochi nutrition program, in the Japantown area.

We are very grateful for this opportunity to be able to address this committee in terms of our assessment of some of the needs and concerns of our people.

I have brought with me Mr. Hisao Inouye, who is our Kimochi board chairman. He has a prepared statement to read to you, which you should have a copy of, as well as a copy of our boarding care brochure, as well as a copy of our Kimochi program.

Senator DeConcini. Please proceed, Mr. Inouye.

STATEMENT OF HISAO INOUYE, BOARD CHAIRMAN, KIMOCHI, INC., SAN FRANCISCO, CALIF.

Mr. Inouye. Thank you very much.

Members of the U.S. Senate Committee on Aging, my name is Hisao Inouye of Kimochi, Inc.

Kimochi, Inc., is a nonprofit agency providing multisocial services to the Japanese-American senior population in San Francisco. With "kimochi," the Japanese term for feeling, the Sansei, third-generation Japanese-Americans, started this grassroots organization in 1971 for the purpose of serving the needs of the Issei, first generation Japanese-Americans. Japanese-American elderly have not been able to fully utilize traditional programs and services provided by the mainstream society because of language and cultural differences. Kimochi's services and programs attempt to bridge the gap between existing programs and the Japanese-American elderly, and to provide programs and services where none exist. Kimochi believes in the involvement and participation of all generations, the Issei, Nisei-second generation Japanese-Americans, and Sansei, in creating a supportive and friendly environment for the elderly.

The significance of Kimochi as a multisocial service organization lies in the fact that it is based geographically in the Japanese-American community and it is directed by members of this Japanese-American community. Kimochi's services include a senior lounge that is open 7 days a week, a title VII nutrition program serving Japanese meals, a bimonthly bilingual newsletter, educational lectures, health and blood pressure screenings, translation assistance, information and referral, transportation and escort services, and home and hospital visitations.

According to the 1970 Bureau of the Census figures, the number of Japanese-Americans residing in the bay area's nine counties, Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma, is approximately 51,300. While no figures are available for the number of elderly Japanese-Americans in the nine-county area it is reported that for the combined area of San Francisco and Oakland, there are 3,180 persons of Japanese ancestry 60 years of age or older. There are approximately 11,800 Japanese-Americans in San Francisco, of which an estimated 11 percent, about 1,300 are elderly.

The San Francisco Japanese-American population is concentrated in the western addition district where San Francisco's Japantown—Nihonmachi—is located. Due to urban redevelopment and a changing economy, many Japanese-Americans and other residents are relocating outside of the western addition and resettling in various sectors of the city. A sizable portion of the Japanese-American population has moved into the Richmond and Sunset districts. Of all the Japanese elderly in San Francisco, 17.3 percent are below poverty level. However, in the western addition, 23 percent are below poverty level.

There is an increasing number of Japanese-American elderly who are limited in their ability to handle the activities of daily living due to physical, mental, or emotional disabilities. For some indviduals, home health services provide the support necessary to assist them to maintain an independent life at home. In pursuing a continuum of care concept, Kimochi's programs and services were developed to help foster and maintain the independent lifestyles of the elderly. As a ing process with various services needed at different stages of life. The promotion of self-determination, self-esteem, and maintenance philosophical base to our organization, we look at aging as a continuof dignity all underlie the existence of our organization.

Adult day health care is an example of such services whereby the aging individual is provided with rehabilitative support in a community setting. Without such support, the elderly individual has little alternative but to purchase these specialized services or be placed in an institution. There are, of course, persons who do require 24-hour-a-day care who are currently placed in skilled nursing facilities, convalescent hospitals, or board and care homes. Although there are a number of convalescent hospitals and board and care homes throughout the San Francisco Bay area, none are able to provide Japanese bilingual and bicultural services. All too often we have seen many Japanese-Amerian senior citizens placed in traditional institutions, only to watch their physical and emotional condition rapidly deteriorate due to their isolation from the Japanese-American community and alienation from monolingual and monocultural staff and services.

At this time, we would like to specifically address the recent Older Americans Act amendments. Under the old title VII nutrition program for the elderly legislation, special consideration was given to those low-income and minority persons to help guarantee that nutrition services would be delivered to this target population. The proposed legislation has been liberalized in that the emphasis was changed from low-income and minority persons to serving the economically and socially disadvantaged. We find this new term inadequate and wish to amend the amendment by specifying consideration of the special needs of minorities in addition to the economically and socially disadvantaged elderly.

Of immediate concern, of course, is the lack of adequate funding for which to develop and operate effective programs geared toward meeting the needs of the minority aging population. One specific area of need for more funding is low-cost congregate housing and family dwellings. We are presently developing a board and care project for 15 elderly which just addresses a small part of our housing need.

We believe the Federal Government should take active steps to specifically identify the minority aging as a high priority for funding and make provisions in both existing and proposed legislation to insure that the needs of minority elderly are properly addressed. With the establishment of future funding sources for minority services, Kimochi will be better equipped to help meet the rising need for bilingual-bicultural care, with particular interest paid to those who are frail, vulnerable, elderly, and who have low- to moderate-incomes.

In closing, Kimochi cannot emphasize enough the need for sensitive bilingual and bicultural care for the minority aging population. We also strongly believe that indigenous communities should be allowed to develop comprehensive services in the district in which they reside. For those of you who write the legislation, we emphasize the importance of implementation of the legislation to reflect the concept of maintaining the neighborhood identity. In a small community such as ours in the Japanese-American community, the positive aspects of aging are promoted by having our elderly in an environment sensitive to their culture and language as opposed to one of alienation and isolation.

Thank you.

Senator DECONCINI. Thank you very much.

Mr. Corwin, do you have some questions?

Mr. CORWIN. I have a question for Mr. Nunn.

We heard from Mr. Whiteside of Neighborhood Housing Services at our Washington hearing on Friday, and were most interested in supporting and formulating new programs to help older homeowners maintain their homes as a safe, affordable place to live. Do you find any special needs, or have you had to develop any special techniques to deal with the older homeowners?

Mr. NUNN. In getting the senior homeowner involved and interested is a task of its own. People don't want to obligate their property any more than they already have. Many of them are free of mortgages. If you talk about a loan, you are talking about something that scares them. That is why other kinds of things need to be developed like deferred loans where they don't have to make a payment or a grant for special kinds of emergencies. We find that with seniors, often they are reluctant to take on any additional loans or whatever. The way we deal with that is either through having neighborhood resident seniors talk to them about the program or talk to them through their families, through their sons and daughters to try and stimulate them to feel comfortable with this kind of thing. So often the problems they have in their housing conditions are so serious they really must be dealt with and it does take some convincing and a real sensitivity.

Ms. WILSON. Where do you get the money, Mr. Nakajo, to feed your elderly?

Mr. NAKAJO. We have title VII money, title III money, United Crusade, EOC, CETA, community volunteering.

Ms. WILSON. And you are making an effort to integrate all the agencies?

Mr. NAKAJO. Right.

Ms. WILSON. And you have found other sources?

Mr. NAKAJO. Right. It is something that we have learned over the years. In the beginning we didn't know if anything was going to fund senior citizens.

Ms. WILSON. Thank you.

Senator DECONCINI. Ladies and gentlemen, thank you for your statements this morning and this afternoon. They have been very helpful.

We will now proceed with the panel on Integrating Aging Services with Neighborhoods composed of Janet J. Levy, director of California Department of Aging; Michael Sneed, representing planning and program development, County of Los Angeles Area Agency on Aging; Victor Regnier, laboratory chief, environmental studies; and Sam Ervin, director, Long Beach Senior Care Action Network.

STATEMENT OF JANET J. LEVY, SACRAMENTO, CALIF., DIRECTOR, CALIFORNIA DEPARTMENT OF AGING

Ms. LEVY. Mr. Chairman, members of the committee and staff, this hearing comes at a time when the agency I represent is implementing California State legislation in assisting older persons to live as independently as possible within the neighborhoods of their choice.

In seeking the national goal or reducing loneliness and dependency among disadvantaged elderly and lessening the impact of chronic illness, the State department of aging has united with the California

Health and Welfare Agency and other units of State government to insure that community-based health and social services are made available to moderately frail and elderly people. California's goal is to reduce premature institutionalization and the disengagement of older persons from their communities and neighborhoods.

We of the State unit on aging have adopted a collegial approach with statewide area agencies on aging to meet this responsibility. We seek to coordinate, integrate, and link social and health services for ellderly persons at the neighborhood and community level through combined State and local agencies and resources.

I regard neighborhood as being an accessible, local geographic area where the residents may not only be visible, but within a radius of communication realistic to identifying and meeting needs and interests. I see strengthened, viable neighborhoods within a community as an effective way to assure older citizens of more enriched lives, and to prolong their physical and mental well-being through projects and programs funded by all levels of government, as well as by the private sector.

Recent studies indicate that older persons have a 25-percent chance of becoming institutionalized before death. Of this percentage, the elderly who enter institutions are typically those who are already physically and socially isolated to some degree.

Although older persons are less often afflicted with acute illness, over 80 percent of the elderly are afflicted by one or more chronic health problems. While persons suffering chronic illness face physical limitations, the major conditions of chronicity among the elderly, arthritis, rheumatism, heart disease, hypertension, diabetes, asthma, can be properly treated and controlled in a clinic or residential setting even in a health care system which is oriented toward treatment of acute illness.

To meet health needs of older persons within the community, the California Legislature in 1977 enacted assembly bill 1611. This measure, the Adult Day Care Health Act, provides for a community-based therapeutic social and health activities program for elderly persons with functional mental or physical impairments.

Provisions of this law provide short-term care as a transition from a health facility or home health program to personal independence. On a long-term basis, the law also provides day care as an alternative to lengthy or permanent institutionalization in instances where 24-hour skilled nursing care is not medically indicated or is not viewed as desirable by the recipient or by family members. The bill provides for licensure by the California Department of Health of freestanding facilities and portions of health facilities to counties, cities, and nonprofit corporations. Benefits of the day health care program are: That provision of health services in a group setting are more cost-effective than similar services provided on an individual basis by a home health agency; adult day health care treats medical, psycho-social, and supportive needs of the chronically ill elderly in one setting; adult day health care works to preserve family relationships and provides help to families who are trying to keep a family member with functional disabilities at home; and adult day health care works to strengthen and prolong independence by providing needed therapies to restore the participant to maximum functional capacity.

The legislative package establishing the Adult Day Health Act includes a bill, A.B. 1612, to appropriate State money to provide prescribed grants to community organizations for expenses incurred in initial operation of adult day health centers. The package also contains a bill, A.B. 1610, which permits individual California cities to participate on an equal basis with counties in preventive health care programs designed to screen older persons for chronic health conditions and, through timely diagnosis, to prevent costly and permanent or extended hospitalization.

The California Department of Aging is assisting the State department of health in coordinating and implementing provisions of these legislative enactments.

The State of California is seeking waivers of State and Federal regulations to insure that integration of services is properly tested. Additionally, the State supports the mandate to provide clients full accessibility, as set forth in the Rehabilitation Act of 1973, in the design or modification of structures to be utilized within provisions of senior health and social service legislation.

Assembly bill 998, designed to provide opportunities for good health and independent living to frail elderly, was also enacted by the California Legislature in 1977. Chapter 5 of this bill authorizes the State health and welfare agency to establish on a pilot basis projects which will test the effectiveness of comprehensive coordinated systems of delivering social and health services to persons age 60 and over. Older persons may utilize a focal point in the community for access to multipurpose senior services which provide alternatives to institutionalization.

Projects will demonstrate the effectiveness of case management techniques, one-step eligibility determination, group eligibility for particular services, combinations of services to seek the most effective means of precluding institutionalization for large numbers of elderly persons, and equitable fee schedules for those clients whose means disqualify them from assisted programs.

Chapter 6 of assembly bill 998 establishes the nutrition and volunteer service program for senior citizens. The bill requests the California Department of Aging to establish county-based pilot projects in which public and private entities will provide meals and transportation to elderly and to encourage their participation in voluntary services within communities designated.

I came to this meeting with renewed enthusiasm. In recent months, we in California have seen a new structure emerge. In a campaign addressing the fragmentation, inequity, and inefficiency resulting from 8 separate State and Federal agencies administering over 20 categorical service programs for the elderly, the California Department of Aging, the California Commission on Aging, area agencies on aging, their affiliate organizations, and recently chaptered State legislation, have initiated a statewide community-based continuum of care mechanism.

The goals of this special program will include consolidation of programs that provide frail and vulnerable elderly access to adequate health and social services to insure their ability to lead dignified independent lives for as long as possible within the neighborhoods of their

choice, and to provide appropriate facilities and services when they are no longer able to care for themselves.

Through the aid of this committee and the support of persons at the hearing today, our department seeks to identify and fill gaps existing in the continuum of care presently available to older people.

Mr. Chairman, in closing I should like to impart California's growing enthusiasm and support to you and the members of this committee for your tireless efforts toward strengthening neighborhood services designed to improve the quality of life for all older Americans.

Thank you.

Senator DECONCINI. Thank you very much.

We will now hear from Victor Regnier.

STATEMENT OF VICTOR REGNIER, CHIEF, ENVIRONMENTAL STUDIES LABORATORY, ANDRUS GERONTOLOGY CENTER, UNIVERSITY OF SOUTHERN CALIFORNIA, UNIVERSITY PARK, CALIF.

Mr. REGNIER. Mr. Chairman, and members of the Senate Special Committee on Aging, my name is Victor Regnier. I am an architect-urban planner and currently laboratory chief of the Environmental Studies Laboratory of the Andrus Gerontology Center at the University of Southern California.

The two major thrusts of the environmental studies laboratory are training and research focused toward the environmental problems of older Americans. Established in 1967, the program has provided masters and Ph. D. level training to 46 students in architecture, gerontology, and urban planning. The laboratory, through the degree granting auspices of the university, offers a joint master's degree in urban planning and gerontology, the only program of its kind in the country.

Our research efforts in the past 5 years have dealt with the following topics: Senior center location and design strategies, mobile service feasibility models, retirement housing, social and health system designs, curriculum development for schools of architecture and urban planning, social service assessment and allocation models, nursing home and sheltered care feasibility formulas, and shared housing schemes.

As an applied research laboratory, much of our work has been with community groups or agencies. Working hand in hand with the realistic constraints of a problem, our research and model building efforts have been successful in producing implementable results. During the past year much of our energy has been devoted to two major research projects. Both projects are examining specific social and environmental characteristics of urban neighborhoods with high concentrations of elderly.

I would like to take the opportunity today to discuss our progress and describe the implications of our research for planners, practitioners and urban designers. Both projects are currently in their second year of funding and I have prepared a mixture of conceptual research expectations and preliminary findings.

One project is jointly conducted with the Los Angeles County Area Agency on Aging. Mr. Michael Sneed will comment more extensively on the role of the AAA in acting as translators of the research into concepts that have meaning to practitioners in the field. This project

is funded by the Administration on Aging and I will refer to it as the AOA project. The second study is funded by the National Institute of Mental Health and I will refer to it as the NIMH study.

The NIMH study is a rather intriguing combination of basic and applied research. David Walsh and Iseli Krauss, experimental and developmental psychologists from the Andrus Center Psychological Laboratory, are coinvestigators of this grant. The study seeks to better understand the relationship between how older people use neighborhood environments and how they gather and mentally manipulate spatial knowledge of this environment. The psychologists have developed several unique measures of cognitive spatial ability and knowledge of neighborhood facilities. I have concentrated on developing a profile of how older people use neighborhoods and the social and environmental qualities of the physical space that encourage or discourage the use of the environment.

We hope to develop a new understanding of how the older person uses internalized images of the environment to navigate from one part to another.

A better understanding on how the older person perceives the neighborhood can provide us with valuable data about how to design neighborhood interventions that facilitate existing use patterns and create a more comprehendable urban environment.

Several interesting findings have occurred in our preliminary comparisons of neighborhood use patterns and perceived neighborhood boundaries. We have elicited data from 100 older subjects living in two low-income Los Angeles neighborhoods. A random sample was selected in each 200-square-block neighborhood and the subjects asked to outline on a map what they considered to be their neighborhood. A computerized combination of these neighborhood maps revealed a contiguous neighborhood territory that was held in consensus by the majority of older respondents. Although this consensus neighborhood includes only 15 percent of the total land area of the sample neighborhood, it accounts for 53 percent of all trips to goods and services. We believe this commonly perceived neighborhood to be a special territory where selective improvements can provide a more supportive environment for the majority of older community residents.

Currently improvements in neighborhoods take place on a piecemeal, haphazard basis. Housing projects are located; nutrition sites funded; parks and recreation programs expanded and transportation systems implemented without much thought toward how these systems work together. Janet Levy, in her remarks, has mentioned that 8 separate agencies working with more than 20 categorical programs are involved in various aspects of neighborhood improvement and service delivery to older people. Oftentimes, these efforts are uncoordinated and unrelated. The result is a lost opportunity to focus fiscal resources and manpower on creating meaningful community improvement strategies. Uncoordinated, isolated changes rarely stimulate comprehensive neighborhood improvements. Furthermore, improvements rarely include a fundamental understanding of how older people use and value certain portions of the neighborhood. We believe that if neighborhood improvements are planned in a comprehensive fashion with input from consumers, the result will have a multiplier effect on the stability and viability of the area.

A corollary analysis from the NIMH data was recently presented at the national scientific meeting of the Gerontological Society. This analysis compared our sample's perception of dangerous areas with the actual locations of street crime. In this case, 50 percent of street crime activity occurred inside the territory identified by a consensus of five or more respondents as dangerous. This territory, which included only 16.6 percent of the surrounding neighborhood, not only represents an accurate forecast of street crime activity, but more fundamentally identifies an area where the fear of crime is pervasive. We believe this type of measure can be of significant value to police by specifying portions of neighborhoods that older people consider dangerous.

The NIMH research upon its completion promises to provide new methodologies for analyzing the location and configuration of community design and service improvements. These new methods will go one step further in integrating the desires of older people within the physical realities of the existing environment.

Our AOA project is similar in some respects to the NIMH research. However, it tests more specifically analysis techniques that can be transferred from other technologies or disciplines and implemented by AAA network personnel.

Census tract data, along with an inventory of existing services, provide the major empirical base for the allocation of services in most AAA's. In most cases, target areas selected for service programs are large, often encompassing several neighborhoods. In this research we have endeavored to test community analysis techniques that provide unique data about the context of the community.

In our first year, methods addressing the issues of crime, transportation, historical development, land use, available secondary data, and existing social services were investigated. Some examples of innovative techniques include the use of aerial photographs to establish generalized land use patterns. These patterns can be helpful in the design of transportation access systems which link older community residents with the locations of supportive goods and services. Another technique displays patterns of elderly target area concentrations during four census periods. It has been used to better understand the changing patterns of elderly residential concentrations and to forecast future changes. This technique can be used to select locations for services that will also service future populations.

Future investigations will concentrate on informal networks, community influential profiles, and the use of selected community knowledgeables to provide unique community context information. The thrust of each investigation is to develop an abbreviated technique that can be used by AAA's to gain special knowledge about characteristics of their community. This information would be interpreted into planning strategies which increase the effectiveness of services allocated to these neighborhoods.

I would like now to hand the microphone to Mr. Sneed. He will describe the AAA's role in this research and how service planning throughout the AAA network could be positively enhanced by considering some of these ideas.

Thank you very much.

Senator DeConcini. Thank you.

Mr. Sneed?

STATEMENT OF MICHAEL SNEED, LOS ANGELES, CALIF., PLANNING AND PROGRAM DEVELOPMENT, COUNTY OF LOS ANGELES AREA AGENCY ON AGING

Mr. SNEED. Mr. Chairman, staff of the Senate Special Committee on Aging, I am Michael Sneed. I am here for Mr. Jay J. Glassman, director of planning and program development of the Los Angeles County Area Agency on Aging, who is unable to be present today. I also am a staff member of that agency. I welcome this opportunity to present Mr. Glassman's statement concerning our efforts to better understand the support which older persons receive in their neighborhoods and communities.

Some of the information presented today by Mr. Victor Regnier of the Andrus Gerontology Center has been drawn from the findings of a collaborative research project being conducted by the Los Angeles County Area Agency on Aging and the University of Southern California. This project is supported, in part, from funds made available by the Administration on Aging through title IV–B of the Older Americans Act of 1965, as amended. It is a unique effort, being the only example in the United States of a formal contractual aging research partnership between a local agency and a major university and is, I believe, a breakthrough in effecting a marriage between theory and practice, breaking down the traditional barriers between theory and practice, breaking down the traditional barriers between the ivory tower and the real world. I shall return to this topic in my concluding remarks, but I wish at this point to set the context of area agencies on aging and planning for the committee.

Planning is identified in the Older Americans Act of 1965 as among the most important functions of area agencies. Specifically the local agencies are charged with the responsibility of developing an area plan on aging which details and documents the needs and resources of older persons in the agency's service area and identifies the unmet needs and gaps in services faced by the elderly. Other related requirements are that the area agencies divide their area into geographic subunits and that the plan be operationalized through the formulation of measurable objectives which are to achieve the Holy Grail of this particular program, the comprehensive and coordinated system of social services for the aged.

This is the theory. It calls for a continuous planning process which mercifully has never been operationally defined within the rules and regulations of the Older Americans Act. The notion that this continuous process takes place is a myth, for area agencies are required to do a great deal besides planning. There are 14 functions specified within the act for area agencies, and all require considerable amounts of time. These present a formidable array, which while intimidating to someone such as myself who comes from an area agency with 38 employees, must be overwhelming to an individual from an organizational setting of 5 or fewer employees, as the case with most of the 600 area agencies throughout the Nation. The reality is that area agencies seldom plan, or when they do generally perform the task in a minimal fashion. The reason for this reality, I believe, is the laborious and time-consuming nature of the grants management role. To design administrative safeguards which reduce the possibility of mishandling

of Federal and State funds consumes much time, effort, and energy of area agency staff resources. This use of resources is legitimate to a point, as it is the area agency's duty to design safeguards and tracking systems to insure appropriate use of the dollars, but there is a marginal utility after a certain point where the grants management function pervades and becomes the most dominant activity of the area agency, relegating to secondary roles not only planning, but the advocacy and coordination functions as well.

The major sources of information which area agencies generally utilize for planning derive from seven sources: public hearings, analysis of secondary data, service provider input, analysis of information and referral data, informal sampling of consumers, advisory council input, formal survey of older persons.

These sources are utilized to produce a needs assessment which purports to provide hard data by which planners can determine where are the most critical needs of older persons, what those needs happen to be and, through a demographic profile, who the older persons are that have these needs. The information typically does not reveal how the needs might be met through program intervention, nor whether the needs are ongoing or occasional. The points which I wish to emphasize are that the planning generally does not account for distinct geographic neighborhood infrastructures, informal support systems, land-use patterns, crime statistics, or the historical development of the neighborhoods. Are these factors useful as contrasted with the more customary tools used by the area agencies to gain knowledge and insights into their service areas? I would argue that they are extremely important, considering recent developments, as I now shall discuss.

With the passage and signing into law of the 1978 amendments to the Older Americans Act and the findings of certain research efforts, the planning role of the area agencies takes on added significance. Three examples—the Cleveland CAO study, the emergence of informal networks, and the selection of the vulnerable elderly with functional health disabilities as a target group to receive services—underscore our needs to improve the knowledge base for planning for older persons.

The General Accounting Office study, currently being conducted in Cleveland, Ohio, reveals that 70 percent of all services received by the elderly are provided by the informal support system of family and friends, with the balance of 30 percent of services provided by governmental and private agencies. This is a staggering finding, for when coupled with the finding that 16 to 17 percent of the aged suffer from severe problems in performing activities associated with daily living, it becomes apparent that our planning to this point might be likened to picking up a handful of sand and tossing it in the air with the expectation that the grains will cover the appropriate terrain upon falling to the ground.

This is a rather harsh analogy, but inevitable when one considers the absence of eligibility criteria or lack of structured assessment in most of the programs which receive funds. An alternative to an income eligibility criteria, or means test, lies in the development of programs which by their nature are targeted to the older persons who experience the highest degree of functional disabilities. Such programs as in-home services or home delivered meals are but two examples; but the issue to

be emphasized is that those services must be targeted to those in the greatest jeopardy with the fewest resources. Area agencies cannot continue to attempt to be all things to all people. A selection process must occur, given the finite amount of resources controlled by all area agencies, through direct contact or indirect coordination means.

How, then, to achieve this higher level for planning? I submit that the resources already exist to advance the quality of area agency planning, to improve the decisionmaking on allocation of resources, and to improve the quality of services received by older persons at the neighborhood level. Those resources are being revealed, utilized and evaluated in the joint project between the Los Angeles County area agency and the University of Southern California. Consisting of reports, statistics, and interviews with older people on how to utilize their neighborhoods to gain access to services, the information is not limited to the communities of Pasadena and Glendale, Calif., which are our study areas, but are generic to nearly every community in the United States.

Our project, then, reveals significant policy findings in two areas: First, area agencies on aging must gain working knowledge of the resources of other planning agencies already existing in the community, such as regional transportation agencies, city planning departments, city engineering departments, historical societies, et cetera. Second, a labor pool to perform the neighborhood analyses already exists outside the area agency's organizational setting, which can be tapped so as not to further stretch out the already extended area agency's staff and resources.

Concerning the first finding, area agencies cannot continue to operate in a planning vacuum. It is incontrovertible that there are many planning agencies operating in technical specialized functions. Regional transportation agencies, local planning departments, and city engineering departments are but three of many examples. Missing are guidelines for area agencies to follow in utilizing these nontraditional information sources or in translating the findings into forms which can be plugged into the planning process. The information is there; a process and procedure to identify and synthesize the information is the gap which our project shall fill. A further benefit would be the communication created between other planning agencies outside of the aging network and the area agency.

On the second point of the labor pool to perform the work in utilizing the techniques, it is also incontrovertible that the overwhelming majority of grant applications submitted to the local area agency by local agencies seeking funds include sections on documentation of need for the proposed service. Customarily applicants blow the dust off 1970 census reports, or secure demographic information from the area agency, add in subjective impressions of the community or neighborhood, and then regurgitate this old and not terribly useful data back to the area agency, disaggregated by community or neighborhood districts.

Instead of perpetuating this travesty, why not require the applicant agency to utilize the community analysis techniques which the area agency would provide, together with technical assistance or training to the local applicant agency on how to use the techniques. This approach would insure a methodological consistency so as to first provide

the applicant agency with a much sounder and complete picture of their community than merely the subjective or census data can provide, and second, provide the area agency with the building blocks for any areawide analysis which could be used to help prioritize where the area agency resources should be targeted, both from a geographic and categorical service perspective.

In this scheme, the current confusion and lack of clarity of planning roles within the aging vertical network would be eliminated, with the bottom line being the more effective use of increasingly more precious funds. The Federal planning role would be to sanction the roles of the other units, to compile the data into a cohesive picture, to disseminate the compilation to decisionmakers both within and outside the agency network, and to provide technical assistance on the analysis techniques to the States.

The State planning role would be to provide the general demographic data base utilizing all appropriate State sources of client information, disseminate this information disaggregated by area agency service areas, and to provide technical assistance on utilizing the data base to the area agencies.

The area agency planning role would operationalize the community analysis techniques, provide training and technical assistance, compile the information into areawide profiles, and check the validity of the analyses by the local applicant agencies.

The local applicant agencies' planning role would perform the analyses for the service area they propose to serve, including determination of neighborhood, utilizing criteria and techniques provided by the area agency.

Clearly this role clarification would improve the national, State, and local knowledge base on how neighborhoods work for older people. The cost would not be excessive, as the investment of most of the energies to go into this approach already has been made. A further payoff would be the opportunity to evaluate local requests for funds on the basis of the degree to which the applicant could demonstrate and document a working knowledge of the community, its neighborhoods, and its citizens.

As alluded to earlier, there is a unique nature to the partnership of the collaboration between the Los Angeles County Area Agency on Aging and the University of Southern California. The partnership draws on the strengths of both institutions—the research expertise of the Environmental Studies Lab at the Andrus Gerontology Center—and the aging network and human services planning expertise of the area agency on aging. Both partners serve the function of checkoff with the university providing theoretical and methodological soundness to the effort, and the area agency providing the political and administrative perspectives which insure that the products of the research can be utilized by the aging network agencies in a manner appropriate for implementation. In this way, both partners serve to keep the other on the right track, overcoming the traditional gap between theory and practice.

The resources within both institutions enable a more comprehensive approach than would otherwise be possible, with the area agency real-world situation serving as the laboratory for the university. It is essential for the network agencies to become part of research efforts into

their operation, involvement beyond an advisory capacity. The contractual involvement which is the model our project uses—the area agency receives the Federal research funds and subcontracts most of these to the university, means that the area agency is responsible and obligated to perform the work called for in the approved application, as well as rewarded by receiving funds to cover most of the costs of the research. In this manner, the subject of the experiment, the area agency on aging, receives incentives to participate.

The other winner in this model is the Federal funding agency, which gains assurances that the organizational object of the study, the area agency, has an ongoing role to make certain that the results of the research can be applied. There simply are too few research dollars available in aging programs for there not to be some safeguards that the research will be used.

While our project concludes with the dissemination of our handbook and community analysis techniques to the national aging network, we hope to secure additional funds for the next stage, to utilize our local network to apply the techniques in our grant application process, much as I have outlined earlier this morning. We are very excited with the potential of this project and hope to have the opportunity to report back to the committee on our findings and prospects for widespread utilization of our research.

Senator DECONCINI. Thank you, Mr. Sneed.

Mr. Ervin.

STATEMENT OF SAM L. ERVIN, DIRECTOR, SENIOR CARE ACTION NETWORK, LONG BEACH, CALIF.

Mr. ERVIN. Senator DeConcini, staff members of the Special Committee on Aging, it is a pleasure to speak before you today on such an important topic. We do believe that the experience of the Senior Care Action Network (SCN) may have broader significance.

Metropolitan Long Beach, an area of 49.6 square miles, has 72,000 residents who are over 60 years of age. This is over 21 percent of the total population of 350,000. Eight percent of that total population are 75 or over. These percentages are double the national proportions.

Significant displacement and dispersal of the elders concentrated in the downtown sector has begun and is accelerating due to large-scale redevelopment efforts. Inflating housing costs will further jeopardize elders economically.

In short, Long Beach elders face an array of problems similar to those in other urban areas, crime, poverty, lack of access to affordable and adequate health care, housing, transportation, in appropriate institutionalization, and inadequate levels of a number of critical supporting services.

Several years ago, a few active older persons in Long Beach began to urge the development of a coordinating agency in Long Beach to address the well-researched problem of fragmentation in existing health care and social services, particularly on behalf of the isolated, hard-to-reach, and vulnerable elders.

In 1976, the city of Long Beach contracted with USC's Andrus Gerontology Center to undertake a year-long planning effort, culmi-

nating in a three-volume plan for a single entry intake and case coordination program. The system plan was the result of the broadest communitywide deliberaton and cooperative effort, including consumer and provider task forces and numerous health and social service organizations.

One year ago the Long Beach Area Geriatric Health Care Council, Inc., was established as the community-based coordinating unit for the service delivery system. SCAN's board of directors is composed of seniors, administrators, and physicians from health care institutions, and directors of social service agencies in Long Beach. An advisory council for each of these groups provides an even broader participation in program and policy development.

SCAN's multilevel approach to coordination affords an accurate process for identifying the vulnerable and frail elders, then linking them with a full range of supports vital to their survival in noninstitutional settings.

SCAN's major responsibilities include case coordination, guidance of an integrated network of private and public facilities, advocacy for the individual and systems advocacy.

The social resource coordinators, who are the front line SCAN staff, evaluate each participant with a comprehensive needs assessment questionnaire and with the participant's authorization carry out a case plan to insure provision of needed services. The assessment instrument is designed to provide clear identification of frail and vulnerable elders. Single-entry intake provides for maximal accessibility to the system. Entrance into the system is further enhanced by a coordinated team which performs focused outreach. SCAN links elders who have medicare and whose incomes are within 125 percent of Federal poverty levels, with geriatric health care providers that do not require either copayments or deductible and accept medicare payment as total reimbursement for all services needed.

Each of the four major private hospitals in Long Beach has committed itself to development of differing geriatric services as part of the system. Three hospitals have agreed to accept SCAN referrals for health screening and assessment, to refer the participant to a private physician if indicated, to provide in-patient care as needed for medicare only, and to refer eligible participants to physicians who will also accept medicare as full payment for those who are eligible. Two of the hospitals have developed home care programs. One has an adult day health care center, and one an alcohol rehabilittion program. All four hospitals have joined in funding SCAN to operate a special medical services transportation route for elders.

SCAN coordinates prevention-oriented health education programs for elders with a number of health and home health care providers.

The Long Beach Medical Society convened a committee to assist in development of the system, and has a representative on the board. Broad-based physician acceptance has greatly assisted the program.

The city supports SCAN financially through CETA, title III of the Older Americans Act and CSA funds, and by providing for thorough coordination of all city-provided and funded services with SCAN, including day centers, the new multipurpose senior center, CSA-funded agencies and neighborhood centers.

SCAN has developed 20 written agreements with agencies designed to promote an integrated pattern of service delivery. These agreements encompass a wide range of available services.

The assessment process focuses both on the problems of the person and the existing or available supports in their environment, friends, relatives, or volunteers. The comprehensive approach used emphasizes meeting the needs of the whole person and providing necessary supports to their independence insofar as possible. SCAN's social resource coordinators work with the family or significant others to supplement or replace agency efforts. However, it should be noted that 60 percent of those assessed thus far live alone and most of these have no one to provide dependable assistance to them.

SCAN has now assessed and linked with services 1,200 elders, whose median age is 76, and 80 percent of whom have incomes under $5,000.

A task force on volunteers has been established and will be meeting by February 1, 1979, to fully develop a volunteer component for the agency.

In addition to the in-house involvement of volunteers, RSVP in Long Beach has taken an active role in SCAN's development and will become the major volunteer recruitment and placement agency.

RSVP will accept referrals of prospective volunteers from service agencies as part of a plan of socialization and activity to prevent premature institutionalization.

Catholic social services has committed the cooperation of its parish community outreach project to assisting identified vulnerable elders to remain in their own homes and to further develop this component in cooperation with SCAN at the neighborhood level.

One major problem in service delivery has appeared in the form of a shortage of available services. The number of elders being referred for services by SCAN has created an overload for some agencies. As an example, Family Services Association provides homemaker services and has had to hold new referrals to a minimum because of an increase in people needing service being found by SCAN's outreach and assessment program.

We believe it would be very helpful to provide clear guidelines for coordinated community approaches to State and area agencies on aging; to require federally funded agencies serving elders to develop written agreements with an identified local coordinating unit; to promote coordination between health care and social services development in aging by requiring cooperative efforts by federally mandated planning agencies. This includes health and housing. Encourage the development of local community-based coordination projects which mobilize institutional, private business, and neighborhood-based resource and supports on behalf of elders.

We believe that projects such as SCAN in Long Beach, and similar models, may provide helpful examples in this effort.

Thank you.

Senator DECONCINI Thank you very much.

[The prepared statement of Mr. Ervin follows:]

PREPARED STATEMENT OF SAM L. ERVIN

Metropolitan Long Beach, an area of 49.6 square miles south of Los Angeles, may well be a laboratory of the future. About 72,000 of its residents are 60 years of age or over. This is over 21 percent of the total population of 350,000, and

8 percent are 75 or over. These percentages are double the national proportions.

Long Beach, which was a retirement mecca as early as 1930, now has the density of elders that other areas should expect to have in the future. More than 22 percent of Long Beach elders lived on incomes below Federal poverty levels even before double digit inflation. It is estimated than an additional 10,000 exist within 100 percent to 125 percent of the poverty level, and 60 percent live alone. The current total population of Long Beach is comprised of 73.9 percent Caucasians, 11.7 percent Hispanics, 9.4 percent black, and 2.9 percent Asian and Pacific Islanders.

At present the majority of elders live in and around the "downtown" area of Long Beach. This section is roughly one-tenth the total area of the city. However, significant displacement and dispersal of the elders concentrated in this downtown sector has begun and is accelerating due to large-scale redevelopment efforts. With large numbers of elders already moving to many other sections of the city, service delivery will become a greater challenge. At the same time, inflating housing costs will further jeopardize Long Beach elders economically.

In short, Long Beach elders face an array of problems similar to those in other urban areas: crime, poverty, lack of access to affordable and adequate health care, housing and transportation, inappropriate institutionalization, and inadequate levels of a number of critical supporting services.

DEVELOPMENT OF THE GERIATRIC HEALTH CARE SYSTEM

Several years ago, a few active older persons in Long Beach began to urge the development of a coordinating agency in Long Beach to address the well-researched problem of fragmentation in existing health care and social services, particularly on behalf of the isolated, hard-to-reach and vulnerable elders.

In 1976, the city of Long Beach contracted with USC's Andrus Gerontology Center to undertake a year-long intensive effort of research, planning, and community development culminating in a three-volume plan for a single entry intake and case coordination program. The system plan was the result of the broadest communitywide deliberation and cooperative effort, including consumer and provider task forces, the city of Long Beach, the Area Agency on Aging of Los Angeles County, the Ethel Percy Andrus Gerontology Center of the University of Southern California, St. Mary Medical Center, Long Beach Memorial Hospital, Pacific Hospital, Community Hospital of Long Beach and numerous other health and social service organizations.

One year ago the Long Beach Area Geriatric Health Care Council, Inc., was established as the community-based coordinating unit for the service delivery system and as the broker-advocate for individual elders in need of services. SCAN's board of directors is composed of 12 seniors, 12 administrators and physicians from health care institutions, and 12 directors of social service agencies. An advisory council for each of these groups provides even broader participation in program and policy development.

THE SCAN SYSTEM

For the individual elder, SCAN acts as coordinator and advocate for a range of services, based on an in-depth personalized needs assessment. At the same time, SCAN is the focal point for a system of services, organizations, and senior groups. SCAN's multilevel approach to coordination affords an accurate process for identifying the vulnerable and frail elders, and then linking them with a full range of supports vital to their survival in noninstitutional settings.

SCAN's major responsibilities include case coordination, guidance of an integrated network of private and public facilities, advocacy for the individual and systems advocacy.

The social resource coordinators, who are the front line SCAN staff, evaluate each participant with a comprehensive needs assessment questionnaire and with the participant's authorization carry out a case plan to insure provision of needed services. The assessment instrument is designed to provide clear identification of frail and vulnerable elders. Single entry intake provides for maximal accessibility to the system. Entrance into the system is further enhanced by a coordinated team which performs focused outreach. The resource pool includes every social service agency that can be of help to elders and the four major hospitals in the city of Long Beach. This unique alliance of public and private facilities maximizes SCAN's impact in the community. For example, SCAN links elders who have medicare and whose incomes are within 25 percent of Federal poverty

levels with geriatric health care providers that do not require either copayments or deductible and accept medicare payment as total reimbursement for all services needed.

SCAN'S MEDICAL COMPONENT

Each of the four major private hospitals in Long Beach has committed itself to development of differing geriatric services as part of the system. Three hospitals have agreed to accept SCAN referrals for health screening and assessment. Two of these will refer the participant to a private physician if indicated, and all three will provide in-patient care as needed for medicare only if the participant is eligible under SCAN's criteria. Two of the hospitals will also attempt to refer eligible participants to physicians who will also accept medicare as full payment.

SCAN is a "managing partner" in St. Mary Medical Center's screening clinic, providing for the social assessment and case management, while St. Mary's provides a physician, nurse, and other personnel for the health assessment and physician referrals. Once an individual is referred to St. Mary's, a complete health and social service assessment will be done and appropriate treatment initiated. St. Mary's also is developing a special meals program and other geriatric services.

Two of the hospitals have developed home care programs, one has an adult day health center and one an alcohol rehabilitation program. All four hospitals have joined in funding SCAN to operate a special medical services route for elders. SCAN coordinates prevention oriented health education programs for elders with a number of health and home health care providers.

The new Long Beach Senior Center is a major development in the system, providing full health screening and a dental clinic through the city's department of public health and other departments and contributors.

SCAN is able to link participants with the full range of medical and auxiliary services. SCAN has specific written agreements with St. Mary Medical Center, which also provides some of SCAN's funding, Long Beach Community Hospital, and two home health providers.

The Long Beach Medical Society convened a committee to assist in development of the system, and has a representative on the board. Broad-based physician acceptance has greatly assisted the program.

SCAN AND CITY OF LONG BEACH

The city supports SCAN financially through CETA, title III of the Older American's Act and CSA funds, by providing for thorough coordination of all city provided and funded services with SCAN, including day centers, the new senior center, CSA funded agencies, neighborhood centers, the departments of human resources, recreation and public health.

SCAN'S SOCIAL SERVICE COORDINATORS

SCAN has developed above 20 written agreements with agencies designed to promote an integrated pattern of service delivery. These agreements encompass the following services: Outreach to isolated, vulnerable elders; information and referral; specialized transportation programs; homemaker/chore services; congregate meals and meals on wheels; adult day care, both social and health oriented; telephone reassurance; employment services; housecleaning donated by private business; legal assistance; crime prevention and escort program; volunteer development and placement; and a range of other services.

CASE COORDINATION

The assessment process focuses both on the problems of the person and the existing or available supports in their environment—friends, relatives, or volunteers. The comprehensive approach used emphasizes meeting the needs of the "whole" person and providing necessary supports to their independence insofar as possible. SCAN's social resource coordinators work with the family or significant others to supplement or replace agency supports. However, it should be noted that 60 percent of those assessed thus far live alone, and most of these have no one to provide dependable assistance.

SCAN has now assessed and linked with services 1,200 elders, whose median age is 76, and 80 percent of whom have incomes under $5,000.

VOLUNTEER COMPONENT BEING DEVELOPED

A task force on volunteers has been established and will be meeting by February 1, 1979, to fully develop a volunteer component for the agency.

In addition to the in-house involvement of volunteers, RSVP in Long Beach has taken an active role in SCAN's development and will become the major volunteer recruitment and placement agency.

RSVP will not only recruit and coordinate volunteers over 60, but will accept referrals of prospective volunteers from service agencies as part of a plan of socialization and activity to prevent premature institutionalization.

Catholic Social Services has committed the cooperation of its parish outreach project to assisting identified vulnerable elders to remain in their own homes, and to further develop this component in cooperation with SCAN at the neighborhood level.

EMERGING CONCERN

As SCAN has developed its coordinated network of health and social services, one major problem in service delivery has appeared in the form of a shortage of available services. Even though Long Beach has an unusual array of services, the number of elders in need being referred to services by SCAN has created an overload for some agencies. As an example, Family Services Association of Long Beach provides homemaker services and has had to hold new referrals to a minimum because of an increase in people needing service being found by SCAN's outreach and assessment program. Family services as a result of the increased demand for services has begun a homemaker registry for those able to pay and thus is seeking to expand its capacity.

RECOMMENDATIONS

(1) Strengthen cooperation between aging service programs at the local level by:

(a) Providing clear guidelines for coordinated community approach to area agencies on aging; and

(b) Requiring all federally funded agencies serving elders to develop written agreements with an identified local coordinating unit.

(2) Promote coordination between health care and social services development in aging by requiring cooperative efforts by federally mandated planning agencies.

(3) Encourage the development of local, community-based case coordination projects which mobilize institutional, private business, and neighborhood-based resources and supports on behalf of elders.

Projects such as SCAN in Long Beach and similar models may provide helpful examples in this effort.

Senator DECONCINI. Mr. Corwin, do you have any questions?

Mr. CORWIN. Ms. Levy, I was wondering what effect you are seeing now, and you expect to see in the future, on services for the elderly in the State of California as a result of the passage of proposition 13?

Ms. LEVY. Yes. We are collecting as much material in regards to the impact of proposition 13 as we can. Two of the major areas where we have already seen a tremendous change are the combined services under adult education where many classes have just been totally eliminated because of the local support that was there to do that. The other is in the area of parks and recreation where formerly park and recreation areas within a community provided a center, space, staff, a great deal. There are places now where they are charging as high as $600 a month rent for that same facility that used to be nothing.

We have done one study already, a survey, really, and we are doing another one on the impact. We will be happy to provide the committee with that material as we gather more.

Mr. CORWIN. We would like to receive that as soon as it is available.

Mr. Sneed, if this program that you are developing under the AOA project, if that works out as you expect it to, will any changes be

required under Federal aging legislation to put it fully into implementation?

Mr. SNEED. Changes would be minimal as the legislation stands now, and the design would make the legislation that much more effective and be a better use of the Federal funds already being allocated throughout the Nation.

Mr. LEWIS. Mr. Regnier, I have a question for you.

How can we make better use of the information that your project will be coming forth with?

Mr. REGNIER. One of the problems with planning on a local neighborhood scale is we really don't have much of a geographical feeling about how the neighborhood coalesces in the minds of older people. Also, we have a very disjointed idea of how a neighborhood is conceptualized by the various actors that are providing services. If we have a fundamental idea of how that neighborhood is defined by a number of people, in this case older people, then we can start to use that as a building block. We can locate housing there, we can detail transportation systems that link the residential locations of older people with supportive retail services. We can start to take advantage of some of the planning and land-use strategies that have traditionally been used to plan for intercity neighborhoods. I think we can have some impacts that go far beyond the funding of title III and aging related programs.

Mr. LEWIS. Mr. Sneed, can you elaborate on why the regulation makes good planning and real planning information more important?

Mr. SNEED. We are now called upon to deal with the most vulnerable elderly threatened by inappropriate institutionalization in long-term care facilities. We are going to have to do so with increasingly fewer resources and must become more efficient in how we do it. The informal support system of families and friends of older persons must provide support in a more effective way, with care taken that Government interventions do not destroy the informal support system. There is such a program where we make payments to families to provide in-home supports to aging parents. The fact is that up to the present time the system has denied those payments and has caused the parent to be removed from the home and put into the more expensive institutional setting. These are just some of the reasons why it is going to be more important that we have a more rational and effective approach.

Mr. LEWIS. Mr. Ervin, I would like to commend the city of Long Beach for SCAN. Here we have an example of a mayor and the rest of the city involved in tapping city and local resources without seeking Federal funds and Federal involvement in a project. Can your project be implemented across the country?

Mr. ERVIN. We believe there are elements of the SCAN design that could be implemented across the country. Certain other communities could probably duplicate it very closely.

One of the key elements that we have pulled together in Long Beach that is unusual is the participation of the private nonprofit hospitals. One is even providing up to $100,000 a year in funding toward the success of this effort. We believe that is one of the things that people should focus on in replicating it, get the support of and community involvement of hospitals.

Mr. REGNIER. I just want to make one clarifying comment with regard to the replicability of the Long Beach project. The U.S. Conference of Mayors, and also the National Association of County Governments, has used this as a model in suggesting to other county units and other cities, processes that they could follow in organizing the private sector.

Mr. SNEED. We do regard the SCAN project in Long Beach as a model not only nationally, but certainly in the local context, inasmuch as it does what ideally should be done in every local community, and moves the decisionmaking process on institutional placements to the neighborhood or local community. We provide Long Beach with the policy guidelines and allocate the funds based on their demonstration of overall need. They make the decisions locally about the different kinds of services for which the funds will be used. That is where the decision should be made.

Senator DECONCINI. Thank you very much. We appreciate your fine testimony.

We thank the city of Oakland also for allowing us to hold our hearing here.

Thank you for your attendance and the committee is now adjourned.

[Whereupon, at 2:05 p.m., the hearing was adjourned.]

APPENDIXES

Appendix 1

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT OF EDDIE J. JAMES, DIRECTOR, ALAMEDA COUNTY DEPARTMENT ON AGING, OAKLAND, CALIF.

I heard the testimony that the witnesses presented at the hearing your committee held in Oakland, Calif., December 4, 1978. For me, the message of those who trooped to the stand and presented their statements is loud and clear: "We are experiencing here in Alameda County, in particular, and in California in general, a massive, accelerating, and calculated destruction of the neighborhoods of our older cities. The elderly along with other poor people, are being affected most dramatically."

The speakers at the hearing clearly expressed the reasons for this massive neighborhood destruction: The poverty level that most older people are reduced to when they retire, compounded by the terrible inflation we are now experiencing; the lack of affordable housing—a lack more serious here in California than other parts of the Nation; the lack of Federal commitment to adequate housing for the low income and elderly—witnessed by the fact that less than half the national housing goal, set in 1968, has been reached; the condominium conversion fever; the naked greed of apartment house owners; urban renewal programs that disregard the housing needs of the displaced; and the lack of adequate funding for supportive social services. There is, however, another very important reason why our neighborhoods are being destroyed which was not discussed; the continuing high unemployment rate. At present, the unemployment rate in Oakland is running around 9.9 percent, in Berkeley 10.4 percent, and 6.7 percent for the rest of the county. At the same time the average for the entire State is around 6 percent. Who are the unemployed, not to mention the underemployed? Mainly minorities, especially minority youth, and older workers 55 and over. Where are many older people concentrated in this country? In neighborhoods where their neighbors are teenage school dropouts, the unemployed and drug addicts. In a word, individuals unable to maintain themselves, let alone their homes and neighborhoods. Desperate people willing to rob and steal from the vulnerable elderly. Unemployment and its social consequences tend to be overlooked when the needs of the elderly are addressed.

In a word, what emerges is a picture of the systematic destruction of older neighborhoods where older people tend to live. The irony of the situation lies in the fact that this pervasive, accelerating destruction has reached crises proportion at a time when the Federal Government is suggesting that the way this country will be able to meet the needs of a growing elderly population is to develop community (read neighborhood) based comprehensive system of services, that call upon local, regional, and State resources to complement Federal resources.

In 20 to 30 years the elderly population in this country will be very large and significant. The "older" elderly, those people 70–75 years of age and over, who tend to become frail and increasingly dependent will grow at a faster rate than the elderly population in general. Under our present system of priorities and allocation of national resources, there will not be enough money to begin to meet even the most minimum needs of those people. The thinking seems to be that we must now begin to develop a service system for the elderly that draws on the resources, voluntary as well as paid, of the local communities. The service delivery system must be community based, or it will not be.

So it appears, as we look down the years a piece, that if we wish to meet the human needs of older people in the future, we must move to stabilize and revitalize our neighborhoods. I would like to mention some steps that should be taken:

(1) HUD's budget for fiscal 1980 must include enough funding for at least 400,000 units of section 8 and public housing, an overall housing budget that will produce 600,000 units of new and rehabilitated housing for lower income people. This should include the 202 program and congregate housing under it.

(2) Immediate and comprehensive relief to renters. Legislation must be passed that will control the amount of rent older people pay.

(3) The passage of a Uniform Landlord/Tenant Act which gives adequate relief and protection to the renter.

(4) The channeling of more Federal and State housing money toward funding a wide range of in-home supportive service programs. The funding that now exists under title XX of the Social Security Act and under the Older Americans Act is insufficient. Such programs could be: homemaker-home health, chore service, minor home repair and maintenance, telephone reassurance, housing counseling/advocacy, etc. The development and coordination of neighborhood outreach and volunteer service programs should be encouraged and funded.

(5) The Social Security Act should be changed allowing for the payment of a wide range of in-home supportive services with these dollars.

(6) Funds must be made available to develop innovative housing alternatives, such as share-a-home programs, "granny flats" (small units attached to a family dwelling that allow an older relative to live next to the family). This will demand changes in local ordinances, building codes as well as in Federal and State legislation (e.g., definition of a family for SSI, or redefining family support).

(7) The channeling of greater amounts of State funds into the rehabilitation of senior residential hotels and the changing of Federal rules and regulations allowing Federal money to be spent to rehabilitate these integral parts of inner city neighborhoods.

To sum up: At a time when we are beginning to realize that perhaps the only way to assure a future generation of older people their right to live in dignity, safety and independence is to develop a community based network of human services that draws in local, State, and Federal resources, we are also witnessing the accelerated and systematic destruction of the very communities we need. Now is the time to implement an aging and housing policy that will reach the goal stated in the previous sentence. We already know the framework for such a policy. What is lacking is the will to implement it.

ITEM 2. LETTER FROM DEANNA LEA, DIRECTOR, AREA 4 AGENCY ON AGING, SACRAMENTO, CALIF., TO SENATOR DENNIS DECONCINI, DATED DECEMBER 18, 1978

DEAR SENATOR DECONCINI: I am writing in response to your call for information regarding the hearing on "Older Americans in the Nation's Neighborhoods." As I am anticipating you will hear from throughout the Nation, two major concerns of the elderly in our seven-county planning and service area which relate directly to neighborhoods are inadequacy of low-cost housing and fear of crime.

We also find a gap in a number of seemingly small personalized services, critical to providing support necessary to sustain frail older persons in their own homes, and seemingly well suited to potential neighborhood organization.

Finally, older persons might well serve as stabilizing forces in neighborhoods, the nuclei for the development of neighborhood support systems, and key support personnel themselves for other members of the neighborhood.

While the following possibilities which we raise are not new, we feel they are worth repeating and worth supporting within a neighborhood development program:

(1) Neighborhood "grandparents," reimbursed to be with "latchkey" children returning from school to homes in which parent(s) are working.

(2) Neighborhood meals cooperatives to provide companionship not only to older persons whose diets may be suffering because they are eating alone, but to other neighbors as well (thereby strengthening neighborhood cohesiveness).

(3) Security watches involving older persons and youth to not only implement neighborhood watches, but to check on homebound elderly on a routine basis.

(4) Youth escort services to provide security to older persons on the street.

(5) Older persons (because they have time and skills) reimbursed to serve as neighborhood information sources (tied in with I. & R. centers), to organize skills exchanges, or neighborhood based voluntary action centers; and to facilitate a range of personalized services such as those listed above.

(6) More extensive use of schools (already constructed on a neighborhood basis) as neighborhood service centers.

(7) Redesign of traffic control mechanisms (e.g., lights) to enhance the safe movement of older persons in the neighborhood.

I do hope these brief comments will be of assistance to you and your committee. We recognize the need to revitalize neighborhoods and hope your efforts will have positive impact on strengthening our neighborhoods.

Sincerely,

DEANNA LEA.

ITEM 3. LETTER FROM BURNS CADWALADER, AIA, THE RADCLIFF ARCHITECTS, OAKLAND, CALIF., TO SENATOR DENNIS DECONCINI, DATED DECEMBER 27, 1978

DEAR SENATOR DECONCINI: We attended your public hearing on "Older Americans in the Nation's Neighborhoods," with great interest and would like to add our comments to the public record of these hearings, based on our experience with HUD's section 8 rehabilitation program.

We are currently completing construction documents for rehabilitation of the Hotel Oakland under the program (a six-story masonry building dating back to 1911) and converting it to 300 units of elderly housing. Tenants for this project will probably come from all over the city. The building will be on the National Register of Historic Places, with the exterior and main floor public spaces historically restored. As principal-in-charge of this project. I personally steered it through HUD processing as well as review by city and State agencies.

(1) The HUD checking/review process is disproportionately long. It took HUD as long to review the drawings as it did for us to prepare them (including design).

(2) HUD staff are generally helpful, cooperative, and knowledgeable.

(3) The Hotel Oakland project is in a slightly deteriorated downtown area, particularly during night-time hours. HUD is requiring street/landscaping improvements in nine-block area surrounding the project. The developer has no control over the improvements as they are on public, city property. Fortunately, the city of Oakland now has limited funds for this work. However, it is grossly inappropriate for a project to be delayed due to requirements beyond which the developer is capable of providing by himself.

(4) Inflated construction costs caused the elimination or reduction of many common-use spaces that were to be used for recreational and social activities. If social service programs are to be included in national housing law (as evidenced by the recently passed $80 million congregate housing services bill). HUD should make additional funds available to provide physical opportunities for these activities.

(5) Too many one-bedroom units are being built for couples. Two persons living together in close quarters should always have two bedrooms or a small den to provide sufficient private space.

(6) Activities for the elderly, as for most people, should have purpose. Efforts should be made in the section 8 program to encourage, or even require, some hours of compensatory work appropriate to an individual's physical capabilities, (i.e., maintenance, teaching, child-care, etc.). Such a program would lend a much-needed sense of usefulness to the elderly, and could perhaps serve as a contribution to their rent subsidy, as well as a benefit to the neighboring community. This suggestion is certainly in keeping with the concept of the congregate housing services bill.

We hope these comments will aid the committee in evaluating the HUD section 8 program and result in improved living conditions for older Americans. Would you please send us the committee's memorandum? Thank you.

Yours very truly,

BURNS CADWALADER.

ITEM 4. LETTER AND ATTACHMENTS FROM TITO A. CORTEZ, COUNCIL ON AGING OF SANTA CLARA COUNTY, INC., SAN JOSE, CALIF., TO PHILIP S. CORWIN, STAFF MEMBER, SENATE SPECIAL COMMITTEE ON AGING, DATED DECEMBER 18, 1978

DEAR MR. CORWIN: Thank you for giving us the opportunity to submit a written statement for the U.S. Senate Special Committee on Aging's hearing on "Older Americans in the Nation's Neighborhoods."

The problems confronting the elderly in Santa Clara County are assumably similar to those in other places, where perhaps the acuteness of the problems dictate the major differences. Situations and circumstances account for the dissimilarities and commonalities. In light of these—housing, transportation, income, health, and other basic necessities to sustain everyday existence face the elderly in this county.

As a good example, in this county housing remains as the number one priority issue. Housing in relation to affordability to one's financial status and decency according to appropriations of life's situation. The seniors are faced with the high cost of maintaining a home, if they own one, and on the other hand of finding an affordable one while competing with the rest of the population for the present low vacancy rates that are very expensive.

Attached, please find two presentations, one made before the California Commission on Aging while the other was submitted to the California Legislature—Assembly Special Subcommittee on Aging. Another attachment is what we popularly referred to as the Bill of Rights of Senior Citizens in Santa Clara County. The latter document specifies the role of Santa Clara County in serving the elderly and its goals and policies regarding older persons. Perhaps other governments will be well advised to follow the actions taken by our county board of supervisors.

The first two papers concentrated very heavily on housing, while the other is an accumulation of efforts put forth by senior citizens, service providers, the Area agency on aging, County of Santa Clara, and others to finally draw up the long-awaited document that is very much needed for the older persons in this county.

May you be blessed with a happy holiday.

Sidadayao,

TITO A. CORTEZ.

Attachments.

STATEMENT OF TITO A. CORTEZ TO THE CALIFORNIA COMMISSION ON AGING, SAN JOSE, CALIF., AUGUST 3, 1978

Good afternoon—or as we say in Filipino Magandang Hapong Po Sa IyoNg Lahat——

Commissioners, ladies, and gentlemen, first of all, let me thank you for having this month's meeting in Santa Clara County and for selecting housing as the issue to be discussed today. My name is Tito A. Cortez. I'm with the Council on Aging of Santa Clara County, Inc., the local area agency on aging—P.S.A. 10.

Let me start with a brief overview of the housing problem. Nationally in 1972 there were approximately 30 percent or 6 million seniors who were living in approximately 2.8 million substandard apartments. Thirty percent of them have no inside flush toilets, 40 percent have no bath or shower with hot water, while 54 percent have minimal heat in winter.

Approximately one-third of the elderly budget is spent to meet housing expenses. Those who own their homes have difficulty in maintaining them. The cost of repair and services and high utility has ascended higher than the inflationary rates. These homeowners comprised approximately 60 to 70 percent of the elderly population. To the remaining 30 to 40 percent, steadily rising rents account for more than older persons can afford. In addition, there is also the ever-presence of not wanting to accept older persons as a tenant because of their age or some other artificial or natural matter.

Many are forced to give up their homes due to compounding reasons. Once they moved, they find that there are insufficient alternatives to their former living arrangements, limited availability of low-income housing and those that were available were either too expensive or psychologically and physically unsuitable. If a move is initiated, far too often, places are unavailable at affordable prices.

On the other hand, those who remain find that their neighborhood is no longer familiar.

There are approximately 125,000 persons 60 years or older in Santa Clara County. Our projection indicated that approximately 41% or 50,000 older persons are in need of having assistance in one form or another. For the next 3 years, it

has been estimated that approximately 13,000–14,000 older persons will be needing housing assistance. This figure is commensurate with those that were submitted by the nonentitlement and entitlement cities—Housing Assistance Plan—Community Development Block-Grant Program, to the Department of Housing and Urban Development (a 3 year housing needs projection).

What is available at the present time to older persons in this county through the Federal Government? Through the Federal level funneling down to the local housing authority, section 8 existing housing is available. Through one change of this section from the previous section 23, the seniors, once certificated, will have to find sympathetic landlords who would accept section 8 subsidy.

This is why it is called "finders-keepers" because the tenants have to find a prospective landlord who is willing to accept a triangular arrangement. This program is specifically designed to meet the low income families' needs, so there is a basic assumption that seniors are as mobile as the rest of the population.

Several factors that warrant consideration if section 8 is to be fruitful. First, there would be a high vacancy rate of all the apartment complexes in the county, thus necessitating the willingness of landlords to accept section 8 subsidy. Realistically, however, the vacancy rate is very low and the ones that are vacant are the ones that oftentimes do not provide a good environment because of the aesthetic outlook that they provide.

Second, that the fair market value that is allowable should be competitive to the going, rental rates. Far too often, the fair market value does not allow incentive to be provided for prospective landlords to accept subsidies.

Third, the mentality of the landlord should not be overlooked. There is the growing fear of losing the total control of the facility, once a subsidy is involved.

Fourth, there is insufficient amount of allocation relegated to section 8 subsidies. This accounts for the long waiting list (locally 3 years) for section 8 certificated persons.

Section 202, section 8 new construction and others account for the development of housing units for older persons. HUD previously allocated 150 units for section 202—direct loan for elderly and handicapped to the city of San Jose. Additionally, HUD has recently advertised for 75 units of section 8 new construction for older persons for the counties of Santa Clara and San Mateo with the exception of the city of San Jose. There are other activities persently undertaken by HUD and to take them collectively it is very doubtful if such activities are beginning to address the problem.

At the local level, cities such as San Jose can participate through the community development block grant. Voted in 1974, the Housing and Community Development Act objectives are:

The elimination and prevention of slums and blight;
The reversal of past patterns of economic and racial housing segregation;
Conservation of the existing housing stock;
Improvement of community services;
Elimination of conditions detrimental to health, safety and the public welfare.

The basic purpose of this law is to provide adequate housing, a suitable living environment and expanded economic opportunities for persons of low- and moderate-income.

Its applicability of providing more supply of senior housing is either very limited in its scope or simply not addressing the housing needs of the older persons.

Under California law, all cities and counties must develop and maintain a general plan—a long-term community development scheme. This plan incudes nine mandatory elements, one of which is housing. This housing portion must contain a statement of the housing needs of all economic segments of the community and a strategy to meet those needs.

While the local cities are not required to provide the needed housing, they must make a "good faith effort" to facilitate the development of appropriate housing. While they are encouraged to pursue available Federal and State housing agencies for financial assistance, they are hindered by the mandate of article 34 of the State constitution. California is one of the few States that requires article 34 to be approved before the voters if a local governmental unit wishes to sponsor and develop low cost housing. In this country, the cities of Gilroy and Campbell have already passed an elderly housing referenda while the cities of San Jose and Santa Clara are in the process of presenting housing referenda to the voters which will be voted on in the general election.

Because of article 34, there is no means to determine how many local municipalities would have sponsored low-cost housing had it not existed in the State constitution. The last attempt to change article 34 failed in 1974. That was ACA 40. There will be another attempt to make changes in article 34. You might look into ACA 47 which hopefully will be before the voters in the November general election. The purpose of ACA 47 would be to reverse the burden of proof, while article 34 requires that prior to a public body sponsoring a low-cost housing, the voters within that jurisdiction must approve of it. With the passage of ACA 47, those who would be against the development and sponsorship of local government to develop low-cost housing will have to collect sufficient signatures to be placed before the voters of the general election. It would be very appropriate if the Commission on Aging would look into this matter and subsequently support it.

There are others who also claimed that they are providing housing services to seniors. They will not be covered here. In looking at the problem and with the accumulation of all the housing helpers, building housing units or not, there seems to be insufficient supply to meet the housing needs of older persons in this county.

Housing is a problem to seniors everywhere. Some perhaps are more acute than others. While the trend seems to be building more units to accommodate the demand, little is being done about exploring the viability of alternative solutions, that is to look at the existing housing and utilize them as a viable alternative solution.

SOME SUGGESTIONS

The older persons cannot wait. Time is a precious commodity that does not need to be abused. We are all aware that there is insufficient amount of housing to meet the needs. Until the income maintenance problem of the older person is solved, sufficient housing subsidies should be made readily available. A person should not be spending more than 25 percent of his/her income for housing and that this expense should be adjusted to local socioeconomic needs. There should be some form of rent control, otherwise rent increases are likely to continue at the discretion of management/owners. We are all aware of the effects of proposition 13 on renters.

A direct provision of money payment or rent subsidies or housing subsidies would be helpful. We should look into subsidizing children of aging parents to build additional rooms in their present homes or other renovation to accommodate their parents—special payments of these kinds of families would be very helpful.

We also need to look at the possibility of direct rent subsidy to older persons who want to share homes with other seniors who own their homes. This needs to be explored further.

Local housing authority should have the opportunity of acquiring existing housing. This would mean an expansion of HUD acquisition programs.

At least 10 percent of new, multifamily housing units should have older persons while low-income housing should earmark at least 20 percent for older persons.

The interrelationship of services with housing projects is another matter that deserves closer attention. Just like any other population group the older persons need a network of services and they need to participate in daily life. New development should have services built directly into the structure. Congress did not authorize funds for services, but it should in order that HUD doesn't have to depend upon States and local provisions for supportive social services which are often unavailable.

We should not overlook the capacity and diversity of private enterprise to assist in providing additional resources to meet the housing problems. Maintaining flexibility and other types of financial incentive should be explored to encourage the participants of private industry in a deeper involvement aside from just building units. There must be some contribution that private industry could provide that we really haven't explored.

While all these are being looked at, we shouldn't exclude the possibility of sharing homes. Here in Santa Clara County we are fortunate enough to have started on alternative solutions to the housing problems. Although it is instituted on a small scale Project Match has proven to be a viable alternative.

The following is a brief description of Project Match (matching aging to coordinate housing) and it was not included in the original presentation.

Project Match attempts to provide another alternative solution to the housing problems. "Low-cost housing is no longer a reality and the term doesn't properly describe the existing problem." The shortage of housing supply and the "lack of a range of housing types from which to choose" have resulted in some persons

being "overhoused" while others may be "under housed." The elderly population, which is more often in a worse condition because they are existing on a fixed income budget, often find it very difficult to maintain their homes. They also have a mental attachment to their homes and are often in a predicament to search for additional resources to meet this demand.

Conversely, there are those who would like to share rooming or housing that is available. This is the purpose of the project, to find persons wanting to share available rooms to be matched to those seeking rooms. By providing this service, it is anticipated that some relief could be provided to the housing problem by effectively utilizing the occupancy of existing housing.

In addition to matching, there are also other benefits. By matching, a better social atmosphere is provided. Individuals who lived alone oftentimes experienced that the surrounding atmosphere is one of solitude. By matching compatible people together in sharing available homes, loneliness and solitude can be alleviated. Thus it can be seen as a solution to two problems.

This project officially received funding from CETA (for staff) in June 1977. The first phase was to establish a foundation for the project and to initiate making matches. This phase lasted for 10 months. By April 1978, the project was given additional funding for 6 months and expanded its activities. In addition to making matches the Project Phase II was to explore the possibility and feasibility of alternative community living arrangements and to provide workshops so that our first phase participants can tell us what can be done to improve Project Match. This phase ended on September 30, 1978. Our current program has only one addition to it from the previous ones. Phase III will continue the other activities and also will implement communal living arrangements.

As of the end of November 1978, approximately 200 matches were made. This comprised 400 people—half of whom are keeping their homes while the other half have found a home. We have at present three houses in which four or more senior citizens are residing.

This is basically Project Match. This project is sponsored by the Council on Aging of Santa Clara County, Inc.

STATEMENT OF TITO A. CORTEZ TO THE CALIFORNIA LEGISLATURE ASSEMBLY SPECIAL SUBCOMMITTEE ON AGING, SACRAMENTO, CALIF., OCTOBER 1978

APARTMENT CONVERSION TO CONDOMINIUM: ITS EFFECT ON THE ELDERLY RENTERS

Introduction

"The housing problem is immense and growing" perhaps best summarizes the nature and scope of the housing situation in Santa Clara County. The Housing Task Force of Santa Clara County, which undertook a study of the area's housing situation further reinforced what other studies have concluded, that there is a dramatic increase in the cost of shelter relative to the individual family's budget. With the increase of shelter cost came the reduction of families ability to purchase a home.

It has been estimated that nearly two-thirds of the county's working population cannot afford to purchase a home at today's prices. The latest median price of a previously occupied home for sale is $82,000. As more and more young families try to own a home, more of them are finding out that this is no longer possible. Those who can barely make the monthly mortgage payments are more likely from families with two-income households. These perhaps are the products of the population explosion years. As they now enter the mainstream of society and for the first time get involved in establishing and starting a family life, they are facing the reality of the housing situation. To fulfill their dreams of owning a home, either both husband and wife have to work full time and somehow save some money for the down payment, and in the meantime must settle for the alternative arrangement, that is to compete in the rental market.

While they are searching for shelter accommodations, others are also doing the same. With the large demand for rental units, the monthly rental payment will follow in a consistent ascending order. All of these activities would eventually lead to a low vacancy rate of rental shelter.

Affordable prices—elderly renters

While the low vacancy rates in rental accommodation dictates the housing (rental) situation in the county, and the monthly rental rates follow in ascending order, the elderly renters are faced with the dilemma of locating a decent shelter at affordable prices. Finding a decent place at affordable prices confronts

the daily existence of the seniors and this endeavor has become increasingly difficult to say the least.

While existing on a fixed income, the elderly renter must compete with renters of all ages who are presumably more mobile, assumably have a higher monthly gross income and can be more selective in residential location. In San Jose, Calif., it has been estimated that the monthly median apartment rental for a one-bedroom accommodation is $204. For an elderly who subsists on SSI, he/she will have to allocate 67 percent of his/her monthly gross income for housing. Coupled with the estimated 20 percent for food and the remaining 13 percent will be spent for transportation, clothing, health care, personal care, and others that are necessary to sustain everyday existence.

As was mentioned previously, the problem confronting the elderly renter is finding a decent and affordable home. Decent according to appropriations of life's situation and affordable in relation to ability to pay. The latter doesn't imply that elderly on SSI should be budgeting 65 percent of his/her gross monthly income for housing alone.

This brings us to the crucial question, "will apartment-to-condominium conversion provide another solution to the housing problems of the elderly renters or will it cause additional ones?"

Apartment to condominiums: the effect on the elderly renters

While the need for more affordable housing is well-known and well-documented, conversion from apartment to condominium to meet this need is not. In relation to the overall housing picture, any conversion would create a reduction of the present available rental units. This, of course, is predicated that condominiums would be sold in the real estate market, thus increasing the number of homes available for sale. This reduction will not only create a serious hardship on elderly renters, but also others who rely on apartment dwellings as their means of living accommodation.

Furthermore, additional expenses will be incurred during the conversion process. These expenses can be seen as an added cost to the price of ownership, or if the condominium is for rent, an added expenditure in the monthly rental payments. In either case, the elderly renters who presently spend a sizable portion of his/her monthly income for housing accommodation will have to seek another place for shelter. Once they moved, however, they will find that there are insufficient alternatives to their former living arrangements, very limited availabilty of affordable housing and those that are available are either too expensive or psychologlically and physically unsuitable.

While conversion increases the homes availabe for the real estate market and at the same time reduces available rental units, this process seems to compound the housing problem of the elderly renters who need affordable housing. While this can be seen as a solution to some, it can also be a problem for others.

To pursue this situation further, let us assume that a former occupant cannot afford the ownership or rental of the condominium. Where would he go to seek housing accommodation and who will be responsible for assisting him in this relocation endeavor?

What will happen to the elderly renter who is now residing in the premise prior to conversion, and who relies on subsidy rental payments? Should the owner decide to rent, would the above persons be guaranteed subsidy rental asssitance thus detering the propensity for them to move?

In reference to owning the condominium, can the elderly afford it? To very few perhaps, but to those who subsist on fixed income the answer is very explicit. Because ownership normally requires a large sum for down payment and mortgage payment, it is appropriate that a mechanism in the form of cooperative arrangement be structured so that opportunities will be provided to the elderly renters to become owners. The cost of the monthly mortgage payment should be no more than 25 percent of their monthly gross income. Perhaps a subsidy can be seen as a necessary ingredient for this type of relationship.

The aforementioned are just some of the many compelling questions and areas that should be addressed prior to conversion of apartment into condominium. Furthermore, these should focus on those who are immediately affected, namely the elderly. Neglecting to address some of these areas will bring consequences that will not be beneficial, and perhaps will create a series of events that will result in compounding the housing problem of the elderly renter.

Conclusion

The elderlies have the right to life not out of life. They have the right to live with independence and dignity. With their labor, they have planted societal seeds and cultivated the fruits of which all of us enjoy today. They have the need to be respected while society has the obligation to provide a mutual reciprocity. They need to be involved in the mainstream of society and we cannot afford to treat them as social casualties.

We need to provide them with the best of giving and sharing because they provided us with the best of everything today. We need to provide appropriate transportation systems so that they may be able to socialize with others and may also be afforded opportunities to obtain other basic necessities for life. We need to involve their wisdom to help us solve societal problems. We need to provide them sufficient income to sustain them through life not out of life. We need to eliminate the negative attitudes that we superimposed upon them and look at them as a part of our future not only in the past.

They also have the right to basic shelter needs and society has the obligation of providing them such necessity. This basic necessity should be affordable and should be situated where the surrounding environment is conducive to the everyday well-being of the individual.

In concluding this testimony, it is proper to state that condominiums can be seen as a solution to the basic shelter need. However, we need to ascertain if this is the appropriate means by which we could provide housing that is decent and affordable to the fixed income elderly renter. Taking the present income situation (SSI) into account, there is a need to place a great deal of emphasis on whether or not this conversion is the mechanism duly structured to provide a solution or to compound the present housing problem of the elderly renter.

ITEM 5. LETTER AND ENCLOSURE FROM RICHARD LIVINGSTON, REALITY HOUSE WEST, SAN FRANCISCO, CALIF., TO SENATOR DENNIS DECONCINI, DATED DECEMBER 20, 1978

DEAR SENATOR DECONCINI: Thank you for visiting the Cadillac Hotel in San Francisco when you came to California to preside over the field hearing on "Older Americans in the Nation's Neighborhoods."

The tenants of the hotel, as well as staff and friends of the program, appreciated your visit and the opportunity to talk with you.

We appreciate your concern for the elderly and your interest in our program at the Cadillac Hotel.

I am sending some material on the Cadillac Hotel in the hope that it can be included in the hearing record.

If you or the members of the committee have any further questions, please feel free to contact me.

Again, thank you for your concern and interest.

Sincerely,

RICHARD LIVINGSTON.

Enclosure.

THE CADILLAC HOTEL AND NATIONAL URBAN POLICY

The Cadillac Hotel sits on the corner of Eddy and Leavenworth Streets in the heart of San Francisco's tenderloin, perched dangerously on the edge of society. The tenderloin, like many of the Nation's central cities, is a decaying rot of neglected buildings, crime in the streets, and senior citizens trapped in cheap hotels.

San Francisco has seen the decline of its central city residential neighborhood during the last three decades. The buildings that met the needs of generations after the second world war became obsolete. The giant hotels took the tourists, leaving the smaller and older hotels to become filled with low-income transients and permanent senior residents.

The elderly are now trapped within the older hotels—trapped by the low rents, trapped by their desire to live independently in the central city, trapped by the elements that prey upon them. Simultaneously with the decay, policymakers have become increasingly concerned with the urban problem. Urban renewal has demolished many of the cheap hotels without creating sufficient

humane alternatives. Social programs in enormous numbers have been created since the fifties to meet the needs. Instead, a fragmented trail of benefits is left strewn about, with few comprehensive solutions.

To date, most efforts at a solution have left out, or tried to exclude, one or more of the existing elements. The central cities are populated with decaying structures, low-income elderly, hard core unemployed, and offers of governmental assistance. Most proposals to better the lot of seniors bring them together with public assistance programs. Many proposals have also taken into account the assets represented in the decaying buildings and attempted to bring three elements together: seniors, public assistance programs, and older housing structures. But very few programs have attempted to positively involve the elderly with unemployed ex-offenders in a comprehensive solution.

Reality House West, through the Cadillac Hotel, is attempted to bring together the four elements available in most run down downtown residential areas: seniors, ex-offenders, public programs, and old housing. The ex-offender element is the part most often ignored. Or if they are not ignored, the goal is to protect the seniors from the criminals. Other solutions seek to move the criminal element to another neighborhood or to another city.

Reality House, from decades of experience with ex-offenders, understands that both seniors and ex-offenders in the central cities are economically oppressed. The elderly population is not going any place. The ex-offenders and hard core unemployed are not going anywhere. The most effective solution must combine these two populations in a positive constellation. The most efficient solution must include older housing resources and existing public subsidies in a comprehensive manner. The Cadillac attempts to do this.

The Cadillac Hotel is an action plan and a demonstration project of a new approach to national urban policy. The goal of the Cadillac is the transformation of the tenderloin into a model central city neighborhood by developing the facility into a multipurpose residence and community center.

The importance of the project is that Reality House's approach is unique in combining resources of senior citizens, ex-offenders, government programs, and older hotel stock. The project is duplicable in many metropolitan areas where the chief elements of the Cadillac Hotel plan also exist.

The Cadillac deals with all of the basic urban policy objectives listed in a recent Carter administration planning memo:

(1) Meeting the emergency needs of cities, particularly through fiscal assistance and enlarged employment opportunities for young people.

(2) The strengthening of private business in urban areas as a means of increasing jobs and bolstering the urban tax base.

(3) Making cities more attractive places to live and work by revitalizing neighborhoods and improving housing.

(4) Reduction of the social and finanical disparities that make suburbs more attractive than cities as places to live and do business.

(5) Strengthening measures to combat racial discrimination.

The project is an ideal modern demonstration project for examining policies that affect fixed income seniors living independently in metropolitan areas, unskilled ex-offenders reentering the urban community, old central city housing and urban renewal government programs available to the cities, and developing services through minority controlled community organizations.

The fixed income seniors in the hotel, and more generally in the tenderloin neighborhood, are an urban paradox. On the one hand they live in the worst of environments from an urban planning perspective. The area has the highest national and regional crime rates and the seniors represent relatively defenseless victims. They choose hotel life and its independent living, but inflation continually hurts their fixed and diminishing resources. The neighborhood is physically avoided and politically isolated. The good side however—the hotel existence represents an inexpensive, diverse, and potentially caring environment for senior citizens. It is possible to create a human, caring, nutritional, and independent living situation that is connected to the world and safe from predators.

The younger and unskilled ex-offenders re-entering the urban community have another set of problems. The prison's policies are increasingly turning to punishment and discounting rehabilitation. Ex-offenders leaving prisons lack skills and economic resources, are often unconnected to the larger community, and lack the self-esteem of having a productive role in society. They need a supportive environment with limits, resources, and training opportunities offering an alternative

to the criminal lifestyle. Representing an unemployed class, they need an economic situation connected to the mainstream, integrated into the work force.

The old buildings in many metropolitan areas represent grand opportunities, especially for rehabiliation through employment opportunities for young people. The buildings are often, like the Cadillac Hotel, structurally sound but needing a lot of labor that can be unskilled if supervised by skilled trainers. Not only is the building then rehabilitated, and the elderly provided low-cost housing, but training skills and income are also transmitted to youth, seniors, and ex-offenders.

Existing government programs provide much of the resources for the people and the programs within the Cadillac Hotel. The multipurpose project, combining different resources, needs the sum of the programs to be compatible, and not counterproductive. The hotel and its residents relate to dozens of public policies, including those for housing and urban development, health, social security, welfare, medicare, mental health, employment and training, aging, drug abuse treatment, police, correctional, recreational and other programs.

In the brief time that Reality House has operated the Cadillac Hotel we have identified a multitude of applicable programs as well as a host of policies that are counterproductive to the basic urban policy objectives. HUD programs are a natural for the residential program, but many programs are designed for apartment living rather than hotel rooms without kitchens. Zoning regulations govern conversion of units from hotel rooms to apartments and costs are often prohibitive. Social security and, even more so, SSI policies discourage employment by recipients even .though their fixed payments are nearly impossibly low. Using youth and ex-offender labor, paid by CETA programs, to rehabilitate housing is a natural, but Davis-Bacon Act provisions outlaw construction work with Federal funds without paying union scale wages. All of the programs include forms, procedures, guidelines, and different levels of bureaucracy. Each must be individually approached with an eye for applicability and to policy changes that would cut down counterproductive regulations.

Reality House West is a black-funded and controlled community organization providing an integrated system of social services. Like many such minority controlled organizations, they lack capital assets for a significant endowment. These organizations are often one step in front of the bulldozer in rented facilities, redevelopment buildings or the like. The Cadillac Hotel, purchased by Reality House, represents an opportunity to develop equity and financial resources. The building is currently valued at about $6 per square foot. As this increased to a more realitsic $30 valuation, the building becomes a multimillion-dollar asset, a solid foundation for a community organization.

On December 9, 1978, the television program Bay Scene 7, produced and broadcast by San Francisco's KGO–TV, included a story on the Cadillac Hotel. In an interview on the program. Leroy Looper, the founder and executive director of Reality House West, summed up the Cadillac program:

"People are talking about getting rid of the addicts in the street and the convicts in the street and throwing the senior citizens in the river somewhere. We're saying that they are total resources in the community.

"People are saying there's no work in San Francisco, that there are no industries in San Francisco. There's an industry out there. Outside that door are buildings that need to be fixed up that could create a lot of work that broadens on all kinds of skills—electricity, brick laying, carpentry, plumbing. They could fix up this total neighborhood and the people in this neighborhood could put some money in the bank.

"If people really care about the concept of saving neighborhoods, if people really believe in what they say about senior citizens and ex-offenders and helping people, what we are asking for are experts and supplies and money to make this a living entity, that this hotel can impact the outside world and this be a demonstration model to show other parts of the country that it can be done. Then we'll halt the demolition of neighborhoods and prove once and for all that they can be salvaged.

"People think because people live in the tenderloin that they are poor, they don't have any resources and that they are dependent and it's a contrary view for me. The senior citizens as I know them in this neighborhood and in this hotel are very independent people. They like to be in the neighborhood, they were very resourceful when they were young, and they just like the neighborhood, and I feel it's crime to tear up a hotel and move them out or raise the rents so high that they cannot spend their last days in some kind of comfort."

THE CADILLAC HOTEL—THE PAST

In 1906 the great earthquake and fire destroyed virtually the entire downtown of San Francisco including the bulk of the city's hotels. The years immediately after the disaster saw the city rebuilt at a fever pitch. By 1912 there were 1,237 hotels including 60,000 rooms, 90 percent of them new. One of the first hotels built in 1906–07 was the Cadillac Hotel.

The Cadillac is a steel beam reinforced brick building. It is situated on the largest lot on the block, a 137 foot by 137 foot parcel. The ground floor includes 10 store fronts and the hotel lobby. On the second, third, and fourth floors are located the 159 hotel rooms, approximately 40 percent with private baths and the remainder serviced by public rest rooms.

When the building was purchased by Reality House West in 1977, only one-third of the building was being utilized. Although structurally sound, lack of maintenance had caused the decline of most of the hotel rooms and store fronts. Ground floor windows were boarded up, upstairs windows were often broken. The roof leaked, the elevator was regularly breaking down, worn gaskets and valves made the boiler and heating system inefficient. The plumbing leaked and many of the toilet facilities did not work. The electrical system was antiquated and inadequate for the current usage. The tax assessor had valued the building at $350,000, or about $4 per square foot. The land was valued at $200,000. It seemed only a matter of time before economics would demand that the building be demolished and another structure be built on the property.

The primary income was rent from senior tenants paying an average of $80 per month from social security and pension checks. The most successful business was the corner liquor store that operated from 6 a.m. to 2 a.m. and did an active business around its two pay phones at the front and a number of pin ball machines in the back.

On the corner in front of the hotel dozens of heroin addicts congregated constantly. From the lobby of the hotel, seniors could watch bags and balloons of heroin be purchased and transferred just outside the picture window. Violence on the street was common—one tenant said that he had personally witnessed four murders in front of the hotel during his 10-year tenancy. While crime in the street was rampant, many police were blackmailing neighborhood businesses. Federal prosecutors have charged that local police extorted $650,000 from businesses in the immediate area from 1966 to 1974. Seven present and former police pled guilty to blackmail charges in the U.S. district court in December of 1978.

In short, the Cadillac Hotel in 1977 was a fairly typical building in a fairly typical tenderloin neighborhood. What little interest existed in rehabilitating buildings in the tenderloin came from speculators looking for profits from government loans and subsidized rents. Few people or organizations saw much potential in the Cadillac Hotel at the time. Reality House though saw the building as a fantastic work site and the senior population as an asset. Banking on its past experience and reputation, Reality House decided to take a risk and purchased the buildings on April 15, 1977, with 100 percent private financing.

Hotels such as the Cadillac stand in ill repair across the country. From our experience in California there seem to be several trends. The first is that foreign nationals are purchasing the small and medium size facilities. Industry magazines estimate that over 25 percent of the hotels and motels in California are owned by foreign nationals. In San Francisco this is especially evident in the hotels owned by Patels, a family of hotel operators from India which the city planning department estimates owns 40 percent of the tenderloin hotels. This trend is supported by the fact that a foreign national can acquire a "green card" as a permanent resident by investing $50,000 in a hotel facility.

The second trend, especially in the central city hotels sitting on valuable property in the central cities, is the inhumane decay of the facility and its eventual condemnation by the public authorities. On the face of it this seems to hurt the owners but actutlly it often helps speculators. An unprofitable hotel, such as the International Hotel which the Senate special committee has investigated, poses a difficult problem of eviction for potential developers, especially if the tenants are an organized group of senior citizens. However, if the owner allows the hotel to be mismanaged it can quickly fill up with junkies, winos, and street derelicts. Garbage may be allowed to pile up and the place becomes a fire and health hazard. The health department, or some other government agency, then condemns the building as unsafe and a hazard and the tenants are evicted. This leaves the owner with an empty building which in many cases is more profitable

than an occupied building. The seniors who happened to be living in the building, perhaps for decades, are out on the street.

Similar to the health hazard condemnation is the trend of burning of unprofitable buildings, some occupied and some not. In the 20 months that Reality House has owned the Cadillac Hotel, there have been more than a dozen major fires within a few blocks, all of buildings that on the face of it were unprofitable for their owners.

Another trend, which has destroyed literally thousands of units of low-cost housing in San Francisco in the last decade, is the "redevelopment" of the buildings and neighborhoods by bulldozing the old hotels. Most often when this has been done the residential units, many inhabited by fixed-income seniors, have been replaced with commercial nonresidential buildings. If the redevelopment includes the construction of residential units these are usually apartments costing $40,000 or more each to build. If they are made available to low-income people it is through expensive subsidies.

The Cadillac Hotel hopes to be the beginning of a new trend—that of community based organizations taking over residential hotels and rehabilitating them with hard core unemployed laborers, creating a community center as well as enhancing the low-cost housing for seniors and other poverty level people.

The Cadillac Hotel is perhaps the most efficient and cost effective approach to the rehabilitation of central city housing stock. At a time of limited funds this approach must be examined closely. Not only is the total dollar cost extremely low, but what money is spent benefits the populations that need it most—hard core unemployed, fixed-income elderly, and community based organizations.

The traditional approach to creating housing for the elderly and low-income people in the United States is extremely expensive. This approach usually involves funding construction through tax exempt bonds purchased by banking institutions, building facilities through multi-million-dollar construction contracts, and then subsidizing the rents through HUD grants. The elderly benefit, those who can wade through the bureaucracy and waiting lists, by receiving housing at 25 percent of their income. But the large profits, the multi-million-dollar deals, are made by the banks that purchase the tax exempt bonds, the construction companies that received the contracts, and the administrators that run the program. Because the costs are high there are too few units and long waiting lists. Although many of the contracts include minority hiring clauses, few "hard core unemployed" benefit from the construction.

Clearly the need is so great that we need many different approaches, the traditional as well as the innovative. But when all the work has been completed, including the training and employment opportunities granted, units in the Cadillac Hotel will cost approximately $7,000 each as contrasted with $40,000 each in the new subsidized units across town.

REALITY HOUSE WEST—THE DEVELOPMENT OF A COMMUNITY BASED ORGANIZATION

Reality House began as one of the pioneer drug abuse treatment and ex-offiender programs in the country. Leroy Looper, the founder and Executive Director of Reality House West, started the oldest drug program in Harlem, the first detoxification program in San Francisco's Fillmore district, one of the first drug abuse training programs on the west coast and was instrumental in the formation of many organizations including the San Francisco Coordinating Council on Drug Abuse, Westside Community Mental Health, and many others. Thousands of addicts have been treated, hundreds of professionals trained, and dozens of programs started by Reality House during the last 15 years.

The foundation of Reality House began in New York in the early sixties when Leroy Looper, himself an ex-addict and ex-convict, began working in prisons with Steven Chinlund, then a volunteer prison minister and now commissioner of the New York State prison system. From there Reality House was started in Harlem in the mid-sixties. Reality House is still one of the largest and most successful programs in Manhattan, directed by Syd Moshette, Leroy's former parole officer, and operated on nearly a $2 million a year budget.

In 1969, Leroy left New York and came to San Francisco where he founded Reality House West. With no money, Reality House secured a building from the redevelopment agency and developed staff from the clientele and some volunteers. From this grew a detoxification facility, a therapeutic residential community, a training center and other programs. Some of the original staff are still with the organization.

During the seventies, Reality House West continued the drug abuse services but increasingly turned to work with ex-offenders, youth and economic development projects.

In 1976 Reality House West began investigating the possibility of operating programs out of a downtown hotel in San Francisco. We discussed the plan with criminal justice agencies, senior citizen organizations, the redevelopment agency, city planning department, and many other groups. Through all of this we came to the decision that the Cadillac Hotel was the best option available. We made arrangements to purchase the hotel as well as to secure the resources necessary for its development. We investigated the possibility of making the property exempt from local property taxes as well as meeting the requirements of the planning department, building inspectors, and the fire department. During 1977 we laid the foundation for developing the hotel into a cornerstone in a new tenderloin and a location for the delivery of community services.

Reality House had no funds for this project, but felt that our track record and ability to successfully put together programs made the project feasible. We approached the owner with the proposition that Reality House West assume the mortgage and that he allow us to pay the difference over several years—in other words, to buy the building with no downpayment.

We involved our board of directors and the attorney for the organization. Through negotiations, we reached a price of $550,000 for the hotel. The bank holding the first mortgage allowed us to assume the loan of approximately $310,000 at 7½ percent interest. The owner accepted a second mortgage of approximately $240,000 at 6 percent interest with payments beginning 1 year after the purchase.

After purchasing the hotel, Reality House began an ambitious program to rehabilitate the building, establish services in the hotel and the storefronts, and effectively combine the populations of seniors and ex-offenders. By early 1979, all but one of our programs will be located in the Cadillac Hotel. Current service components include:

Women's halfway house.—The only service that is not planned to be located in the Cadillac Hotel, the Reality Women's House provides residential services to women being released from prisons and jails. The capacity of the house is 20 women who reside there for an average of 3 months while working in the community or involved in a educational program. The program is primarily funded by fee-for-service contracts from the Federal Bureau of Prisons and a grant from the San Francisco Mayor's Criminal Justice Council.

Men's halfway house.—The men's residential services, similar to the women's program described above, are provided on the third floor of the Cadillac Hotel. The program has a capacity of 40 men and is primarily funded by fee-for-service contracts from the Bureau of Prisons.

Senior residential program.—Operating on the second and fourth floors of the Cadillac Hotel, low-cost rooms are provided for independent elderly. There is a capacity for 100 residents. Funding for the operation of this program comes from the low-cost rents, averaging $80 per month.

Outpatient services.—Located at 324 Leavenworth Street, in a Cadillac Hotel storefront, the outpatient services provide counseling to substance abusers and ex-offenders. There is a capacity for 100 clients funded by contracts with the San Francisco and California Departments of Health and the National Institute of Drug Abuse.

Reality rap restaurant.—The restaurant operated by Reality House is currently located on Divisadero Street in San Francisco but is scheduled to move to the corner of the Cadillac Hotel when remodeling is completed. The restaurant feeds seniors, youth and residents of the halfway houses as well as providing a community center.

Maintenance company.—A small group of laborers provide the maintenance for the Cadillac Hotel. Originally funded by a CETA grant from the Mayor's Office of Employment and Training, when the grant expired the best of the workers were kept as hotel staff. The eventual plan is to develop a company providing maintenance services for Reality House and other facilities.

Upholstery shop (planned).—With HUD community development funds, one of the storefronts will be remodeled into an upholstery shop that will train and employ ex-offenders and seniors to refurbish the furniture in the Cadillac Hotel as well as for other senior facilities.

Administrative services.—All of the programs and payroll for Reality House West are administered through the office at 306 Leavenworth, in the Cadillac building, including billing, fiscal records, personnel records, and other business.

Billy Newman's gymnasium.—One of the oldest boxing gymnasiums in the United States, Newman's has been located in the Cadillac Hotel for over 50 years and hosted dozens of world's champions including Jack Dempsey, Muhammed Ali, George Foreman, and many more. The gym is operated by Mr. Newman and includes about 8 trainers and 100 fighters.

Artist's co-op.—Also operated at the Cadillac Hotel by people other than Reality House West is the artist's co-op which includes a dance floor, darkroom, photography studio, and other facilities.

Shoeshine stand.—The third facility, along with the gym and co-op, in the Cadillac Hotel but not operated by Reality House is the shoeshine stand which serves as a ministry for its owner, Rev. David Fairley.

When Reality House purchased the Cadillac Hotel it was less than one-third occupied. Now, after 20 months, the facility is two-thirds utilized. We hope by the end of 1979 to be using 85–90 percent of the building for the various programs. None of this would have been possible without the financial support we have received. Most involved in the program were local foundations.

Funds for supplies were donated by the Bothin Helping Funding and the Evelyn and Walter Haas Foundation. The San Francisco Foundation awarded a grant to fund expert trainers and supervisors for the project. The Hewlett Foundation and the Irvine Foundation provided moneys for the major repairs on the building. An unrestricted grant was received from the Crown Zellerbach Foundation. Grants for remodeling the restaurant, gym, and upholstery shop were received from HUD funds dispursed by the Mayor's Office of Community Development. The first grant, to hire ex-offenders and seniors, was of CETA funds from the Mayor's Office of Employment and Training. From local parking tax revenues, the San Francisco Commission on Aging provided funds for building supplies.

In addition to the grants mentioned, the business community responded with a multitude of building supplies and furniture. Also donating supplies and equipment was the Synanon Foundation. Design services were provided by the University of California Community Design Center.

Finally, friends and residents of the hotel provided hours and hours of volunteer time in support of our efforts.

The Cadillac Hotel is a large project and requires support from a multitude of sources. The project is less than 2 years old and we estimate that the first stage consisting of the rehabilitation of the building will take a total of 5 years. A long and hard struggle, the results will benefit our community, our neighborhood, and hopefully serve as a model for others.

Appendix 2

STATEMENTS SUBMITTED BY THE HEARING AUDIENCE

During the course of the hearing, a form was made available by the committee to those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

DEAR SENATOR DECONCINI: If there had been time for everyone to speak at the hearing on "Older Americans in the Nation's Neighborhoods," in Oakland, Calif., on December 4, 1978, I would have said:

The following replies were received:

WILLIAM T. ABBOTT, OAKLAND, CALIF.

The senior citizens of Oakland would like for you to send a representative to our meeting (workshop meeting) to be held December 6, 9 a.m. to 3:30 p.m., at the First Presbyterian Church, 27th and Broadway, Oakland, Calif. This meeting is sponsored by the California Legislative Council of Older Americans. Here you will hear the dire needs and the true feelings we senior citizens have.

We need free mass transportations as they have in Philadelphia; Milwaukee; Santa Clara County, Calif.; the State of Hawaii, etc.

We do need a senior multi-service center as they have in most cities.

I would like further communication with your committee.

S. W. BRAY, ALAMEDA, CALIF.

I am interested in the rumor that the cost-of-living index that has been tied to social security payments is being considered for removal due to budget cuts because of inflation. Please comment. Thank you.

CLARENCE DAY, ALAMEDA, CALIF.

At least 50 percent of the military budget for expansion should be diverted to more human-related services.

It is shameful that we should spend so much preparing to kill people and so little to make life bearable for those alive—particularly the elders.

MITCHELL ELIOTT, OAKLAND, CALIF.

The lack of morality in the discussion is unsettling. Sons and daughters are now encouraged to toss their aging parents onto a scrap heap. Now, more attempts are being made to make the heap more attractive and remove any lingering guilt for doing it. It is hogwash to say older people want to be with their age group. Young people with young ideas keep persons from getting old. Offsprings should bear the brunt of supporting their parents and encouraged to have them live in the same household. A tax credit would help in doing this. To pour money into depressing old-age housing is immoral. One of the worst I heard was that proposed by Mr. Turner in California to convert old cruise ships into homes for the aged. If you have spent any time on a ship, you will see what I mean.

JIM G. FRIEDL, CONCORD, CALIF.

Please provide some attention for the retired mobile-home owners who are at the mercy of the park owners.

Our investment is often hazarded by the mere whim of the park owner—with respect to fees, accommodations, and continued occupancy—especially if we criticize or protest any shortcomings.

SUSIE P. GAINES, BERKELEY, CALIF.

No condominiums for the elderly. More money for the elderly. I would have said the same words that Mr. Turner said—most of the poor elderly helped build America with cheap labor and now we need to be looked after properly—medical-wise, better housing, food. The United States is the richest country in the world. I happen to be retired, a mother, a grandmother, and six brothers to serve in U.S. service. Also a son that served 2½ years in the Armed Forces. I am an advocate for the poorest of poor—elderly. This is what I would have said. Please look into the matter deeply. Then do something about it.

THALMA LAWRENCE, OAKLAND, CALIF.

Instead of new programs being initiated, which will necessitate training of staff and, as with passed experimentation, a great deal of resulting inefficiency and consequent lack of benefit to the elders in need, I am hoping for carefully considered and evaluated programs and agencies which have proven themselves to be effective. I have in mind our local Oakland Neighborhood Housing Services Agency which has, on a low-budget operation, visibly proved itself in the Elmhurst area of East Oakland. Director Nunn and staff have been a definite assist to seniors and others in efficiently processing low-interest rehab loans and in obtaining services for citizens of Elmhurst which, when handled by city bureaucratic systems, only result in endless delays and frustrations for the homeowner. Most elderly give up rather than having to deal with the paper-shufflers downtown whose only interest seems to be in perpetuating their jobs and not in solving problems.

MARJORIE MCCARTOR, HAYWARD, CALIF.

Older people are beginning to panic. People who have planned and saved to be self-supporting to the end of life are being hit by inflation year after year. They don't dare to think ahead now, knowing that each dollar buys less. Since housing takes a big bite out of available income, skyrocketing rents tend to reduce self-respecting citizens to fear ridden semipaupers. Women are particularly vulnerable.

Older people who get together and share a home might be a cost-effective strategy. Some way of rewarding relatives for providing living space for elderly family members might help.

A tax rebate for people willing to prepare and rent part of their home to an older person might help.

JAMES E. O'NEILL, ALAMEDA, CALIF.

Keep up the good work!

BIRUTE SKURDENIS, OAKLAND, CALIF.

All types of surveys have been done on the comparative costs of caring for an older person in their own home or apartment and the cost of caring for them in a nursing home or acute care facility. As far as I know, all have shown that the savings in money is immense when services are provided directly in the home. That's not even taking into account the savings in sorrow, anger, and fear that older people face when confronted with the possibility of entering a nursing home.

With all the howling taking place around the issue of the use of taxpayers money, it would seem to be a logical conclusion that providing services to those who need them in their own homes is a better remedy than forced nursing care. Yet there is no alternative to nursing care for many elderly who are well but are

having difficulties with cooking, shopping, or personal care. Oakland is, perhaps, in better shape than other cities in the country, having such services provided by groups like the Social Service Bureau of East Bay and the senior companion program, but we still have a long way to go.

I would like to see more emphasis placed on congregate housing which provides some of these necessary services. Currently, if you live in one of Alameda County's congregate housing sites, you face eviction if you are too ill to care for yoursef, if only for a limited time. I've seen many older people whose health has deteriorated as they've become slightly ill and have become sicker for fear of losing their housing. Some even forego medical care for fear the administrator will find out and send them packing. None of the congregate housing sites will allow people in wheelchairs on the assumption that they cannot care for themselves, although there is one being built that will allow this. I would like to see that broadened. Thank you.

VIOLA VOLG, BERKELEY, CALIF.

We are trying to keep older peresons from becoming residents or patients of institutions as long as they can possibly manage to stay in their own homes.

However, it is necessary that there be suitable housing, and services appropriate for their condition and needs at a price they can afford.

Almost any alternative is preferable and less costly than placing older persons in institutions.

Needed are: Suitable (low-cost) housing, in-home supportive services, day care, and multipurpose senior centers.

KILROY ZUKAS, BERKELEY, CALIF.

To win 1984's "Cold World War III," the home-scene logistics require adequate and decent homes for all Americans—not only the aged survivors of previous holocausts and massive wastes of their hard-earned taxes. After W.W. II in England, where I had been a 3-year, 8th Air Force combatant, the Labor Party repeated their W.W. I "Post War Homes for 'Veteran Heroes.'" They further said, "If homes were required to defeat the Hitler-Hirohito-Mussolini juggernauts, the low-income public houses could have rolled-off the escalated defense assembly line as did planes, tanks, ships, shells, ets.!" After 33 years of frustrated expectations of Yankee low-income modern housing for our W.W. I and W.W. II veterans and heroes, I finally secured a satellite senior studio shelter for my 66-year-old decrepit remains of W.W. I, W.W. II, and potential W.W. III struggles. As a retired school teacher, I have only $300 income monthly after 50 years of effort in raising a family of three Phi Beta Kappa children at U.C., Berkeley, whose paternal grandparents were illiterate and alcoholic Litvok immigrant ghetto types. Just as public education achieved this upward mobility of my CCNY and GI degrees and the U.C. honors for my offspring, so would a massive rehousing "crash program" result in greater employment, less delinquency, less psychosomatic medical and mental health expenditures—especially in our growing urban and rural ghettos.

Converting deluxe Hawaiian Cruise Ships is not the solution. If Scandinavia and the Western European NATO and EEC governments and economies can provide model housing for their low-income taxpayers, surely the 20th American Century could match, if not surpass, these poorer nations.

If the Jonestown mass hari-kari refugees from "liberal bay area's Peoples' Temple" had decent housing, jobs, schools, and medical agencies, possibly they never would have fled this "Sodom and Gomorrah" crisis-ridden metropolis. If "law and order" vigilante-paratrooper White had been spared his Vietnam War hardening and pier number 39 "easy buck" hanky-panky, he still might have been San Francisco's supervisor helping Mayor Moscone and fellow politician Milk to improve San Francisco's public and tourist image, instead of tarnishing it. This is how the Roman era collapsed—too many legionnaires—not enough civilian securities.

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OLDER AMERICANS IN THE NATION'S NEIGHBORHOODS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 1—WASHINGTON, D.C.

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CONTENTS

Page

Opening statement by Senator Dennis DeConcini, presiding---------- 1

CHRONOLOGICAL LIST OF WITNESSES

Fleming, Richard C. D., Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development---------- 3
Whiteside, William A., Washington, D.C., Director, Office of Neighborhood Reinvestment, Federal Home Loan Bank System, and Staff Director, Urban Reinvestment Task Force---------- 11
Holman, M. Carl, president, National Urban Coalition, Washington, D.C-- 19
Filer, John H., chairman, Aetna Life & Casualty, Hartford, Conn., representing the Committee on Corporate Social Responsibility---------- 29
Weiler, Dr. Conrad, associate professor, Temple University, Philadelphia, Pa., representing the National Association of Neighborhoods---------- 34
Myers, Phyllis, senior associate, the Conservation Foundation, Washington, D.C---------- 48
Jacobson, Solomon G., associate director, Institute for the Study of Human Systems, Inc., Columbia, Md---------- 55

APPENDIX

Letters from individuals and organizations:
Item 1. Letter and enclosure from Henry S. Dogin, Deputy Administrator for Policy Development, Law Enforcement Assistance Administration, U.S. Department of Justice, to Senator Frank Church, dated Dec. 22, 1978---------- 73
Item 2. Letter and enclosures from Douglas P. Wheeler, executive vice president, National Trust for Historic Preservation, to Senator Frank Church, dated Dec. 29, 1978---------- 81

OLDER AMERICANS IN THE NATION'S NEIGHBORHOODS

FRIDAY, DECEMBER 1, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The hearing convened, pursuant to call, at 9:13 a.m., in room 5302, Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Present: Senator DeConcini.

Also present: William E. Oriol, staff director; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; Philip S. Corwin and Alan Dinsmore, majority staff members; Jeffrey Lewis, minority staff member; Shirley Wilson, office of Senator DeConcini; Marjorie J. Finney, operations assistant; Alice Hamlin, resource assistant; and Kaye English, information assistant.

OPENING STATEMENT BY SENATOR DENNIS DeCONCINI, PRESIDING

Senator DECONCINI. Ladies and gentlemen, this is the opening hearing of the Senate Special Committee on Aging, Frank Church, chairman. I bid you good morning and welcome to the witnesses we have today and also to the hearing audience.

Today, the Senate Committee on Aging holds its opening inquiry into the subject of neighborhoods and the elderly. Our examination takes place in the firm belief that America's elderly, more than any other group in our society, have the greatest need for strong and stable neighborhoods—and may have the most to lose if they are forced to reside in blighted areas characterized by substandard housing, inadequate public services and commercial activity, and high levels of arson and street crime.

Older persons—so many of whom live on low, fixed incomes, have physical limitations, and develop strong psychological needs for secure and familiar environments—require the good housing; the ease of access to shopping, health care, and social services; and the informal support and assistance that can be summed up in the word "neighborliness."

It is clear that healthy neighborhoods are a prerequisite for healthy cities. And, at a time when renewed interest and new capital is conserving the physical resources of neighborhoods, equal attention must be paid to their human resources.

We are beginning these hearings at a moment marked by a clear shift in the dynamics of America's urban areas. The problems of the past have certainly not disappeared. Nor should it be mistakenly

thought that the problems, assets, revitalization trends, and characteristics of all neighborhoods or all cities are alike. Nonetheless, a new stage appears to have been entered, for these reasons, among others:

No. 1: The 1978 Housing and Community Development Amendments declare it to be Federal policy that, in carrying out shelter and revitalization policies, the utmost care should be taken to minimize the displacement of persons from their homes and neighborhoods. Further, the HUD Secretary is ordered to report to the Congress, by January 31 of next year, her recommendations on the formulation of a national policy to minimize displacement due to public and private redevelopment activities.

No. 2: Mr. Rolf Goetze, of the Boston Redevelopment Authority, speaks in his 1977 study, "Stabilizing Neighborhood," of a "tidal wave" of new households which will inundate our urban areas and bring all their housing resources into play during the remainder of the century. He goes on:

> For policymakers, the implications should be clear. The last 20 years can be characterized as the period when problems of urban blight caused stress; and the coming 20 years as the period of rediscovery, speculation, and dislocation * * * we must realize that coming events can bring with them a full measure of trauma, particularly for existing residents.

Yet these new trends offer cause for hope as well as concern for, as Dr. Goetze observes:

> Revitalizing neighborhoods offers an unprecedented opportunity to maintain diversity if appropriate public policies are pursued.

No. 3: An August 1978 study by the National Urban Coalition found that a group dubbed "the new urban nomads" was being created by reinvestment displacement in 44 American cities, of all sizes and in all regions. Of great concern to this committee is the coalition's finding that, "The elderly are most often displaced."

No. 4: The cover story in the December 1978 Harper's asserts:

> 1978 * * * was the year the Northern cities confounded the prophets of inner city doom * * * from Boerum Hill in Brooklin to Capitol Hill in Washington the fastest growing social problem was not the departure of the white middle class; it was the displacement of the poor and nonwhite.

This same article goes on to report that domestic and foreign investment is pouring into America's urban centers; Federal programs have contributed to these events in ways that few policymakers ever foresaw.

Clearly, the implications of these, and many other reports, are more than academic matters for older Americans.

More than half of America's elderly reside in urbanized areas; a full one-third reside in central cities.

For the 7 out of 10 older Americans who own their own home, will these changes bring enhanced equity, better municipal services, and lowered crime on the streets?

Or will it bring agonizing choices as speculation results in skyrocketing property taxes, or even in displacement as code enforcement is stiffened? For the 30 percent of the elderly who rent, will escalating prices or condominium conversions force them out of long-occupied dwellings and into more affordable, but less desirable, parts of the city?

In short, as many urban commentators have recently inquired: If America's cities are to be saved, who will they be saved for? How can we continue to maintain the diversity of age, economic status, and ethnic background that are drawing so many of the urban pioneers back into the hearts of our metropolitan areas?

This is the essential question of today's hearing, for if the elderly are forced to compete head to head with others for continued occupancy in good neighborhoods, they will surely be forced out from the communities they have helped create.

We will be looking for our panel today to help us answer many questions, among them:

How much is known about the extent of displacement in America's urban centers and its specific impact on the elderly?

In what ways are older persons benefiting from the revitalization of our cities?

How have Federal programs affected neighborhoods? What are our national neighborhood policies now, and how do we address the future?

What innovative efforts are today helping older homeowners upgrade and keep their properties, are helping elderly renters to stay in place and even to become homeowners, and can be replicated and transplanted to other neighborhoods?

What positive role can the private sector play in helping to maintain healthy and diverse neighborhoods?

How can aging services be better targeted and utilized to become an integrated support system within a community?

In coming months the committee will conduct hearings and field trips in diverse American communities to continue our search for full answers to these inquiries.

In order to best tap the knowledge of today's witnesses, our hearing will be in a roundtable format. Each witness will be asked one or two questions after delivering a brief summary of written statements already received earlier by this committee. We ask that that be kept to 5 minutes. Then we will move on to the next witness, and at the conclusion we will enter a full discussion during which the witnesses will be free to exchange comments as well as respond to questions from the Chair.

At this time our first witness will be Richard C. D. Fleming, Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development.

STATEMENT OF RICHARD C. D. FLEMING, DEPUTY ASSISTANT SECRETARY FOR NEIGHBORHOODS, VOLUNTARY ASSOCIATIONS AND CONSUMER PROTECTION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. FLEMING. Thank you, Mr. Chairman.

I welcome this opportunity to speak to the committee this morning about the relationship between urban revitalization and the displacement of our Nation's elderly population. I would like to also mention several HUD programs and policies which are directly benefiting senior citizens and are to that extent discouraging displacement of the elderly.

As is well known, displacement in urban neighborhoods refers to situations in which individuals and families are forced to leave their current housing without opportunity to secure alternative affordable and adequate housing. Because neighborhoods are continually changing and because governmental programs tend to focus upon specific mechanisms which either help or unintentionally worsen displacement, disagreement remains on ways in which the phenomena may be adequately responded to by public policy as your opening remarks certainly suggest. In general, however, most observers agree that displacement is occurring in neighborhoods undergoing:

DISINVESTMENT

A condition marked by the lessening or absence of essential services, the physical deterioration of both housing and the neighborhoods as a whole, or the continued reduction in the economic viability of the area's properties, which may lead to the eventual abandonment of the whole neighborhood; or

REINVESTMENT OR REVITALIZATION

The conscious effort of public and private entities to direct financial resources into selected neighborhoods, which can result in rising housing costs and/or rising property taxes, which in turn make the occupants unable to afford to remain in the area and make properties more attractive to higher income households.

From discussion with neighborhood groups, lenders, community organizers, and advocates for the elderly, and in reviewing some of the very recent literature or displacement both within and outside of HUD, it appears that elderly homeowners and renters are primarily affected by speculation and its resulting displacement and condo-conversion. Yet, while we know much is happening, we do not have documentation of the problem and its unique impact on the elderly, a need which both HUD and local government can work jointly to resolve. In fact, HUD's Office of Policy Development and Research notes that, the popular press and political debate notwithstanding, little precisely is really known about the displaced elderly: who they are, where they go, models of the process, nor methods for controlling that process.

For example, while the upgrading of the Mount Adam's area was of great benefit to Cincinnati, we do not know the extent to which elderly homeowners sold their homes only to find it extremely hard to buy elsewhere due to lack of knowledge about the real estate market. Nor do we know the extent to which elderly renters were forced out by rehabilitation and consequent rising rents. In the "new" neighborhoods, oldtimers and recent arrivals have yet to coalesce; no one even is sure if the percent of oldtimers remaining there is 15 to 40 percent.

On the other hand, Washington, D.C., has a large number of apartment buildings being converted to condominiums—having experienced a greater than 500 percent rise in permit requests in just the last 2 years, particularly in the upper Northwest area, because of rent controls, skyrocketing housing values, and population shifts to a younger, more affluent group. Most displacees in the Northwest are elderly people who cannot afford to buy an expensive condominium or who may

not want to put their life savings into such an investment. Where are they going? Is this a national phenomenon? We do not precisely know. At least one study, however, notes that displacement has "disproportionate impact on the elderly in working class areas which have undergone past attempts at traditional renewal * * * or at the fringes of areas currently being gentrified"—a word which I find somewhat repugnant, but it is in the quote. Elderly renters are the last to go since homeowners can generally get relocation assistance.

Let me note briefly some of our current efforts which affect the elderly and how they may assist revitalization, lessen displacement or help those displaced.

In the section 202 housing for the elderly program over 340 projects have been built under the 202 program during the last 20 years. About 26,300 units have started construction since fiscal year 1976. During fiscal year 1978 some 20,000 additional housing units received fund reservations in this program. These projects tend to stabilize older neighborhoods, particularly local shopping areas, and have been a boon to residential areas due to the general feeling and the recognition that elderly people make good neighbors. Additionally, the program specifically requires any persons displaced by a 202 project to be relocated in adequate and affordable housing.

COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

While existing HUD policy is to prevent or minimize displacement which might be caused by HUD programs or local activities, some displacement is inevitable as part of the urban revitalization process. In the case of rehabilitation, for example, temporary relocation is often required because of the nature of renovation. Community development block grant applicants must develop a strategy and describe actions they will take to directly or indirectly assist persons displaced by the community development program to remain in their neighborhoods, when they prefer, and to mitigate any adverse effects resulting from block grant funded activities.

Beyond that, Mr. Chairman, I would like to note a project which I think the committee would be most interested in and may want to study in the course of its hearings. It is funded through innovative grant funding under the block grant fund. Secretary Harris chose under her discretionary money to fund a very imaginative project in the city of Savannah, Ga. Those familiar with neighborhood revitalization are perhaps familiar with the historic preservation efforts that have gone on in the city of Savannah.

Under this innovative grant, HUD has seeded a program to undertake the renovation and rehabilitation and historic preservation of the historic Victorian district in Savannah. The unique aspect of that renovation, however, is an emphasis through a nonprofit corporation which is actively involving the private sector in the city and the community itself in preserving a substantial number of those units that are going to go through preservation for low and moderate-income people—a very ambitious project and one which to date is moving on a very successful basis.

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THE SECTION 312 REHABILITATION PROGRAM

The rehabilitation program is of significant use in restoring older housing in deteriorated condition. We estimate that about 20 percent of all 312 loans have been made to elderly homeowners, allowing them to make repairs they would not otherwise be able to make, and by doing so, helping them remain in their homes.

As the chairman is no doubt aware, recent action by the Congress has made the program more conducive to neighborhood revitalization by extending the amount we put into any single house from $17,000 to $27,000 per unit. The fiscal year 1978 program of about $85 million has been dramatically increased as part of the President's urban policy initiative to $230 million for fiscal year 1979, thereby allowing for greater participation in this program.

Next, the neighborhood strategy area program is a relatively new concept of HUD. This new program makes funds available, in the form of rent subsidies, to tenants, many of whom live in small rental properties in selected target areas. This program, which has 38,000 housing units in it, is beginning in 117 neighborhoods. These funds will trigger revitalization of the target areas as houses and apartments are improved. Yet, by subsidizing the remaining rental costs of low and moderate income people who pay more than 25 percent of their income for rent, such individuals, many of whom are elderly, are able to remain in their homes, even as values and rents in the neighborhood begin to rise. It is a very important initiative that we are going to be watching closely in those 117 neighborhoods as indications of future directions of how we encourage cities to use other types of urban revitalization money.

The next program is also a relatively new initiative; the urban development action grant program. Funds from the urban development action grant program can be used to attract private sector investment to carry out a variety of commercial- and neighborhood-based revitalization activities such as attraction of industry, construction of new housing, and improving commercial physical plants. Many cities have innovatively packaged a number of these approaches.

To date, Mr. Chairman, some $491 million of action grant money has been awarded to cover 200 cities, and with the objective of leveraging private money I can report to you with enthusiasm that nearly $3 billion of private reinvestment has been triggered by that $491 million of action grant money. That is enearly a 6 to 1 ratio.

For example, one neighborhood in Newark, N.J., used $400,000 in urban development action grant funds to attract over $2 million in private funds for low and moderate income, new and renovated, housing as well as a shopping center and a vitally needed supermarket in an area sorely lacking shopping and other amenities. Many of the 95-percent-plus minority residents of this locale are elderly.

The neighborhood self-help program: This program is fostering self-help activities for neighborhood development organizations in which staff and residents work to fight blight and restore both the social and economic health to their neighborhoods, thus enabling the residents to remain. While these organizations are not generally exclusively elderly oriented, their activities can and do assist elderly neighborhood residents. For example, in a recent contract awarded by

Secretary Harris, the Fillmore-Leroy Area Residents, Inc., of Buffalo, N.Y., received $115,000 to develop a home repair industry which will provide low-cost assistance to low-income and elderly residents in making necessary improvements to their dwellings in a 55-square-block section of the city. This was one of 21 such contracts made directly to community-based organizations utilizing community development bloc grant money.

Congress very recently passed two very critical pieces of legislation, a $30 million authorization over the next 2-year period for the Neighborhood Self-Help Development Act and a $15 million authorization over the next 2-year period for the Livable Cities Act of 1978, both of which will be key tools in the self-help area.

The final two areas I would like to touch on are housing counseling and public housing. Under the housing counseling program, private and voluntary HUD-approved housing counseling agencies assist current and prospective renters and homeowners by providing advice on a variety of housing matters. A significant proportion of clients seeking assistance through agencies providing HUD housing counseling are low-income persons, many of whom are elderly people who need help in managing their financial affairs and in finding suitable and affordable housing to either rent or purchase and matching them up with the housing resource programs. This has been made a cornerstone of the housing policy and the program will increase in 1979 by over 100 percent in funding money.

Public and subsidized housing: Since the beginning of the public housing program in 1934, 1,308,810 housing units have been put under contract as of January 1, 1978. Public housing represents the largest single governmental resource available for housing older persons and at present about 40 percent of the units occupied in public housing have elderly residents. Public housing, which gives priority consideration to persons directly displaced by governmental activity, is probably the largest single resource available to the Government for persons requiring relocation.

This administration has recognized the urgency of housing needs for our senior citizens. For example, in fiscal year 1978, we approved fund reservations for 108,157 subsidized housing units under the section 8 new, rehabilitated, and existing programs. This amounted to 42 percent of the total section 8 fund reservations.

Additionally, we hope not to repeat the planning mistakes that we all learned in urban renewal in the 1950's and early 1960's in which massive blocks of decaying residential and commercial structures were razed, and the residents relocated—only to have such "neighborhoods" replaced, in many instances, by concrete jungles in which people worked during daylight hours but did not inhabit at night.

One thing, however, is clear: We in HUD must view all our programs as interrelated parts of a total planning and resource process in a community or neighborhood and not as a series of unrelated and discrete program options.

Mr. Chairman, I want you to know that we are sensitive to the issue of displacement and to revitalization and to the way both affect low- and moderate-income residents in our urban neighborhoods. HUD hopes to develop more neighborhood based partnerships with local

government and foundations to more adequately address stabilization of older neighborhoods and specifically deal with this problem this committee is addressing—displacement.

We hope to create within HUD, within the Office of Neighborhoods, a capacity to deal systematically and institutionally with the key participants and partners of the urban revitalization process with city government and the Federal agencies, with the private business and foundation sector, and with the community and neighborhood groups themselves in the context of an urban process that we are pursuing as part of the Carter urban policy. We hope to develop, in conjunction with other agencies, a better data base on displacement and on the degree to which the elderly, in particular, are affected but we cannot wait for that data base nor are we waiting for that data base.

We recognize the problem exists and we are acting on it. Perhaps the housing assistance plans under the community block grant program would be one tool with which HUD could more effectively integrate planning for the Nation's housing needs. We are taking a hard look at the housing assistance plans as they presently are called for. Certainly for these hearings and future efforts of like nature we will learn much about how the elderly are affected by displacement. Given this information, I hope we can find some HUD policy and other agency policies to deal more successfully with revitalization and displacement.

Mr. Chairman, this concludes my remarks. I would be pleased to respond to your questions, and I am looking forward to having the opportunity to participate with the distinguished members of the panel.

Senator DECONCINI. Thank you very much, Mr. Fleming.

Let me introduce Phil Corwin on my left, who was instrumental in planning these hearings for the committee; and Jeff Lewis on my far right, representing the minority staff; and also Shirley Wilson of my personal staff. They will join in asking questions.

Also, I am advised that Ruth Braver of the Urban Elderly Coalition is with us. Ruth, thank you for being here to represent that fine organization.

For future witnesses, when 5 minutes pass, I am going to hold up a yellow sheet like that to let you know so you can bring your remarks to a conclusion. I don't want to exclude anything important, but if you can summarize your statements, it would help.

Mr. Fleming, the first round of funding for the action grant program has been criticized by some as concentrating too much on downtown commercial projects as being too similar to the urban renewal activities of the past. As you note, that created many concrete jungles. What steps has HUD taken to see that a fair share of UDAG's money goes to neighborhoods?

Mr. FLEMING. This is a concern of the Secretary as well, Senator. As you are aware, the legislation indicates the objective of a reasonable balance between projects that are located in neighborhoods, commercial projects and industrial projects, and I suppose two responses. First of all, in terms of encouraging cities which are the applicants under these programs, the city decides what type of project it will apply for. The Secretary has actively encouraged mayors to bring in neighborhood-based projects, projects which involve job creation, and

private sector leverage in neighborhoods. The legislation for the action grant places a great deal of emphasis on private leverage and on the creation of private sector jobs. I suppose the thing that we are finding in the early stages of the action grant program is that the state of the art is much more conducive to commercial downtown development projects in terms of quick startup projects that have the funds for planning and the necessary predevelopment activities done.

I think we are experiencing that sort of gap in the pipeline, if you will, that had built up over the years, but we didn't have the capacity at the Federal level to respond to the major developmental needs of cities in their downtowns, and we certainly don't minimize the importance of the projects that are being funded in the downtown. What the Secretary has done in choosing projects which are fundable that are located in downtown, played a very heavy litmus test—that these projects do not involve displacement, do not involve massive relocation. It has been a major consideration in our considerations to fund or not fund major projects even when they were located in downtowns.

On the neighborhood side of the issue, we have taken a number of steps because we are not seeing the projects coming in on their own. We have undertaken in the last 6 months a number of neighborhood technical assistance activities, some of which deal with cities, some of which deal directly with community-based organizations, nuts-and-bolts kinds of workshops on how to put a project together. We certainly are interested in the content of the self-help development program and other neighborhood activity programs to reinforce that emphasis that the Secretary is trying to give to the program.

We have seen from the first round a very sizable increase, though, in the amount of money going into neighborhood projects, a very substantial turnaround from the April funding to the July funding, for example, where it almost completely reversed itself. It was $96 million for downtown projects in the first round and $26 million in neighborhood projects. In the second round, those two amounts were almost equal to one another, and that, I think, was the result of the message that the Secretary had conveyed to the cities.

Senator DECONCINI. Thank you.

Mr. Corwin?

Mr. CORWIN. Mr. Fleming, some of those who have studied urban policy have asserted that, due to the timelag between the perception of a national urban problem and the creation of the Federal response, and due to the practical difficulties of truly targeting and fine-tuning programs, that we often are spending—I think it is now about $80 billion in total aid that goes to the cities. We are dispensing this money and yet failing to really respond to the social problems of today and of the future. I would like to know not only how you respond to that assertion, but I would like to know if the administration believes that there are significant portions of that $80 billion which could be better utilized to help cities. How do we in Congress formulate a policy to make sure that we are not spending next year's dollars on last year's problems?

Mr. FLEMING. First of all, I assure you that we have plenty of this year's problems around as well as last year's, but your point is well taken. I think it is implicit in the urban policy position that the President announced in March. It was significant that the urban policy that

President Carter announced was not simply an articulation of new program initiatives. Certainly there were a number of key program initiatives that the President has presented Congress, certainly many of which have been favorably acted upon by Congress by a major element.

The urban policy that the President emphasized was that figure that you cited—$80 billion is going to State and local governments today. That is double the amount that went to State and local governments in 1964. It is still not enough money against an array of needs, certainly.

Mr. CORWIN. I know that the President did note that inability, but I think within that $80 billion—is all that being really directed toward the problems of today, and the problems that are coming up, given the changing urban scene?

Mr. FLEMING. What I was about to say, in noting that $80 billion figure —this is my point—the President said we have got to do a better job of managing the resources that we already have and for that reason the administration now, by virtue of the Executive order that the President issued subsequent to the urban policy, does a very rigorous examination of what is called an urban impact analysis of every new program that we enact. As part of that process, we went back through over 150 basic programs that deal with domestic assistance with the litmus test with the objectives that we have articulated, such as the area of greatest need, the people of greatest need, encouraging self-help.

Those programs—either with the way they are managed, with the way they are proscribed, the statutory way they are regulated—how are they meeting those objectives? Major changes have been made and many other changes will be made. There is certainly a recognition that one of the major resources that we have is the more effective management of the program resources that are available to domestic needs.

Mr. CORWIN. Thank you.

Senator DECONCINI. Mr. Lewis?

Mr. LEWIS. Mr. Fleming, can you give me some indication of what HUD's policy would be and, if possible, what the administration's thoughts on the neighborhoods will be, particularly with the emphasis on the elderly?

Mr. FLEMING. I think it is significant that with the advent of the administration of President Carter and specifically Secretary Harris of HUD, that we had created for the first time to my knowledge an Office of Neighborhoods within the Department of Housing and Urban Development. Where we are headed in terms of neighborhood policy is to try to broaden the relationship that we have developed with a very wide network of community-based organizations—neighborhood organizations who are engaged in neighborhood revitalization—and to broaden that network to include the mayors whom we deal with in our programs and with the private sector whom we have traditionally not dealt with on an institutional kind of basis. We have dealt with them on a program kind of basis.

To answer your question, I think the bottom line of where we are going in terms of your neighborhoods policy is to attempt to try to put some flesh on the skeleton that is alluded to in the urban policy about a partnership between the public, private, and community sectors.

Developing that agenda, I suppose, is going to be the major objective for HUD's neighborhood policy in the months and even years ahead.

Mr. LEWIS. Thank you.

Senator DECONCINI. Thank you.

Our next witness is William Whiteside, Staff Director, Urban Reinvestment Task Force, Neighborhood Housing Services, Federal Home Loan Bank Board.

STATEMENT OF WILLIAM A. WHITESIDE, WASHINGTON, D.C., DIRECTOR, OFFICE OF NEIGHBORHOOD REINVESTMENT, FEDERAL HOME LOAN BANK SYSTEM, AND STAFF DIRECTOR, URBAN REINVESTMENT TASK FORCE

Mr. WHITESIDE. Thank you, Mr. Chairman. The Urban Reinvestment Task Force is made up of the Chairman of the Federal Home Loan Bank Board, the Chairman of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, a Governor of the Federal Reserve System, the Administrator of the National Credit Union Administration, and the Secretary of HUD. The work of the task force will soon be subsumed by the National Neighborhood Reinvestment Corporation which will have the same individuals who serve on the Urban Reinvestment Task Force as its board of directors, and the first chairman of the board of directors will be Robert McKinney, the Chairman of the Federal Home Loan Bank Board.

The major thrust of our work which began about 8 years ago in the Federal Home Loan Bank Board has been to replicate a model of our revitalization program called neighborhood housing service. It is a very careful, small-scale effort which involves us in spending individual staff time in a city and assisting that city in putting together a local partnership of community residents, city officials, and representatives of financial institutions.

Our role is basically an educational one. We put about a person-year of staff time into the development of each NHS program. Residents of the neighborhood in which the program operates participate actively in the program—they really take the lead in the program.

The board of directors of the NHS is made up of about equal numbers of residents and financial institution representatives, with the residents having a numerical majority on the board. This is only appropriate because in the long run it is the homeowners themselves who are putting up a substantial proportion of the reinvestment. Even if we make loans available, residents pay them off and so it is their investment in the neighborhood that counts.

In the neighborhood housing services program, residents serve on the board of the NHS and on the committees. They get out in front of the program by notifying fellow residents of the availability of NHS services, working house by house and block by block to educate the neighborhood as to the potential that exists in the program.

Local government is involved in the program as well; it has a number of specific roles to play as a partner. One of the things that we discovered is that as disinvestment occurs in the neighborhood, local government has typically disinvested along with the other parties. There is work to be done on the service levels and on public improve-

ments, such as streets, curbs, gutters, street lights, recreational facilities. Also, for the program to move forward with real momentum, a systematic inspection program is important. For the systematic inspection program to be acceptable to the residents, it has to be flexible, it has to be sensitive to their needs, and it has to be focused on minimum health and safety standards so a hardship is not imposed upon a resident homeowner in bringing their home up to the minimum housing maintenance code of the community.

We discover that local governments have the ability to be flexible and sensitive in applying the housing code. Oftentimes, they don't know it until it is pointed out. A dialog between neighborhood residents and local government is necessary to satisfy each that this partnership, and the housing inspection program, can work and can be acceptable to the community. The dialog is also necessary to focus public improvements on things that are needed and appreciated by the residents.

The third component of the partnership includes the financial institutions. The task force has been very important to us in our ability to involve savings and loans, commercial banks, and credit unions in the NHS program, not in the way of coercing their involvement but in the way of getting their attention and letting them know that their regulators are highly in accord with the program.

The financial institution representatives have a very special role. They make a major contribution to the management quality of the program and they bring a sense of financial responsibility to the management of the program which is extremely important to a neighborhood-based program. They serve on the Board, they serve on committees. They, along with the residents, put thousands and thousands of volunteer hours into each NHS to make the program work. In addition to that, they make normal bankable loans to neighborhood residents who meet their normal underwriting criteria. The first reaction to that is, "big deal," they are supposed to be making those loans.

The reality is that the neighborhoods in which NHS operates have had very few loans made over the years so these loans have a major impact. The major amount of dollars that flow into the neighborhoods over the years, will be in the form of normal mortgage money, and normal home improvement loans.

Our estimate of the total amount of reinvestment taking place as a result of our efforts since the beginning is about $100 million. Of that, by far the lion's share is loans made by private financial institutions. A new partner is entering the program now along with the financial institutions—the insurance industry. We are working with a group of insurance companies in regard to their participating in the NHS partnership, writing insurance coverage in the neighborhood, and contributing to the operating budget of the NHS program, which is by and large supported totally by voluntary tax deductible contributions of the financial institutions involved.

A revolving loan fund is available to make loans to residents who don't meet the underwriting criteria of the private institutions. These are loans that are made at totally flexible rates and terms. You start with the improvements needed and the financial ability of the homeowner and work backward to a rate and a term the homeowner can handle.

Frequently for an elderly resident this will be just a token payment on a very long-term loan that we know is going to exceed the borrower's life expectancy but a lien placed on the property guarantees the loan's eventual repayment. The homeowners get their home brought up to minimum health and safety standards. They have a place to live out their years. Their block is improved, which means the values for everyone on the block are improved, and it becomes a very worthwhile investment even though the revolving loan fund will earn little or no interest, and receive very little in principal payments during the lifetime of that homeowner.

The revolving loan pool derives its funds from the task force, foundations, other business groups, and community development block grant funds provided by the local government. Neighborhood housing services manages the revolving loan fund.

Finally, an important element of neighborhood housing services is its highly trained professional staff that counsels homeowners, that works with them in a very sensitive personal way in helping them meet their needs. I should mention that there are now NHS programs active in 63 cities serving 75 neighborhoods and we have 24 others in development. In addition, we are assisting a number of NHS programs to expand to additional neighborhoods in the city in which they are currently operating.

We have not maintained specific records with regard to the proportion of elderly clients which the NHS programs serve. We know that a major proportion of the NHS clientele is over 55 years of age and in many programs in which such records are available, we know that half or more of the number of the loans that are made are to elderly residents. We know that a large proportion of the clients who receive the total panoply of services that an NHS offers, including the financial counseling and construction counseling, are elderly as well and riding herd on the construction until it is finally complete so that you know the contractor did the job according to specifications, all of the kind of hands-on work to make sure that the client gets what they need in the way of rehabilitation. A great deal of that is done for elderly clients in the NHS neighborhood.

In my written testimony I have detailed a number of case studies, case situations of how the elderly have benefited from the NHS program. I won't go into that now but I would like to touch on two efforts that we have undertaken which are having an effect on displacement.

One of these is we have been able, in cooperation with a HUD set-aside of section 8 allocations, to target on neighborhoods where rehabilitation activities might tend to displace tenants. Here we selected 18 cities around the country that have a substantial number of tenant-occupied structures in the neighborhood. In these neighborhoods, when a home is improved, and the landlord has invested considerably in the property, and needs a higher rental return on the property, the NHS Director can take the landlord and the tenant to the local housing authority, and if the tenant qualifies for section 8, obtain a subsidy to enable the tenant to continue living in that residence and continue living in the neighborhood.

I know a number of the witnesses will be commenting on the degree to which the infrastructure of the neighborhood supplies a life sup-

port system for the elderly which can really be damaged if by economic or other circumstances they are forced out. I won't take the time to go into that, but I will say that NHS makes a major effort not to disturb that neighborhood relationship; to allow the individual who desires to remain in the neighborhood to do so.

In the Baltimore NHS program—which members of your staff were able to tour with me recently—they have developed a very exciting home ownership development program which we are getting ready to make available to NHS's around the country. We have assisted the Bridgeport NHS in getting such a program underway, and we are working with the Philadelphia program on a pilot basis. This is, in effect, a management of the reinvestment process in a neighborhood where displacement is possible.

To give you an example of the numbers involved in the first year in Baltimore. I might point out that NHS enabled 210 absentee owners to sell their homes to resident owners in the Baltimore neighborhood. Of those 210 sales, 152 involved individuals who were tenants in the neighborhood; 58 of the sales took place to individuals who are moving into the neighborhood from the outside.

Senator DeConcini. I am sorry, we are going to have to bring this to a conclusion so we can get to the other witnesses.

Mr. Whiteside. May I conclude the sentence?

Senator DeConcini. Yes.

Mr. Whiteside. I will use a lot of commas.

The NHS staff managed this process in that it marketed the more expensive homes, or those requiring more rehabilitation, buyers with higher incomes moving in from outside the neighborhood, and marketed the lower cost homes and the homes that needed minimum rehabilitation to the residents who were already tenants in the neighborhood.

With that I will conclude my remarks and be delighted to answer questions.

[The prepared statement of Mr. Whiteside follows:]

Prepared Statement of William A. Whiteside

Mr. Chairman, my name is William A. Whiteside, and I am Director of the Office of Neighborhood Reinvestment of the Federal Home Loan Bank System and Staff Director of the Urban Reinvestment Task Force. The Urban Reinvestment Task Force is made up of the Chairman of the Federal Home Loan Bank Board, a member of the Board of Governors of the Federal Reserve System, the Chairman of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Administator of the National Credit Union Administration, and the Secretary of the U.S. Department of Housing and Urban Development.

The Neighborhood Reinvestment Corporation Act recently signed by the President (title VI, S. 3084), continues and expands the work of the Urban Reinvestment Task Force through the creation of the Neighborhood Reinvestment Corporation. The Task Force members serve as the Board of Directors of this public corporation. Robert H. McKinney, Chairman of the Federal Home Loan Bank Board, has been designated as the first Chairman of the Board of Directors of the Neighborhood Reinvestment Corporation.

The major thrust of the Task Force's work to date has been in the establishment of Neighborhood Housing Services programs. These programs are private, locally controlled, locally funded, nonprofit corporations which offer comprehensive housing rehabilitation and financial services to neighborhood residents. NHS programs are based on a strong local partnership of community residents and representatives of local governments and financial institutions. The Urban Reinvestment Task Force conducts a local educational process in developing NHS and other neighborhood preservation programs across the country.

Neighborhood Housing Services programs work to reverse deterioration in locally selected neighborhoods. The five key elements of the NHS program are:

(1) Organized residents of the neighborhood who want to improve their homes and their community and who will help create a positive improvement climate in the neighborhood and support the program by actively serving on boards and committees.

(2) Strong local government involvement in developing and implementing the program; providing improved services and capital improvements in the neighborhood; establishing a sensitive and systematic housing inspection program.

(3) Financial institution executives who agree to invest in the neighborhood by making loans at market rates to all homeowners who meet normal underwriting criteria; who agree to make contributions to the NHS to meet operating costs; and who actively participate on boards and committees during developments and operation of the program.

(4) A revolving loan fund designed to provide loans to NHS clients who cannot meet commercial credit requirements. The fund is set up as a self-help tool of the neighborhood, offering loans with repayment terms which fit the financial capability of the borrower.

(5) An operating program with a private, tax-exempt status, governed by a board of directors made up of neighborhood residents and financial institution representatives, and administered by a small professional staff. The staff (usually three persons) offers rehabilitation counseling, construction monitoring services, financial counseling and referral and other housing rehabilitation-related services to residents of the neighborhood.

NHS programs are now in operation in 71 neighborhoods, located in 60 cities, and task force staff members are currently developing 24 new programs, and assisting 3 of the earlier programs add one or more neighborhoods.

The most important point I can make about NHS is that it involves the current residents and it is oriented toward preserving and improving the neighborhood for them. Furthermore, we are dealing with working class neighborhoods of primarily modest, owner-occupied homes, and have not seen any of them become fashionable (or subject to "gentrification") as have, for example, Georgetown and Capitol Hill. Therefore, our experience has not included any significant degree of displacement of minorities, the poor or the elderly. In fact, NHS programs appear to offer a strong defense against displacement as the "back to the city" momentum grows.

That Neighborhood Housing Services seeks the preservation and improvement of neighborhoods for existing residents is of particular importance to the elderly. Most elderly residents have lived in their current place of residence for many years, in homes which form the very center of their lives. It has been our experience that elderly neighborhood residents desire to remain in the home, and community, in which they have formed enduring bonds. Despite this desire, however, many live on low, fixed incomes and find it difficult to bear the increasing costs of home maintenance and repair.

The revolving loan fund which derives its funds from the Task Force, foundation, local businesses and local government community development block grants, has proven to be particularly beneficial to elderly homeowners. Clients who wish to improve their homes but who cannot meet normal lending institutions' underwriting criteria, make application to the NHS for a loan from the revolving loan fund. The loan committee of the board of directors assesses the application, and in making the loan, tailors the terms to fit the ability of the borrower to repay.

Many NHS directors have reported that a significant proportion of the recipients of the revolving loan fund are persons over 65 years of age. (For example, in Cincinnati and Dallas over half the recipients of this fund are elderly residents.) Access to the revolving loan fund has enabled many elderly homeowners to remain in their neighborhoods, in a safe and sanitary home, with their life support systems intact, who would not otherwise have been able to do so.

Many elderly borrowers receive loans of longer term than their life expectancy, but a lien on the property insures that the loan will be repaid when the property changes hands. The Merriam Park NHS in St. Paul, Minn., for example, made a 73-year-old woman a 12-year loan, a 70-year-old man a 14-year loan, while another 70-year-old resident received a 25-year loan of $3,500.

When Neighborhood Housing Services began operating in the Merriam Park community, many elderly residents were reluctant to take advantage of the

program and place themselves in debt. Now that the St. Paul NHS has been in operation for 3 years and a real sense of trust has developed between NHS staff and the neighborhood's elderly residents, they have spread the word to friends and neighbors and become NHS's most vocal "salesmen."

The nonbureaucratic approach characteristic of Neighborhood Housing Services programs has enabled its staff to cultivate close working relationships with community residents, and to respond to not only the technical needs, but also the psychological needs of the elderly. Typically, elderly homeowners have been fearful and distrustful of city inspectors. Understanding the significance which the home holds for the elderly, NHS staff have been successful in their efforts to ease the tense relationship between city officials and elderly residents. NHS programs have brought about a dialogue between residents and local government, which has enabled the housing code to be a flexible, sensitive tool for neighborhood improvement. Some nonessential code elements have been relaxed, while other safety/health related codes (such as stairrails, electrical wiring systems, etc.) are now subject to more stringent inspection and enforcement. NHS conducts block meetings prior to inspections, and informs residents of NHS services and the revolving loan fund at the same time inspection notices are delivered.

NHS encourages elderly homeowners who are able to maintain independent life styles to do so. Others who, because of poor health or severe disability, are unable to live on their own, have been assisted in securing alternative living situations—where possible in their current communities. In one instance, the Chicago NHS discovered an elderly couple who were in need, not only of home improvements, but of immediate medical attention as well. They were taken to a local hospital, given emergency food assistance, medicare and food stamps. Recognizing that the couple could no longer cope with the daily problems of maintaining a home, NHS granted them a loan from the revolving loan fund so they might rehabilitate their property and place it on the market for sale, and worked with the Department of Housing Services to place the couple in a senior citizens housing project.

When NHS incorporated itself in Buffalo, New York—a neighborhood in which 32 percent of the residents are retired heads of households—the staff discovered that many older persons were determined to sell their homes because of fear of street crime and vandalism. The Buffalo NHS encouraged residents to remain in the community and to work towards improving the quality of life in their neighborhood. NHS initiated and funded a security program which services neighborhoods both within and beyond the target area included in the NHS program. NHS installed free deadbolt locks to protect residents from intruders, and free handrails to provide the elderly with greater mobility within their own homes. This program serviced at least 1300 households. In addition, Buffalo NHS worked to improve police protection in the community as well as to provide home improvement loans and counseling. Many elderly residents (especially widows living alone) who had initially considered relocation, decided to remain in the neighborhood. They credited NHS for this change of heart.

Another task force activity is monitoring and making small grants to neighborhood preservation projects (NPP), showing promise of becoming models of new neighborhood revitalization strategies. NPP has several projects to assist elderly tenants and homeowners and has provided the task force an opportunity to obtain some experience relevant to the issue of elderly housing and alternative living situations.

The Mission Hill NHS is conducting a neighborhood preservation project for a congregate housing development for elderly residents in its community. The NHS is purchasing an abandoned structure which will be rehabilitated and converted into apartments which share common living space. Local financial institutions in Mission Hill have committeed themselves to financing the project. The congregate housing will provide an alternative living situation to elderly residents who wish to maintain an independent life style and remain in their community but who no longer wish to assume the responsibility of maintaining a private home.

The Mission Hill NHS plans additional congregate housing projects in Mission Hill's triple decker structures which lend themselves to being rehabilitated and subdivided into separate rooms or suites which share common living room, and possibly kitchen, space. A resident manager will live in the house and assume the role of homemaker—he/she will look after the upkeep of the home. MHNHS will involve other groups and private institutions in this locally based program. One

state social service agency has already agreed to arrange for homemakers to provide services to the home. Many elderly residents have expressed an interest in participating in this program and representatives from their age group will sit on the senior advisory board which will elect the resident manager and plan the design of the house with the help of a local university. The architects hope to assure future residents that the structures will be remodeled so as to suit their needs and perferences.

This project will be important in the revitalization of the Mission Hill community. The first house planned for rehabilitation is currently a neighborhood "eyesore," and its rehabilitation will help to "bring back" the neighborhood while at the same time providing an alternative living situation for elderly residents.

Another program which is being reviewed for potential replication is an NPP in Baltimore NHS's home maintenance program. The home maintenance program sponsored by NHS provides minor home maintenance repair for the elderly, handicapped and single-parent families living in the NHS area. It proposes to provide routine and emergency or "on call" services to those eligible. The program respects the homeowner's pride and independence and assists in performing routine maintenance repairs beyond the owner's economic and physical capabilities. Minor maintenance items such as exterior trim painting, weather stripping, caulking, repairing broken locks, doors, glass, and minor plumbing and electrical are provided. The program is not equipped to do major improvements, but in those cases will provide contractor referral or financial assistance through NHS or other resources.

In conclusion, I would like to take an excerpt from the study which was done by the conservation foundation entitled, "Neighborhood Conservation and the Elderly" of the relationship between revitalization strategies and the urban elderly population. The conservation foundation maintains that:

"Blight, substandard housing, even unpleasant neighborhood conditions must be weighed in the total context of the support the community environment gives to the older person. All over the world, urban planners are finding that the way people arrange their lives—their neighborhoods, types of housing, friends, activities—often make more sense to them than communities planned according to a professional idea." [1]

Aware of the reality that as people grow old their immediate neighborhood increasingly defines the outer limits of their lives, NHS and our other programs bear in mind, when dealing with elderly residents, that such "life support systems" as familiar surroundings, life-long friends and acquaintances help sustain the very lives of elderly people. Relocation and the incumbent sense of alienation from a familiar, supportive environment threatens the very ability of the elderly to maintain a viable and independent life style. The nonbureaucratic approach characteristic of Neighborhood Housing Services programs will continue to tailor their programs to meet the special needs of elderly residents in the different neighborhoods it seeks to assist.

Senator DeConcini. Thank you, Mr. Whiteside.

You mentioned the involvement of the insurance companies with the task force. Does that involvement include participation of loan funds or primarily in the life insurance?

Mr. Whiteside. The insurance companies are involved in several ways in the program. For instance, Mr. Filer's company—Aetna—is involved along with a number of insurance companies in the Hartford NHS.

Senator DeConcini. Do they make capital contributions?

Mr. Whiteside. They make contributions to the revolving loan fund. In the Newark program, Prudential is supporting the operating budget. We are working in Chicago to develop a pilot which would bring the casualty companies into NHS on a broad scale where they will become a full partner and write standard insurance coverage in the neighborhood. These are neighborhoods where excessive referral of insurance creates a problem in kind of weakening the confidence

[1] Conservation Foundation, "Neighborhood Conservation and the Elderly," 1978, p. 57.

of the neighborhood. We have 17 major insurance companies working very closely with us on that project and we are hopeful that within a few months we will demonstrate how those companies can become full partners in the NHS program.

Senator DECONCINI. Mr. Corwin.

Mr. CORWIN. As you know, the Federal Home Loan Bank Board recently received the assent of Congress to go ahead with the several new alternative mortgage instruments, including reverse annuity mortgages for the elderly, a concept which received strong support from all the members of our committee. I was wondering whether the task force has given any consideration to utilizing reverse mortgages as a new tool.

Mr. WHITESIDE. I think it can be an important tool and is one that the Bank Board is promoting in one or more pilot locations. The NHS staffs will be interested in this. When they work out with NHS clients what best meets their needs, the reverse mortgage will be an additional tool to work with.

I might say that while the idea of mortgaging one's property to take cash out of it is very appealing to sophisticated higher income people, the idea of mortgaging one's home is not easily accepted by working-class elderly people. We have found that frequently it has taken months of persuasion to induce an elderly NHS client to take out a $2,000 loan on the home that is free and clear, to make essential repairs, because of their feeling that they want to leave the home free and clear to their children. Sometimes, NHS programs have to bring their clients' grown children into the conversation to persuade them that they really would prefer that their parents live in a decent environment, and that they are willing to take the home when it comes to them with a small mortgage against it.

So I believe, therefore, that there is going to be different acceptance of this new instrument at varied income levels. In the NHS context, it will have to be worked out in cooperation with the client, working out what is best for them, what fits their values.

Senator DECONCINI. Mr. Lewis?

Mr. LEWIS. No questions.

Senator DECONCINI. Mr. Corwin?

Mr. CORWIN. I did have one more question I was going to ask you at this time. Up to now, most NHS projects have been limited to a particular type of neighborhood. I understand that you are undertaking some pilot programs to develop some experimental approaches to assisting those neighborhoods which are less amenable to stabilization and revitalization. Give us some details on what you have in the works on that.

Mr. WHITESIDE. We are undertaking NHS development in any neighborhood for which resources exist to turn it around. What happens is that the neighborhoods are selected by a local group made up of local government representatives, lenders, and local community leaders. They review the neighborhoods in the city, and they look at the resources available to them—resources for their operating budget, resources for the revolving loan fund, other city programs that might also be targeted in the neighborhood—for instance, grant programs—and then in consideration of that resource base, they decide how difficult a neighborhood they can take on.

Another factor, of course, is that there may be a substantial number of homeowners in the neighborhood who can qualify for loans from financial institutions. It would make little sense to turn this program into a totally subsidized effort where virtually all of the loans would be made from the revolving loan fund. So you are seeking a balance. The balance is achieved locally by the local partnership group, in deciding where they can best target the program.

The section 8 availability will affect our ability to work in neighborhoods which have lower proportions of owner occupancy. We have advised against bringing the program, with its systematic inspections, into a neighborhood where displacement would be produced, or where you might be producing abandonment—because if the resources are not available to an absentee owner and he receives a list of expensive code violations, you can trigger abandonment.

Senator DeConcini. Thank you very much, Mr. Whiteside.

Our next witness is Carl Holman, president, National Urban Coalition, Washington, D.C.

STATEMENT OF M. CARL HOLMAN, PRESIDENT, NATIONAL URBAN COALITION, WASHINGTON, D.C.

Mr. Holman. Thank you, Mr. Chairman. I will try to get through this in 5 minutes.

I appreciate the opportunity to appear here today. I would like to submit not only this testimony for the record, but also some additional testimony. I want especially to put to rest one of those myths which is repeated over and over again: the statement that $80 billion in Federal funds goes to State and local governments. That is not true as I think can be demonstrated to your satisfaction. It is very convenient, of course, when you do less to say that you are doing more.

The elderly have been for too long a hidden constituency. Those who live in urban neighborhoods are too often forgotten by their neighbors and overlooked by those who make urban policy at the local, State, and national levels. In much the same way polling and fact gathering, because they do not adequately distinguish between general groups, can provide misleading statistics about the urban elderly or can ignore them altogether.

For example, in New York City, it is interesting to note—and for the people involved it is a little more than interesting—that there are 20,000 elderly households. Only 20 percent of the elderly households in that rather costly city have incomes of $8,000, and 52 percent of the renters pay more than 35 percent of their income for rent. Elderly people tended not to move out of the city after World War II as did many others in their neighborhoods. For this reason, they of all groups can be a kind of glue to hold their neighborhoods together. They provide a force for continuity which we think is vastly overlooked.

At the outset of the coalition's recent survey of 44 cities, we went to the Bureau of the Census looking for information on neighborhoods undergoing rehabilitation. They told us then that they had no way of finding out what was happening in transitional neighborhoods with respect to displacement—that was not something in which they were interested. A few weeks ago they admitted that there was indeed something happening which could be called displacement. We are seeing

that it does not matter what the macromoves out of the city or if you have a number of other moves taking place within the city.

The media, in the way they responded to the coalition survey, demonstrated how the situation is being simplified. A headline in one paper said the study showed that blacks were being displaced by middle-class whites. That is indeed true in some cases. The study's major finding, however, was that the elderly are being displaced more often than any other group. Of course, I understood the paper's rationale—later they did an editorial chiding us about what they had said we said, which in fact, we did not say.

In the 65 rehabilitated neighborhoods we studied it was reported that the number of elderly had dropped noticeably since rehabilitation in 80 percent. We came to this conclusion not by long-range survey, but rather by interviewing the people involved in the money markets, the people in the neighborhoods themselves, the people in the cities. Of course, the situation differed from one city to another.

One group then, clearly, suffers from displacement—the elderly—and their departure brings a sameness to the neighborhoods. We think we ought to have a mix of middle-income and low-income people in the neighborhoods. We think we ought to have what cities used to be, diversely populated places—in terms of age, income, race, and the rest. In New York, in New Orleans, in Denver, in Seattle, and in Chicago, our respondents indicated that both public action and private market forces had created situations in which older people were forced to relocate because the increase in housing costs and the increase in taxes forced them out. In many cases, the neighborhoods turned out to be areas in which once displaced people could not find rental housing nor could they find sale housing at anything comparable or affordable cost.

Displacement can be caused by public projects, urban renewal, highway construction—public and private investment or public and private disinvestment. Whole areas—you saw it along Connecticut Avenue—as drugstores and local shops began to move out—the fixed-income population found itself stranded without the amenities it needed.

However, we looked mainly at what private reinvestment had done. In Santa Monica and Venice, two Los Angeles communities which have been getting a great deal of significant reinvestment, most of the people threatened with displacement are elderly, with incomes of less than $4,000 a year. If they cannot get additional Federal payments or other Government support, they are unable to cope in such a rapidly changing environment. Similar situations exist in Cleveland, Ohio, and in St. Louis, Mo.—the city in which I grew up—in Denver, Colo., and in Washington's own Capitol Hill.

When large apartments are converted to condominiums, it is very difficult for people on fixed incomes to come up with the funds required to stay on. For those people who own their own homes, it may theoretically be easier to bring their homes up to date, but usually bankers prefer dealing only with those who are able to support a long-term loan. That makes it very difficult for older people. They are very often considered bad loan risks, even when there are private programs such as the ones which provide loans to low-income areas. The elderly find it difficult to participate fully in such programs.

I would like to say a word or two about some neighborhoods with which I am personally familiar. In many cases, these areas have not seen very much Federal intervention, certainly not Federal intervention early on. It is true that because Federal programs have to succeed—or people think they have to succeed—the tendency of the Federal Government has been to play it a little safe and therefore it has tended to work in areas and to work with programs which involved less risk than some of these elderly people would represent.

In Newark, after a 2½ year battle waged by our local Newark Urban Coalition, a judge finally moved in. We now have people beginning to renovate, to own and to manage many of their projects themselves. They do some interesting things. They tear out whole sections of a wall so they can have a living/recreation room area larger than the space those who built it for them thought they actually needed. There we see again the problems of inflexibility in and poor coordination of Federal programs. For example, while the residents could get HUD money and HUD assistance, they still had to police their own area because Federal funds for the elderly were difficult to untangle to help provide for their security.

The cutting of Federal redtape is important. When the President went to the south Bronx he looked at an area in which a group of private citizens—some of them aided by our local affiliate, the New York Urban Coalition—had been taking over apartment buildings, rehabilitating them and trying to see to it that people who didn't cooperate were evicted. I should note that they get a whole lot of cooperation. Here again the private nonprofit sector was working at rehabilitation for low-income groups a little earlier. We are told now that there will be stronger Federal interest in this strategy. I hope there will be.

Jeff-Vander-Lou is an area in the north St. Louis ghetto where—under the leadership of a dynamic man and beginning with less than 5 percent homeowners, many of them aged 60 and older—the neighborhood group will have rehabilitated 800 homes. The project began as a private sector operation. Macler Shepard and his neighbors were trying to stop the Federal Government and other forces from destroying the neighborhood. Businessmen set up a foundation to help them. Very recently HUD put up additional money and gave them some homes to work with. The homes the group is working with are not in trouble, while there are indications that those the city is working with are having some trouble.

In the Jefferson district of east Oakland there is a project with which a church, our local coalition, and the National Urban Coalition are working. A number of businesses were able to go in and hold off strict code enforcement until we could help bring those houses up to date. In the supporting housing operation under NDRC, the Manpower Administration was assisting as well. The program dealt with housing: it dealt with jobs—you had a situation in which the unions had skilled craftsmen helping kids and older people rehabilitate those homes. At the same time, there was a program in which the University of California at Berkeley was helping improve the Jefferson school.

Here in Washington—for example, in Adams Morgan as you may know—there began to be an incursion of the so-called urban pioneers.

There is a great tendency on the part of people who have suburban tastes to wish to see these areas suburbanized. That is, they want a homogeneous neighborhood which will be largely middle class and in many cases largely white.

The Adams Morgan organization has no such inclination. The Adams Morgan organization managed to convince a savings and loan company to come in, and, with the aid of a law firm, were able to give some of the people who otherwise would be forced to move out an opportunity to purchase their homes. Mr. McKinney and his people validated that Adams Morgan agreement in a very close vote later on.

I think the urban impact analysis, the locational and the other Executive orders the President issued may be useful here, especially if they focus on the impact of Federal actions, not just on cities but on neighborhoods, and not just on neighborhoods but on particular groups like the elderly.

I would like finally to say that this morning's announcement of gas rationing in some areas and the current inflationary pressures—and in fact, the administration's efforts themselves to cope with inflation and to support the American dollar—may leave millions of older Americans trapped between a rock and a hard place. We are talking here today about programs we are not even sure are going to be funded next year. Our focus is on housing today—too many Americans pay a lot more than 35 percent of their incomes for shelter.

As you well know, older Americans do not live in a world of neatly compartmentalized problems or solutions. For those living on fixed incomes, there are no built-in escalators to protect them from steeply rising costs for such necessities as food, fuel, housing, and clothing. Over the next several months there will be a lot of talk about equal sharing of budget cuts and there may be talk of a recession. If we are not to be either hypocritical or insensitive in our actions, we must recognize the fact that when it comes to pain and sacrifice we do not all begin at the same starting line and this is especially true for the poor, for minorities, for the unorganized working class and for ill-housed or displaced older Americans in today's harsh housing market.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Holman follows:]

PREPARED STATEMENT OF M. CARL HOLMAN

Mr. Chairman, members of the committee, I am M. Carl Holman, president of the National Urban Coalition. I want to commend the committee for holding hearings on a subject which is only just beginning to receive the attention it deserves from urban interest groups, from housing experts, and from advocates for and researchers of the elderly and their needs.

The elderly have for too long been a hidden constituency in urban neighborhoods, too often forgotten by their neighbors and overlooked by those who make urban policy at the local, State, and national levels. They are a major population group in city neighborhoods, especially in older inner-city communities. In 1977, close to 11 percent of all Americans were over 65, and 34.1 percent of that group lived in central cities: 32.5 percent of all whites over 65, 52.1 percent of all blacks, and 50.8 percent of all hispanics were central city residents. The elderly provide a stable presence in urban neighborhoods—many of them have lived in the same community for years—they move significantly less frequently than the general population.

In a study of urban elderly recently undertaken by the minority aging and social policy program of the University of Southern California, 1,200 older people 62 to 74 years of age were queried as to their recent residence. Eighty-six per-

cent of those questioned had lived in the Los Angeles area for 16 or more years and three-quarters of them had lived in the same house or apartment for the past 5 years. There was little difference between white, hispanics, and black elderly in this respect. National figures for a more inclusive age group underscore this tendency to stay; the 1970 Census found that 44.2 percent of all homeowners over 65 had lived in the same home since 1949 or earlier.

The elderly represent a force for continuity in the cities. They are the bearers of their neighborhood's history and often of cultures or traditions forgotten by younger generations. Whether they live in intergenerational households—and many do—or they live alone in groups, they are a resource on which younger people can draw, a civilizing presence in the community. And the urban neighborhood in turn may give them ready access to amenities like shopping and to public transportation, to meeting places and institutions like churches, to nearby family and old friends. Family, friends and neighborhood groups also provide the elderly with a need support network—someone to check in when they're not feeling well, someone to drive them on an urgent errand.

What concerned the National Urban Coalition when we began the 44-city study which resulted in our publication, "Displacement: City Neighborhood in Transition," were reports from our affiliates around the country that certain otherwise welcome changes in urban neighborhoods—the rehabilitation of innercity homes and the inmigration of middle and upper middle class people—were resulting in a marked decrease in the number of longtime poor residents, many of them elderly. Our immediate concern centered on questions of housing policy—supply and demand, cost and availability—but our larger concern was raised by a neighborhood resident in Denver who asked: "Whose history is being preserved and at whose expense?" but who might as well have asked: "For whom are cities being revitalized and at whose expense?"

In 65 rehabilitating neighborhoods profiled by the Coalition in 1977, 80 percent—or 52—reported the number of elderly had noticeably dropped since rehabilitation began. Clearly then, one group at whose expense reinvestment was occurring was the elderly. In New York, in New Orleans, in Atlanta, in Denver, in Seattle, in Chicago—our survey respondents, including community groups, realtors and realtists, city officials, and academics, told us the elderly were leaving, their numbers reduced not just by normal attrition, but as the result of private market forces which drove the cost of housing beyond the limited means of many.

The elderly as a group are ill-prepared for abrupt changes in their home environment. The University of Southern California group summarizes recent findings very well: "Forced relocation... difficult at any age, presents additional obstacles and anxiety for the aged. Many elderly persons confront . . . relocation at a time when restricted income, increased living costs, loss of spouse, and chronic illness make them totally unprepared to deal with the additional crisis of moving. Involuntary relocation, in addition to threatening an elder's identity and sense of continuity, may bring about physical debilitation." Most studies of elderly forced to move have been undertaken on those forced to move from home to long-term care facilities. This is an important kind of elderly displacement, but there are three other kinds as well:

(1) Displacement caused by public projects (for example, urban renewal or highway construction projects) which especially threatened minority innercity communities in the 1950's and 1960's;

(2) Displacement because of public and private disinvestment in which the neighborhood leaves the elderly who, because they have strong attachments to the neighborhood, because they can't afford comparable housing elsewhere, and because they find it difficult to uproot themselves, are the last group to go; and who leave only when they can no longer cope with high crime or other adverse conditions; and

(3) Displacement because of private reinvestment in which high rents and property taxes force the elderly on limited or fixed income to move to another area (or another home in the same neighborhood) which they can afford.

It is this last kind of displacement we are addressing here today, the result of a movement which is occurring in many cities essentially as a result of private sector activities—though frequently with the encouragement and cooperation of government. This kind of displacement is difficult to document because it doesn't happen all at once; it is not the result of one or two discreet decisions; it is the result of a long process of neighborhood change in which government policies may contribute to the ease with which private investment occurs and

the patterns it takes—for example, through municipal land use policies like zoning—but in which private forces (individuals as well as developers or speculators) are mainly responsible for acquiring and rehabilitating neighborhood property and thus gradually altering the nature of that neighborhood. It is hard to prove that public policies which provide incentives for reinvestment in widely disinvested urban areas are fostering displacement and hard to moderate these policies in the face of continued disinvestment. It is also hard to hold private sector forces directly accountable for the displacement they cause.

Realization that displacement is occurring is also slow. Individual residents in a rehabilitating neighborhood see their neighbors leave one by one and, as they gradually understand "what is happening to the neighborhood," they fear the day which they too will be forced to move from their buildings. As increasing numbers do leave the oral history of the community, the knowledge about who went where goes with them. Those who work with the elderly in Washington, D.C., in Chicago, in Los Angeles say that frequently older neighborhood residents just simply disappear when they are displaced. They are too proud, says one senior citizens' center director, to admit they have to leave the apartments they have been renting because they can no longer afford to live there. Meanwhile, the remaining elderly community anxiously waits and hopes that somehow, despite all evidence, the change will not touch them.

Because they are so frequently forced to live on limited or fixed incomes and because they are so highly represented in many of the neighborhoods now experiencing improvement, the elderly are especially caught in this cycle of increased housing costs and diminished housing supply. I understand that the Census Bureau has found the number of elderly below the poverty rate to be decreasing from 1966 levels of 26.4 percent for elderly whites and 55.1 percent for elderly blacks to 1975 poverty levels of 13.4 percent for elderly whites and 36.3 percent for elderly blacks. Yet the areas which are attracting rehabilitation freqently have elderly populations with poverty rates higher still. One New York City official put the city-wide elderly poverty rate at 51 percent. In Santa Monica and Venice, two Los Angeles communities which have been attracting significant reinvestment, local estimates are that half the Venice elderly and a quarter of the Santa Monica elderly must subsist on incomes less than $4,000 per year and that another quarter of the Santa Monica population could be classed as low income. The hardship is especially great in high cost urban areas in which there is no supplement to the SSI base payment, and among minority elderly who, even if they are "less poor" as a group today, are "more poor" relative to whites than they were in the sixties.

The elderly live in high concentrations in many of the neighborhoods attracting reinvestment, in many cases because they declined to move away during the period of postwar disinvestment. In the course of our interviews with neighborhood residents, we were told that Richmond's Fan area had the highest percentage of elderly of any community in that city. In Cleveland's Ohio City, in St. Louis' Soulard, in Denver's Capitol Hill, the percentage of elderly was reported to be well above the city average, estimated as high as 40 percent in Soulard.

These people face dramatic, often abrupt rises in the cost of housing—the increases affect both elderly renters and owners although it affects each group in different ways. Because of this distinction, the housing mix in a given neighborhood strongly determines how and when displacement will occur.

The Coalition study found that renters were threatened with displacement much earlier in the rehabilitation cycle than homeowners. In most jurisdictions tenants have few protections if the person who owns the house they rent wishes to sell to a prospective owner-occupant or if the person who owns their apartbuilding wants either to rehabilitate and rent to more affluent people or to convert the apartments to condominiums. Even if legal protections for the tenant do exist, as, for example, here in Washington, D.C., the landlord is more likely to know what the law is and how to use it.

Rehabilitation work provides a good reason to move people out of a building and once the elderly in particular have moved, they are unlikely to ever return. This was the experience of Project Find in New York City which helps to run two old hotels restored and converted to apartments for the elderly. The rehabilitated hotels have been very successful but the elderly who now live there were not the original tenants.

Two public policy questions which have received special attention in rehabilitating neighborhoods seem to touch closely on the needs of elderly tenants. As

apartment rents skyrocket and people on low and moderate incomes begin to lost their apartments, the question of rent control becomes more and more hotly debated. In several communities with significant elderly populations and with active rehabilitation neighborhoods—San Diego, Denver, and Santa Monica among them—there have been battles to institute rent controls.

The Fair Housing Alliance of Santa Monica with active support from senior citizen groups were outspent 20 to 1 in a recent effort to win voter approval for rent controls. Eighty percent of the residents in this Los Angeles community are renters. I am not convinced that rent control is the answer to the national housing problems made manifest by dramatic changes in these rehabilitating neighborhoods, but I do believe that some damper is needed to slow price increases while we pursue other public policies to increase the general housing supply and to broaden opportunities in rehabilitating neighborhoods. A creative way must be found to keep rents within the economic reach of our poorest urban residents while allowing some reasonable adjustment in response to market forces.

In Washington, D.C. which has had a rent control law since 1973, building owners are responding to the demand for renovated units by converting their buildings to condominium use. The District of Columbia government recently estimated that the city was losing 500 rental units per month to condominium conversions. Washington real estate interests have claimed that condominium conversions are the inevitable outcome of restraints on rents, but in other cities without such restraints these conversions are also occurring and are drawing community resistance.

In Chicago's Hyde Park, an area heavily redlined in the fifties which nonetheless survived as a thriving economically and racially integrated neighborhood, a second wave of rehabilitation is resulting in the loss of rental units to condominiums.

Tenants in one 140-unit apartment building which has a high proportion of elderly, moderate income residents received word this fall that their building would be converted; they were told to buy or vacate their apartments by February, and all building maintenance was effectively terminated. One moderate income 85-year-old widower considered buying until he learned that his monthly payment would more than double and then, unsure about how to look for another apartment because he had lived in the same place for 35 years, he relied upon a friend to find him a place in another neighborhood, with fewer amenities. poorer access to public transportation, away from friends and the community he knows.

This example provides useful illustration of special problems the elderly experience with displacement. Not only do they exhibit greater stress in conjunction with a forced move, but because of their frequent inexperience with moving, they are unfamiliar with the housing market and uncertain about where to look for replacement housing. They face the loss of support networks which, where they exist, are usually far better than replacement services provided by public agencies. They face the loss of amenities commonly found in inner city neighborhoods—a corner store, a nearby bus stop. The Barney Senior Citizens' Center in Washington's renovating Adams Morgan neighborhood provides transportation back to the center for some displaced elderly forced to move to other neighborhoods, but for most elderly, severance from the neighborhood means a severance from their friends, much more final than any experienced by their younger counterparts.

The displaced tenant must look for another place to live in urban markets which have a diminishing supply of low-income housing. For the elderly in some rehabilitating communities, in New Bedford's County Street Historic District for example, newly constructed subsidized housing for the elderly is available which provides some older people with the opportunity to stay in the neighborhood. But in other communities, there are reports that nearby subsidized housing for the elderly has long waiting lists for admission. And public officials may be reluctant to designate publically owned vacant land for new subsidized elderly housing in neighborhoods which are experiencing rehabilitation because of pressure from developers anxious to cash in on middle class demand.

One class of neighborhoods surveyed by the coalition was not only experiencing the immigration by more affluent professional groups but also expansion of the bordering central business district. In Denver's renovating Five Points neighborhood, two apartment buildings housing about 200 elderly people were recently acquired for construction of a new high-rise parking lot. Proximity to the down-

town in Denver's Capitol Hill and Washington's Dupont Circle has attracted construction of new high-rise high-income apartment buildings, hardly substitute housing for longtime neighborhood residents.

More urban elderly are homeowners (52 percent) than are renters (48 percent), and the percentage of elderly homeowners in cities is less than the percentage for the elderly population as a whole.[1] The University of Southern California project on the minority aging found that 62 percent of elderly whites, 54 percent of older blacks, and 67 percent of elderly Mexican-Americans were homeowners in its Los Angeles sample. Homeowners have different problems in those neighborhoods experiencing rehabilitation than do renters. They theoretically have the choice of selling, and in reinvested neighborhoods it is possible to sell at a substantial profit. Though longtime homeowners may choose to sell early in the neighborhood cycle of rehabilitation, elderly homeowners—judging from their mobility rates—are probably the group least likely to want to move.

When the U.S.C. study asked its Los Angeles sample whether they would move if they had a choice about where to live, 81 percent of the elderly homeowners (as opposed to 67 percent of the elderly renters) said they preferred to stay where they were. Of those who wanted to stay, roughly equal percentages mentioned proximity to certain people, convenience of location, quality of the neighborhood and other personal considerations including low maintenance costs. Older people in all three ethnic groups were shown to favor residential stability and continuity even in the face of problems in their neighborhoods and with their houses.

Reports are not uncommon of unfair practices and unusual pressures associated with sales in rehabilitating neighborhoods. An extreme example is in Atlantic City where the downtown area has been subject to intense speculation since that city legalized gambling. Development plans call for both new construction and rehabilitation and elderly homeowners have been subject to strong pressures to sell. On one block by the waterfront predominantly elderly homeowners, many of whom have lived in the same home for thirty to forty years, received the offer of $100,000 each for their homes provided all their neighbors also agreed to sell.

In other cities there are reports of people who sold with inadequate information to adequately assess the value of their property or the cost of replacing it. The elderly are especially vulnerable on this score, and because so often they must manage on fixed incomes they are also vulnerable to code inspections and city-mandated repairs.

Finally, they are vulnerable to sharp jumps in their property tax assessments when, usually late in the rehabilitation cycle, surrounding reinvestment and improved confidence in the neighborhood make all homes in the area worth more money.

Any sudden unanticipated jump in the cost of living is a hardship for many elderly and increases in valuation such as those experienced in many reinvesting neighborhoods—increases much greater than those to be anticipated from general inflation—are a very real discouragement to continued home ownership, especially when the elderly may have received unsolicited offers to buy—offers which may seem good to them if they are not familiar with changes in the real estate market. Circuit breaker taxes and other property tax exemptions may be available to elderly or low income owners, but even these may not be enough to protect the elderly from the increase which puts them over budget. Reportedly, it was the elderly who joined with real estate interests in convincing Californians to pass Proposition 13.

The Hartford city government has a tax-in-kind program which is worth mentioning in this regard. The program, which has been in existence for several years and may be refunded in the next fiscal year, is designed to allow the unemployed or underemployed to pay their city taxes by performing contracted services to the city government. Of the 103 people who applied and were deemed eligible for the program, 41 were over 65 years of age. The 61 who actually participated in the program managed to work off nearly $37,000 in taxes since July 1978. Programs of this sort should be tried in other jurisdictions and protections against rapid property tax increases strengthened.

The resistance in the financial community to giving home mortgage or rehabilitation loans to the elderly is well known. One mortgage banker told us that the usual formula was that the age of recipient plus the term of the loan should

[1] Heads of households; bureau of the census.

equal 75 years, and that in his opinion financial institutions would not begin to revise their standards until they were subject to a few lawsuits on age discrimination. Banks participating in the Philadelphia mortgage plan were giving mortgage loans to people on fixed income—one bank had just given an 85-year-old newlywed a 25-year mortgage and the loan officer stressed that the economic life of the property was the essential factor, not the age of the borrower. But as of yet, there is little rehabilitation money available through PMP. Rehabilitation money may be important to the elderly facing costly code violation repairs, and the U.S.C. study recommended that the government give increased support for rehab assistance for the elderly. Almost 80 percent of the elderly surveyed said they'd choose government assistance for home repairs over government assistance to find other housing, and this preference held true for whites, blacks, and Hispanics. Especially seen as needed were small scale fix-up funds for repair and improved security.

For the minority elderly—who, as we have seen, are poorer than white elderly—the stresses associated with immigration of more affluent groups are compounded by those associated with discrimination. While the racial and ethnic dynamic of neighborhood change was less clear than the dynamic associated with wealth—incoming groups were, virtually without exception, more affluent than their predecessors while racial and ethnic patterns were mixed—the Coalition study still noted that 37 percent of the neighborhoods surveyed observed a drop in the number of minority residents since the onset of rehabilitation. The pattern was frequently that of whites moving into black or Hispanic neighborhoods; the elderly minorities who are displaced under these circumstances face additional problems of relocation and readjustment.

The Coalition offered a number of recommendations in its study, among them that increased counseling be made available to help low income residents faced with displacement and that local protections for low income tenants and elderly homeowners be broadened. Clearly, the elderly who so desire continuity need to have increased opportunities to remain in the neighborhoods they have claimed as their own. We should use the programs we have already at our disposal better—section 8 funds and more subsidized housing located in the neighborhoods, for example—and we should insist on broadened use of public funds to encourage rehabilitation of the places where the elderly already live. The emphasis should be on maintaining the elderly person in his or her present environment, on respecting established, often culturally determined backgrounds and preferences, and on improving certain quality of life factors of which crime is clearly the most important. The rehabilitation of inner city neighborhoods can be seen as an opportunity to build economically and ethnically diverse neighborhoods, from the stability and continuity which those neighborhoods already may possess. The elderly as possessors of the neighborhood's past and as active participants in its present must not be tossed aside like outdated light fixtures or unfashionable bits of house trim in the process of sprucing up our neighborhoods.

A striking story about elderly displacement comes to us from Venice, Calif. Built as an oceanside vacation community for Los Angeles residents, the neighborhood attracted many elderly residents in the 1950's. Thirty of its forty thousand residents were elderly. In the late 1960's young people, drop-outs, and the members of drug culture began to pour into the area. The crime level increased, and landlords who found they could charge several young people more than one elderly person were encouraged to rent to the new group of tenants. Speculators bought oceanside properties and tore them down, leaving empty rubble-filled lots.

Until the first young professionals came to this disinvested neighborhood in the early 1970's the elderly had managed to remain in the area, but in the last 10 years their numbers have dropped from 30,000 to 3,000 to 4,000. The director of the senior citizens' center which attracts nearly 40 percent of the 1,500 Jewish elderly has said that the 1970's are "the decade of decimation" for the elderly in Venice.

Rent increases have been precipitous and are expected to resume when the current moratorium on further increases is lifted March 1. An apartment which rented for $75 in 1972 rented for $300 per month in 1977. So many of the Venice elderly have incomes below $4,000 per year that many are spending 90 percent of their social security income on rent payments. The center provides daily hot lunches and brunch on Sunday and even so the director does not know how his group manages.

There is pressing need for 500 to 1,000 units of low-cost housing for the elderly in Venice but the city is sympathetic to development interests and has sold to the highest bidders 140 vacant lots. The Coastal Commission which had restrained development has changed in composition and in policy over the past year, and because of an exclusionary exception builders may bypass the commission and go directly to the sympathetic Los Angeles City Council. Meanwhile some observers feel that it was the federally subsidized building of the Santa Monica Freeway in the late 1960's which, by connecting the area to downtown Los Angeles, made Venice attractive to the professional groups.

Soon only professionals will be able to afford the area. The same house which sold for $10,000 to $15,000 in the early 1960's cost $150,000 in 1975 and would probably cost $200,000 today. The median age of the Venice elderly is 84 years and rising. They are moving away as the cost of renting gets too high, sometimes going to cheaper housing in old hotels near downtown or sometimes going to nursing homes. And they are dying. No new elderly groups are replacing them.

Senator DECONCINI. Thank you, Mr. Holman.

Can you give me your thumbnail observations given the present trends? What do you see in the future for America's urban areas if no changes are made in the present programs and the present policies? Further, what limitations do you see on the Federal Government in the area of urban transportation?

Mr. HOLMAN. Well, from what I can gather about the current administration's interest in urban transportation—and transportation is a real problem for the elderly in many cities—the tendency has been to say that it is much too costly. A small amount of money is in the new budget for intermodal transportation in cities.

I think that some of the cities are going to shrink in size and some are already shrinking. This change has potential benefits and it will also bring problems which I think are so numerous that they will be very difficult to turn around. One view of cities, which people have long held, is that if you want to make cities work you must do something about the commercial downtowns. Of course the common wisdom is true but revitalizing the downtown only, as the Newark program did, for example, is very risky. Nonetheless, this is a very popular approach.

It is less popular, both in the Congress and elsewhere, to try to do things which will help neighborhoods. Moreover, sooner or later, 5 years from now or less, we are suddenly going to find we have to take our urban money and put it to work repairing the physical infrastructure of cities. Mayors are now having to put off for a long, long time necessary repairs in their physical plant. Take the example of the amount of fresh water that Boston is losing because of inadequate repairs to its water and sewer system. The examples can be found in other cities around the country.

I have a feeling always that cities are going to survive. I wish we had a bigger constituency for cities. I think we agree that those people who represent the organized elderly or the organized neighborhood people, can make themselves heard. They cannot outspend the others. If they can make themselves heard on Capitol Hill and with the administration, the cities I think will have a viable future. Mr. Ralph, a former member of our board, who has built as many suburban shopping centers as anyone, says, "I think perhaps there are getting to be too many." The Quincy development that he has done, the market in Boston, provide examples of ways to revitalize cities. I hope that the Federal Government and local and State governments will be able to

work with the private sector and with private citizens to have a little more faith that urban problems can be worked out.

Senator DeConcini. Thank you, Mr. Holman. We are going to get back to you for some further questions but I would like now to go to John Filer, chairman, Aetna Life & Casualty, Hartford, Conn., representing the Committee on Corporate Social Responsibility.

STATEMENT OF JOHN H. FILER, CHAIRMAN, AETNA LIFE & CASUALTY, HARTFORD, CONN., REPRESENTING THE COMMITTEE ON CORPORATE SOCIAL RESPONSIBILITY

Mr. Filer. Mr. Chairman, thank you.

I will probably set a record for brevity on this panel and perhaps be a slight example for those who follow me.

I am John Filer. I am the chairman of Aetna Life & Casualty, and also chairman of our life and health insurance industry's committee on corporate social responsibility, which is an organization that has been in existence for 6 or 7 years. Your committee's inquiry into urban investment policies and practices from the perspective of elderly city residents is timely and essential, and I welcome the opportunity to discuss the involvement of our business.

America's life and health insurance companies have been concerned about the needs of the residents of the Nation's urban centers. Most of our companies are central city employers and our business is profoundly affected by conditions in urban neighborhoods. Our economic activities are substantial enough so that our business would affect the well-being of our cities with or without deliberate, well intended effort on our part.

Our industry is a major source of investment capital for residential and commercial urban projects. We have tried to respond to the economic and social changes in America's cities in a variety of ways—not only through our investments but through corporate contributions, educational programs, and the civic activities of our officers and employees.

While the future of our business is critically dependent upon the health of our cities and the vitality of our neighborhoods, the cities must be the architects of their own affairs. I have been urging for some time now that business leaders regard the condition of our urban communities as an urgent and integral aspect of corporate citizenship in the fullest sense of the term.

I would like to refer to those associations that represent the companies that write nearly all of the life and health insurance in the United States. Back in 1971, we established a clearinghouse on corporate social responsibility. I don't like that term but we could not find one that was any better. The clearinghouse does keep member companies informed of the industry's activities in this area and conducts an annual social reporting program through which our member companies provide a comprehensive accounting, essentially to each other, of their activities in this area.

Recently, in recognition of the complexity of the problem and the continuing need for a joint effort, we created what we call a neighborhood response. This new program is a partnership between the

clearinghouse and the Academy for Contemporary Problems. The effort is to stimulate the industry to take part in neighborhood revitalization activities of a variety of natures.

The initiative essentially is to provide service to our own member companies throughout the country with a consulting service that acts as a catalyst in a way in areas of public safety, health services, social services, housing, community and schools, and training in economic development and public management. The program is relatively new and really got started just in the last several months. We are very hopeful that that will be a significant step in the participation of our companies in our own problems.

Referring to my own company, Aetna Life and Casualty, we have tried to intensify our commitment to the cities. A year and a half ago we formalized the financial side of this effort by establishing what we call a corporate responsibility investment committee. The committee identifies, reviews, and recommends what we consider socially responsive investments, such as low-income housing in High Point, N.C., and in Topeka, Kans. We have committed to date about $90 million pursuant to this program.

Finally, Mr. Chairman, I just would like to make one comment and that is, it seems to me, particularly as we have crosscurrents in this country of proposition 13, fiscal conservatism, and social problems of our urban centers which are not going to go away, I am very hopeful that the business community will recognize that this is a remarkable opportunity for the private sector to join with the nonprivate sector and Government to try and find some unique ways to help solve these problems which will not go away by themselves. I thing a businessman has a great opportunity and a great obligation in the next few years.

[The prepared statement of Mr. Filer follows:]

PREPARED STATEMENT OF JOHN H. FILER

My name is John H. Filer, chairman, Aetna Life & Casualty. I am also chairman of the life and health insurance industry's committee on corporate social responsibility, an organization I will describe in a moment. Your committee's inquiry into urban investment policies and practices from the perspective of elderly city residents is timely and essential, and I welcome the opportunity to discuss the involvement of the life and health insurance industry in the Nation's urban neighborhoods.

America's life and health insurance companies have been concerned about the needs of the residents of the Nation's urban centers. Most of our companies are central city employers and our business is profoundly affected by conditions in urban neighborhoods. Our economic activities are substantial enough so that our business would affect the well-being of our cities with or without deliberate, well-intended effort on our part. Our industry is a major source of investment capital for residential and commercial urban projects. We have tried to respond to the economic and social changes in America's cities in a variety of ways—not only through our investments, but through corporate contributions, educational programs, and the civic activities of our officers and employees.

While the future of our business is critically dependent upon the health of our cities and the vitality of our neighborhoods, the cities must be the architects of their own affairs. But I have been urging for some time now that business leaders regard the condition of our urban communities as an urgent and integral aspect of corporate citizenship in the fullest sense of the term.

The beneficial impact of our industry's urban investment programs upon the elderly and their neighborhoods derives from our overall involvement in urban revitalization and our increasing sensitivity to the need for maintaining our urban communities as living neighborhoods. One familiar aspect of the rapidly changing economic and social condition of America's cities has been the gradually diminishing tendency for the more affluent upwardly mobile people to emigrate

to the suburbs while the disadvantaged with fewer life style choices have moved into the cities. At the same time, of course, many older people have stayed in the city neighborhoods where they have lived most of their lives. Many of the elderly are more reluctant than younger people to change their accustomed environment. The elderly are the only age category with more members living in cities than in the suburbs.

Their attitude is understandable. Shelter is not their only concern. A city is a network of community resources that help the elderly to maintain an independent, meaningful relationship with their environment. There is no simple way to achieve what one author has called a life-support system for the elderly. Focusing only on their needs might at best separate them from society and "ghettoize" them. At worst, it could reinforce the tendency of cities to become warehouses of the poor, the infirm and the old, and of the criminals who prey on them. Restoring a sense of community in our cities and making cities more desirable places for people of all ages, ethnic groups and income levels to work and live is one of the most complex and challenging problems faced by private industry and government alike.

It is probably unrealistic to attempt to turn back the clock and return our cities to their condition 30 years ago before the growth of suburban population and employment centers. It would be equally unrealistic to assume that a complex and diverse urban culture will be amenable to any standardized, nationwide program to assist neighborhoods, especially a program which focuses too selectively on any one segment of the community. A public policy and private investment strategy which works in one city may well be inappropriate for another. There is a need to help develop and support local neighborhood organizations without which rehabilitation by itself would mean little.

The American Council of Life Insurance and the Health Insurance Association of America represent companies writing nearly all of the life and health insurance in the United States. In 1971, they established the Clearinghouse of Corporate Social Responsibility. The clearinghouse keeps member companies informed of the industry's social responsibility activities and conducts an annual social reporting program through which member companies provide a comprehensive public accounting of socially responsible activities.

In recognition of the complexity of the problem and of the continuing need for a joint effort, the insurance business has also undertaken a "neighborhood reponse" program. This new program operates as a partnership between the clearinghouse and the Academy for Contemporary Problems, a public foundation sponsored by several national organizations of State and local officials.

This "neighborhood response" program is conducted on a voluntary, individual company basis in selected urban neighborhoods where the prospects for meeting both investment and corporate responsibility objectives are reasonable. We hope the program will encourage diversity and flexibility while at the same time provide a forum for the exchange of ideas and experiences between the public and private sectors.

Like many other companies, Aetna Life & Casualty has intensified its commitment to the cities. In February 1977, Aetna formalized the financial side of this continuing effort by establishing a corporate responsibility investment committee. This committee identifies, reviews, and recommends socially responsive investments like a low-income housing loan in High Point, N.C., and a retirement community loan in Topeka, Kans. Nearly $90 million has been invested pursuant to this program.

Perhaps the single most pressing, but at the same time most manageable problem faced by us all is the unintentional, but frequent displacement of those urban residents, often the elderly, who are inevitably inconvenienced whenever a neighborhood undergoes change—even positive, well-conceived change.

During Aetna's recent conversion of an older Hartford apartment house to condominiums, we faced this displacement problem. We found that we were able to relocate all of the former residents at a cost of about $200 per resident. We hope that our "neighborhood response" will provide a forum for the exchange of such practical solutions to one of the most intractable problems encountered in the effort to preserve a sense of community in our neighborhoods.

Such an exchange of ideas and cooperative use of private and public resources is vitally important. The "section 8" Federal rent subsidy program is a good working example of the use of Federal funds together with city administration in an effort to encourage development in a way that recognizes the diversity of community needs.

Rather than taking more time now to describe our efforts, I have provided the committee with some written material. I would be pleased to answer questions.

Senator DECONCINI. Mr. Filer, thank you.

If you don't mind a very direct question as to your company, is it financially feasible to get involved if your company has to commit itself to the urban older parts of our major cities?

Mr. FILER. Yes, sir.

Senator DECONCINI. Or is it partly your social responsibility, or a combination? Really what I want to know is, are the finances there? Is the profit there to justify it?

Mr. FILER. It is a combination, Mr. Chairman. I tend to be an optimist and I think increasingly the balance will be that the activity will be following commercially viable financial transactions. I believe that a lot of what we have had to do, for example, in Hartford, we took risks that were rather extreme, I believe. A fair part of the return was looked upon as a social return. In my judgment all of those investments over time will have proved to be financially profitable as well as socially profitable so that I think there has had to be a fair amount of taking more risk for lower return, really a voluntary force effort to be involved in the urban centers. I think that time is changing. I think the time is coming——

Senator DECONCINI. You think the payoff will be there?

Mr. FILER. The payoff will be there and I think the trends are rather clear. The real problems are how do we handle the social throwoffs, the problems that get thrown off when you do have the urban center and the financial institution.

Senator DECONCINI. I want to compliment Aetna for their involvement in this. The money motive is quite natural. The question is only for my information purposes.

Is there anything that you see that the Federal Government can do, that would not be in your best judgment extremely costly, to encourage companies like yourself to get involved in this type of participatory action?

Mr. FILER. Yes, I think there is. Our experience from this neighborhood response program is that we are worried a little bit. We really had quite a variety of inquiries from various parts of the Government with it affirmatively seeking to become attached to part of it, supportive of this neighborhood response program, and I felt very good about that.

We must be very careful that the government does not overwhelm us. I said to the committee the other day we are a solution in search of a problem and we want to be sure we recognize the problem. I understand that HUD will meet in New York next week to talk with business executives of the UDAG program and I intend to attend. I understand that there is a part of that organization that is set up to try to stimulate cooperative understanding between the government and the private sector.

The principal problem in my judgment is that the senior executives of major corporations have a priority list of about 20 and that comes unfortunately somewhere in between 16 or 19. It is very complicated. We really cannot understand it quickly. I am forever saying a little more than I know on the subject and it is really for the businessman

that we need prodding; we need education; we do need stimulus, a catalyst from others. It is very, very hard to do ourselves.

Senator DECONCINI. What about tax incentives?

Mr. FILER. Well, again I think I would answer that question as an indication of how hard it is to be knowledgeable. I really don't know, Senator. I would mislead you if I said in my judgment here are certain areas of incentives. Obviously we have the opportunity for financial investments as we have now committed one in the Washington area in a center for the aging where there was a HEW grant and we are making a $3.5 million mortgage loan. The combination of the two makes something viable that without either would not have occurred, so clearly incentives are in many instances necessary to make something feasible.

Senator DECONCINI. Mr. Filer. would you be inclined to consider some other questions that we might submit to you regarding the business involvement?

Mr. FILER. Yes, indeed.

Senator DECONCINI. I would submit some and maybe staff will, too. I would like an opportunity in the next couple of weeks to write you.

Mr. FILER. Yes; and then I will come down and discuss with your staff.

Senator DECONCINI. That would be very, very helpful.

Mr. Corwin.

Mr. CORWIN. Mr. Filer, just again I want to say I think the neighborhood response program is commendable, and I wish there were other industries taking that type of initiative. I am very glad to hear from Mr. Whiteside that the insurance companies are becoming involved beyond the management stage and are providing private casualty coverage, as opposed to the expensive FAIR plans which a lot of neighborhoods have had to turn to. As you know, GAO reports issued at the initiative of Senator Percy of this committee indicated that, because of FAIR plan mismanagement, there were cases of incentive to commit arson in some neighborhoods.

However, I do have to ask you. There was a May 1978 study put out by the Federal Insurance Administration of the Department of Housing and Urban Development, and I am going to quote from one of the conclusions of that study. They said: "Insurance redlining is widely practiced by insurers. * * * Redlining extends far beyond blighted areas into many otherwise healthy neighborhoods."

I would like to get your response on the accuracy of that conclusion, and if there is some truth to it? Perhaps our insurers, looking at urban areas, are looking back at the last 20 years rather than looking forward to the next 20.

Mr. FILER. Yes. It is hard for me to know exactly how to answer that question. The particular study you refer to I would hasten to indicate that I don't remember at all in detail, but a significant part of it I do not agree with. However, you come to the issue of so-called redlining. There is no question but that when you are in a business that involves risk selection and the business is done by and large through an agency system where the agents are located in a variety of places, some urban and some suburban and rural, and when you have a history of some rapidly decaying neighborhoods, you will have

a difficult problem in placing insurance on a certain neighborhood, a certain number of houses.

I would be naive to say that the problem is easy to solve. There are activities going on, including what Mr. Whiteside said about the address in Chicago. We have in Connecticut now what is called an open line where 20 companies are participating. Anyone who wishes to inquire about placing of homeowners insurance will be put through to a company representative on a rotating basis. There is assurance that the property will be inspected. The industry is really very concerned about this problem. As a matter of fact, it was last February or March, as the chairman of the company, I sent a letter to all of our field force. And I just want to reiterate, the policy of this company is "Thou shalt not redline," but that does not really get the job done. It takes a variety, I think, primarily of voluntary activities and cooperative efforts along with the insurance companies themselves to solve the problem. I think we are making progress; unquestionably we have not made it as rapidly as we should. Clearly if you are going to have neighborhood revitalization, you should have the availability of insurance coverage so the people will have respect for their own neighborhood and be interested in rebuilding. So clearly it is a problem and I think we are clearly addressing it. It is not an easy one, it won't go away, but I think we can solve it voluntarily.

Mr. CORWIN. Thank you.

Senator DECONCINI. Mr. Lewis?

Mr. LEWIS. I have no questions now. I will wait.

Senator DECONCINI. Thank you very much.

Our next witness is Prof. Conrad Weiler, Temple University, Philadelphia, Pa., representing the National Association of Neighborhoods.

We are glad to have you with us. Please proceed.

STATEMENT OF DR. CONRAD WEILER, ASSOCIATE PROFESSOR, TEMPLE UNIVERSITY, PHILADELPHIA, PA., REPRESENTING THE NATIONAL ASSOCIATION OF NEIGHBORHOODS

Dr. WEILER. Thank you very much, Senator. I am very pleased to be here today. I am speaking on behalf of the National Association of Neighborhoods, which as the name implies is an association of neighborhood organizations. We have a very strong social justice orientation in our activities in the last 3½ years since we were founded, and I might point out that our association was among the very first to call attention to the problems of displacement in our Nation's neighborhoods.

My personal experience as a member of the Queen Village Neighbors Association will give some specific highlights to my testimony today. I am going to deviate very much from my prepared testimony and respond really to the flow of what I have heard so far this morning.

I would like to make one point in the beginning, a point which I have been making for several years. Even though we are now focusing on urban neighborhoods, the interdependence of what is happening in the inner city neighborhoods as they are being revitalized with what is happening in the suburbs must be seen as a whole. People are just beginning to get that awareness now.

Second, I want to point out that while displacement is certainly the most obvious and the most painful problem connected with reinvestment, reinvestment poses a great many challenges which affect even the middle-income people who have recently come back to the neighborhood. Even if we did solve the displacement problem, we still would have quite a task in deciding just how to build good, stable neighborhoods for low and moderate as well as middle- and upper-income people.

Another point, in my prepared testimony I have criticized HUD rather severely. Based on Mr. Fleming's testimony here today, I am encouraged hearing much clearer language coming from HUD that they recognize this problem, and they are willing to do something about it, but I must point out that there has been a considerable amount of misinterpretation or, let's say, misleading interpretation of data. For example, there has been a great deal of discussion out at HUD as to whether more people are leaving the city than coming back rather than on what happens when people do come back. Since one of the goals of urban renewal over the last 30 years has been to reduce urban density, I don't see why declining urban population is seen as such as disaster.

One of the other data discussions is why most people who are moving into these reinvestment areas already lived in the city. Well, the answer is very simple. You can only come back once, and once you come back you are a city dweller but that does not mean population movement is limited to the young effluent whites primarily. The data also show a very large increase in black population moving to the suburbs.

Now I would like to just list some of the problems that I have seen for older Americans in inner-city areas as reinvestment occurs based on my personal experience. This is a very long laundry list and I will go through it quickly.

Uncompensated eviction of tenants from rental units or condominium conversions, which is a serious problem in some cities but not in others, or eviction just for rehab, which is the situation in my area in Philadelphia.

Rapidly rising rents, loss of friends and relatives through reinvestment, displacement, loss of supporting institutions, personal contacts and facilities through reinvestment, loss of part-time jobs or voluntary activities that the senior citizens use to contribute to the community and help keep themselves active; rising costs of food and clothing as neighborhoods become "gentrified;" loss of nearby shopping facilities; loss of nearby physicians and pharmacies or rise in cost of such services; increased difficulty in walking in the neighborhood because of parked cars blocking intersections and construction excavations and dumpsters; loss or decline in quality of public transportation routes; increased noise and dirt in the neighborhood either temporarily during construction or permanently through new uses—heat pumps, external air-conditioning units attached to luxury housing and possibly also through bars and nightclubs that may have been attracted to the revitalization going on in the area; harassment by landlords seeking to evict them or by realtors, speculators, or private individuals trying to purchase their home.

An example of this is the Saturday and Sunday visitor from the suburbs who gets a sudden inclination to buy a house in this very cute neighborhood and just knocks on the door of people and says, "Would you like to sell your house?" The first couple of times it is rather funny but after a while the people get rather depressed, especially the senior citizens who see a pattern of harassment and attempts to move them out of the neighborhood. Realtors also have been doing this. We have been solicited so many times that we give up trying to respond to individual realtors than canvass the neighborhood.

Mental or physical illness sometimes including the very obviously premature death caused by the stress of actual forced displacement. This is a very serious problem.

Senior citizens, like many others who have lived in these neighborhoods all their lives, don't really have contact with the housing market and if they do sell, they sell oftentimes for much less than the fair price and then are faced with the inability to purchase even roughly equivalent housing in any other neighborhood. They may also be losing nearby open space for gardening or recreation.

One of the sort of benefits over the years of urban decline, if you can call it that, is a number of open spaces which urban dwellers have converted to gardens. Once the neighborhood becomes popular they disappear, and they are very important to senior citizens to use as gardens or spaces to build a little park.

Another problem we have found is that at least many of the local community development agencies have not really gotten the word from HUD yet and when the neighborhood begins to develop they see that as the time to turn off the spigot of assistance. We keep getting the message from our own city as well as other neighborhoods that we have completed the task now and your neighborhood is well along the way so you don't need any help now. As soon as those $80,000 townhouses were gone, forget the help, we will move on to the areas that need it. Our people still need help even though the area as a whole might not seem to.

A few additional problems: The general loss of comfort in a neighborhood and familiarity as the neighborhood fills up with strangers and changes in physical appearance as old landmarks are torn down and rehabilitated; problems with social agencies and political zoning processes, remapping, and other planning activities; difficulty in trying to get access to social and housing programs.

One particular problem that hits senior citizens is historic certification. They often don't understand it and especially don't understand why they have to fix up their house. If it was good enough to live in all these years, why do they have to fix it up to apply to some historic requirements?

There tends during reinvestment also to be a lot of minor damage associated with construction in neighborhoods, and senior citizens again seem to be among the worst hit by that.

We find a certain portion of our association's effort is in trying to get cheap legal assistance for senior citizens—at least if nothing else to write a letter to the contractor to say you have to fix that hole that you knocked in so and so's house. Maybe it won't go to court but it is a kind of minor harassment that an older person can really take very seriously and we are finding some of it lessens their life and enjoyment of life very much.

A couple of specific points. I see the time here slipping away. I have included in my testimony a Xerox of the actual tax assessment summaries that we filled out 2 years ago when I guess this was the second or third year that our neighborhood had been hit with systematic and very dramatic upward tax reassessments, and I think they speak for themselves. They tend to average in the 200- to 300-percent range and come one year after another.

If you read the case studies, you will see that in virtually every case these are senior citizens and they have done nothing to their property. Now that does not mean that it is a falling down wreck, they have kept their houses nice all these years. The point is that they are paying the price in increased tax assessments for reinvestment. By others, I will just quote from one of these forms. I have kept it anonymous but I know the person who wrote this.

I don't understand why this house tax was raised 350 percent. Fitzwater Street between 2nd and Front is in bad shape, hasn't been repaired in 40 years. It also is not much wider than an alley. I have an empty lot in front of me and a factory in the rear. Also my income is only $210 a month social security.

Since this woman wrote this, the empty lot across the street has been the site of the construction of an approximately $115,000 townhouse and the factory to the rear now has, I believe, 13 luxury apartments in it, so her assessment and taxes will go up much more again. So the homeowner, directly and indirectly, the tenant, is feeling a tremendous bite from increased tax reassessments, not because of intrinsic improvements—which is a different related issue—but just simply because they happen to live in a neighborhood which other people happen to find attractive.

Just one example on the problems with community development. Even where the program may be working to help senior citizens get community development benefits, that is only where the program has not been phased out yet because the neighborhood has been "saved." I gave one example in my prepared testimony, and it is a rather extreme example but it exemplifies the problems in getting these programs to work. The example is of an elderly gentleman in our neighborhood who in this case happens to be black and who was waiting 2½ years for an emergency loan and grant. He was 92 years old.

Then, of course, there is the constant threat of eviction. The most recent case was of a roominghouse that had 65 rooms and it was occupied by single men, once again in this case all black. That is now the subject of a bitter fight with my zoning committee. We were unable to do anything to stop the tenants from being evicted, but now the new owner wants to cram in 32 apartments where there were 65 rooms, which will in turn have a secondary effect on the neighborhood. There is no parking or yard space whatsoever; so the parking, recreation, and trash storage problems will be passed on to the rest of the neighborhood.

To conclude I will call attention to a couple of things that I think the Federal Government can do. I am not going to call for massive expenditure of funds though there are certain areas where more money is necessary but I say with regard to the private sector I think that one of the things that HUD can do and the Federal Government generally, and I hope also neighborhoods can do, is to educate the private sector that the risks are in most cases a lot less than they seem to be,

and they can invest in neighborhods that still need them. I dealt with approximately 300 to 400 developers in my years in Queen Village and while I have seen a few go broke, I have seen quite a few make a heck of a lot of money.

I also think the property tax question is a major one. I am not sure what the Federal Government can do directly but something has to be done about the property tax situation.

Section 21–24 of the Tax Reform Act benefits only developers and I think it should be repealed but if not it certainly should be extended to individual homeowners.

Relocation benefits are virtually nonexistent for most of the people displaced because they are displaced by private activity. I think there has to be a Draconian step taken and again I am not sure what the Federal role is. If you are going to displace somebody, you have to take care of the relocation before the permits are given for rehab, before right of occupancy is given. In fact, what I would like to see is before the real estate transfer tax would be paid there must be a form filed for adequate relocation. Holding up property transfer before relocation has been complied with is a very Draconian and a very extreme step, yet it is the only step that would in any way guarantee most of the displaced people any hope. Relocating simply does not work if you let the redeveloper go ahead first and then let the public worry about relocation.

Then, finally, I think we have to expand the tilt toward the neighborhoods which the Federal Government has begun to take under the present administration. I think that has to be expanded considerably and it does not require money so much as it requires awareness and emphasis. I think the neighborhood is the fine tuning instrument that is best suited to deal with reinvestment and its problems.

Thank you very much.

[The prepared statement of Dr. Weiler follows:]

PREPARED STATEMENT OF DR. CONRAD WEILER

Mr. Chairman, members of the committee, and others, I appreciate very much this opportunity today to testify to you on the problems of older Americans in the Nation's neighborhoods.

Nearly 4 years ago I raised the prospect of massive recycling of Philadelphia's metropolitan population, the affluent young returning to the city centers and the older and poorer population moving—or being moved—inexorably outward. This prediction was based on analysis of limited, but already apparent trends, and the underlying goals of urban renewal and housing policy. At the time such prospects were dismissed by most experts as wildly impractical speculations. Today this prospect is no longer so easily dismissed. In 4 years—one Presidential term—displacement of low- and moderate-income residents resulting from urban reinvestment is now a nationally recognized housing problem, even though many experts, including those at HUD, now do their best to confuse and underestimate the problem, as they or their predecessors dismissed it entirely a few years ago. The related issues of optimizing reinvestment generally and the future of the suburbs have still not received the attention they deserve, and one wonders if, in 4 more years, the experts and policymakers will still be down-playing displacement and just beginning to give graudging attention to optimizing reinvestment and the future decline of the suburbs.

The National Association of Neighborhoods has been in the forefront of raising and investigating these issues, not only because they affect our neighborhoods but also because they affect the well-being and quality of life of all our citizens, especially those who are socially, economically and politicaly disadvantaged or otherwise less well off.

Today we are particularly concerned with the situation of "Older Americans in the Nation's Neighborhoods." My remarks today will draw upon my experience and research nationally as a board member of the National Association of Neighborhoods and as an associate professor of political science at Temple University, and locally in my own neighborhood of Queen Village in Philadelphia as president of the Queen Village Neighbors Association. I would like to address especially the plight of senior citizens in urban neighborhoods undergoing reinvestment. I would like to divide my remarks into the following areas: a brief review of overall trends in reinvestment and displacement, the effects of these trends on neighborhoods and their senior citizens, drawing particularly upon my Queen Village experience, and what the Federal Government could do to ameliorate adverse effects on senior citizens. I would like in particular to acknowledge the assistance provided me in preparing this testimony by Mrs. Kathy Conway, field representative in the Queen Village office, and Dr. Paul Levy, planning committee chairman for Queen Village Neighbors Association.

OVERALL TRENDS IN URBAN REINVESTMENT AND DISPLACEMENT

From personal inspection of nearly two dozen cities, dozens of first-person reports, perusal of scores of reports from a great variety of media reflecting all levels of society and from study of a growing number of carefully researched studies it is indisputable that substantial reinvestment and growth is occurring in downtowns and neighborhoods of many if not most of our cities in all regions of the country. Nearly all of these reports underestimate—often considerably—the extent of reinvestment and resulting problems, a tendency I have noticed since first studying this issue in 1971. In fact, in reaction to this, I have only half-humorously formulated the first "law" of reinvestment: there is always more reinvestment and displacement than any expert or policymaker suspects. Particularly impressive exceptions to this tendency however, were the Urban Coalition's report earlier this year, and a September 3, 1978, special supplement on housing to the Seattle Times.

While the overall trends of reinvestment are the subject of a longer discussion in a paper prepared for the Back to the City Conference in Hartford last October, a summary is in order.

First, many neighborhoods are undergoing "incumbent upgrading" primarily by existing residents with little or no serious adverse effects.

Second, many older inner city neighborhoods are undergoing considerable reinvestment by outsiders and new residents (in addition to frequent incumbent upgrading), frequently causing substantial displacement and other adverse effects.

Third, most of the newcomers to older, inner-city reinvestment neighborhoods are white, middle- or upper-income, frequently single person households, primarily in the 25–35 year category, with a smaller number of late middle age empty-nesters. Overwhelmingly these newcomers grew up or spent most of their adult lives in outer city or suburban areas, and are usually different in income, class, education, social behavior, and political outlook and frequently in race from the long-term neighborhood residents. Most studies have obscured or confused the essentially affluent, suburban, middle-class origins and outlook of the newcomers, which is obvious to anyone who spends even a few seconds observing such people. This suburban character of the newcomers and sometimes the challenges and problems of reinvestment have been obscured by several "facts":

(*a*) More people are leaving cities for suburbs than returning to cities from suburbs;

(*b*) About three-quarters of recent movers in cities had their previous residences in the same city;

(*c*) About three-quarters of newcomers in obvious reinvestment neighborhoods had a previous residence in the same neighborhood or city;

(*d*) Most cities still have areas of substantial blight, serious social problems, and fiscal difficulties; and

(*e*) Very little quantitative data exists on the extent of displacement or other adverse reinvestment effects.

The preceding facts, while doubtless true, in themselves have frequently been given unwarranted importance, in interpreting reinvestment issues and presented without important qualifying statements or supplementary information. In fact, there is little or no inconsistency between the above facts and the existence of a serious and rapidly growing problem of reinvestment displacement caused directly

by primarily middle-class whites of predominantly suburban or outer-city origins. How can this be?

First, even though there is still a net population outflow from cities to suburbs, this is not incompatible with reinvestment displacement in the inner city. Basically, the trend outward is an old one, now levelling off, and comprising increasingly black people, while the trend back is a new and small, but rapidly growing one. Moreover, the people moving out have more persons per household than those moving in, so that the same number of middle-income people requires a much larger number of housing units when moving to the inner city than when moving to the suburbs.

According to data from the annual survey of housing, the total number of households moving from central cities to outside central cities of American SMSA's grew 6.9 percent between 1973 and 1976. The number of households moving from outside central cities to central cities during the same period grew at over three times the same rate, 22.0 percent. For the black population, the "flight from the cities" grew a phenomenal 52.5 percent, while for non-Hispanic whites it grew only 3.3 percent. But for "return to the city households," non-Hispanic white households from outside central cities moving to cities increased by 20.8 percent, while the comparable figure for blacks between 1973 and 1976 was only 16.3 percent. Moreover, mover households into or within the city have a much higher tendency to have a different head of the household for all races than suburban movers. These figures not only support the metropolitan recycling theory in general but indicate specifically that there is a back to the city trend.

Second, it is normal for most movers to move from relatively nearby, regardless of whether they are moving into the city or into the suburbs. In 1976, 69 percent of all city mover households with the same head previously lived in central cities, while almost exactly half of all suburban movers with the same head—49.9 percent—previously lived in the same outside central city area. In fact, despite the much-bewailed "flight to the suburbs," outside central city areas in 1976 received only 22.6 percent of their new mover households with the same head from the adjacent central city, and only 8.8 percent from other central cities, and roughly the same has been true all during the post-WW II "flight to the suburbs."

From the suburban viewpoint, less than a third (31.4 percent) of their recent movers are households "fleeing the cities," while cities receive about a quarter (22.8 percent) of their households from noncity areas, for households with the same head.

There is one main reason why a high rate of within city movership by itself is not necessarily incompatible with reinvestment displacement or a "back-to-the-city" trend. First, most households tend to move to relatively similar, nearby areas. If someone has already moved to a reinvestment area in the city the typical pattern is to move nearby, perhaps to a less "discovered" area. Naturally, such a person shows up statistically with a previous residence in the same city. The same goes for suburbanites. You can only "flee to the suburbs" or "return to the city" once. What is important is whether an important and growing segment of middle-income housing purchasers are choosing marginally to move to cities and to stay there. That seems definitely to be happening and is far more important than misleading quibbling over whether more people are moving to suburbs from cities than to cities from suburbs. An interesting but disturbing tendency seems to have developed within HUD, within many public interest groups, and even within Congress. This is the tendency to wait until "sufficient" data are compiled before doing anything about the adverse effects of reinvestment. At best this strategy will cost years of delay, and at worst is a deliberate strategy for avoiding the issue. Anyone wishing to gather enough information to know that there is a serious problem and to gather pretty specific ideas on what to do about it need only spend a week or even a day meeting residents in the hundreds of American neighborhoods where displacement is a daily phenomenon. The National Association of Neighborhoods and my own neighborhood will be happy to help arrange such visits to anyone wishing to bypass the thicket of data and academic research.

SPECIFIC EFFECTS OF URBAN REINVESTMENT ON SENIOR CITIZENS IN NEIGHBORHOODS

In general there seem to be substantial adverse effects of reinvestment in inner-city neighborhoods on older Americans. While there are also some positive effects of urban reinvestment on senior citizens and cities, generally they do not

outweigh nor compensate for the adverse effects. Among the adverse effects I have seen or heard about nationally are the following: uncompensated eviction of tenants from rental units, for rehab, condominium conversion, or owner occupancy, rapidly rising real estate tax assessments, rapidly rising rents, loss of friends and relatives through reinvestment, displacement, loss of supporting institutions, personal contacts and facilities through reinvestment, loss of part time jobs, or voluntary activities, rising costs of food in nearby shopping areas or loss of nearby shopping altogether, loss of nearby physicians and pharmacies or rise in cost of such services, increased difficulty in walking in the neighborhood because of parked cars blocking intersections, and construction excavations and dumpsters, loss or decline in quality of public transportation routes, increased noise and dirt in the neighborhood, either temporarily during construction, or permanently through new uses, such as bars and nightclubs, harassment by landlords seeking to evict them or by realtors, speculators or private individuals trying to purchase their home, mental or physical illness including premature death resulting from the stress of forced relocation, loss of nearby open space for gardening, lounging or recreation, loss of eligibility for benefits under the community development program as the neighborhood becomes "revitalized," general loss of amenity and comfort as the neighborhood fills up with strangers and changes physically, often at a dizzying rate, problems understanding or coping with zoning remapping and often frequent zoning variances brought on by reinvestment, difficulty in coping with new or increased housing maintenance costs and administrative processes brought on by historic certification, damage to homes and injury to selves caused by nearby construction, general difficulty in coping with snafus, delays, inaction, and errors in governmental bureaucracy and contractors in section 312 and other "revitalization" programs as well as in dealing with social service and governmental agencies generallly.

Let me now review a few specific examples of these adverse effects drawn from our experience in Queen Village. Queen Village is a neighborhood of about 7,000 people along the Delaware River waterfront in South Philadelphia, next to the well-known upper-income renewal project of Society Hill. The earliest settled area of Philadelphia, the rowhouse neighborhood contains numerous historic structures and a rich mixture of industrial and commercial uses, including the popular shopping and entertainment area of New Market and South Street. In 1970 the population was predominantly blue collar and about 60 percent white and 40 percent black. The white population was mostly of eastern European origin and mostly homeowners, frequently employed in the docks nearby. About half of the black population lived in the large public housing project in the south end of the neighborhood, and the rest was about evenly divided between tenants and home owners. The neighborhood was severely disrupted in the early 1960's by construction of the housing project in 1962, in the late 1960's by the construction of I–95 through the eastern edge, by fights over other highways, and, beginning about 1975, by massive reinvestment in homes and businesses. In the last few years, thousands of old residents have voluntarily or involuntarily left the neighborhood, and thousands of predominantly young, white professionals have moved in. At this moment there are over 100 new housing units under construction in projects of more than 5 units, dozens more in rehab or small numbers of new construction, and hundreds of other units planned as rehab or new construction. Most of the larger new units are on the site of former factories or nonresidential uses, so that the community is simultaneously losing its blue-collar jobs and gaining more housing units that it ever was designed to hold. Despite the considerable turnover and reinvestment, a substantial number of long-term residents still remain, many of them on fixed or low incomes. In 1977, according to the Pennsylvania Department of Public Welfare, 1,400 Queen Village residents received aid to dependent children, 525 persons received general assistance, 400 aged, blind, and disabled persons received aid through the supplemental income program, and hundreds more lived on pensions of one kind or another, many from the waterfront. While many of these persons lived in the housing project, particularly those on aid to dependent children, nonetheless these figures indicate what we know from living in the neighborhood—that a substantial portion of the remaining white and black population is older and on moderate or low incomes, and are thus particularly susceptible to adverse reinvestment effects.

Now let us examine a few specific examples of these effects. First, property tax reassessments. Since 1975 many of our homeowners, including many senior citizens, have undergone severe increases in their property tax assessments,

not because of any improvements to their properties, but solely because of renovation, new construction, or increased value of property sales on the same block. Attached is a list of some of our residents, with a short description of their economic and social status and their recent property tax assessments. As can be seen, many of these increases are over 200 percent in 2 or 3 years and occur frequently. (These materials were prepared by our association for appeals of the assessments. More on our association's efforts to lighten the tax burden on senior citizens will be discussed below.) It is worth pointing out that we receive frequent reports from our residents that when they discuss their tax assessments with the assessor, the assessor suggests they sell their homes and move out, in at least one case even reportedly offering to help the individual sell. This outrageous behavior does as much damage as the assessment itself, because it contributes to the feeling that one is being forced from one's own home and neighborhood.

Our association has done a number of things to combat rising tax assessments. We have constantly appealed for and are continuing to work for property tax reforms that would limit or postpone assessment increases stemming from rising market values until the property is sold. We have for several years conducted clinics in applying for the Pennsylvania senior citizen property tax rebate. This rebate has just been raised from $200 to $400, and is a help to those who apply for it. However, unless the rebate is raised substantially every year our people will still suffer because of our rapidly rising assessments. Also, not everyone eligible knows about the program, no matter how much we advertise it.

We have also organized a series of tax appeals. At the first level of appeal, asking reconsideration by the assessor, our people have sometimes found some individual relief. At the next level, the board of revision of taxes, our appeals have been adamantly rejected with the argument that property tax assessments must be made on the basis of market value only. We have in turn appealed this decision to common pleas court where our case suffered disastrously. First, it was joined to tax appeals of large corporations, who claimed their assessments were a higher percentage of market value in the city than were most residences which traditionally have been often assessed lower than 55 percent. Then, a few weeks ago the judge handed down his decision: he ordered a reassessment of all property in the city to bring it up to the legal level of 55 percent of market value. If this is done, our people will be destroyed by taxes. The property tax in Philadelphia is now 61 mills. The tax on a house assessed at $10,000 is thus $610. With the increased State tax rebate of $400 the burden at this level on senior citizens is temporarily bearable. But assessment at 55 percent of market value would take the assessment of most of our single-family homes to within the $25,000 to $50,000 range, resulting in an impossibly high property tax bill of from about $1,525 to $3,050. If the court's ruling is upheld and if we do not have major tax reform, our people—homeowners and tenants—face a tax disaster that surely will force hundreds of those on lesser incomes from the neighborhood—especially our senior citizens—but might well burst the speculative bubble afflicting the neighborhood, force many of the newcomers already living on overextended credit to sell, and cause a collapse of the inner-city "revitalization" in Queen Village and elsewhere the city is so proud of .

Second; let us examine community development programs and senior citizens. Here our specific experience is that senior citizens as a group are among the most eligible, eager, and deserving groups for certain CD programs, such as section 312 rehabilitation loans and site improvements, but they often are seriously frustrated or disappointed by such programs. For several years we have been trying to get section 312 rehabilitation loans and grants in our neighborhood, with little success. Our neighborhood had been declared eligible for the program, and money has even been appropriated for us, but for the last 2 years reorganizations and other problems in Philadelphia's community development program have resulted in a virtual standstill in this program in Queen Village and, I understand, throughout most of the city. Of the approximately 100 people in Queen Village who have submitted names to our waiting list for this program, most are senior citizens or close to it. In the more than 3 years since we began publicizing and became eligible for this program five homeowners have received loans and grants, all in the first year, before the program was "reorganized." Two others just recently were given preliminary writeup interviews by CD staff. The rest are still waiting. The most extreme case is Mr. B----, a 92-year-old black gentleman who has lived in the community all his life. Two and a half years ago Mr. B----'s rowhouse suffered serious fire damage

to the roof, but was not otherwise seriously damaged. For two and a half years we have been trying to get an emergency loan or grant for Mr. B----, with no success, even though he is eligible.

Our office has made countless dozens of phone calls and inquiries on Mr. B----'s behalf, with no luck. We hear from some sources that if we had the right political contacts we could expedite Mr. B----'s case and those of the others, but we have gotten nowhere even through politicians. Mr. B---- comes by our office about once a week, as he is still active and in good health, but we are despairing of ever having good news for him. But Mr. B---- is not an exception: we have to make excuses to dozens of our senior citizens for a program we were promised but which has not been delivered.

Third, hundreds of our senior citizens, especially blacks, have been evicted from their apartments because the landlord or new owner wants to rehabilitate the building for luxury apartments or convert it to a single-family home. Few if any of these people receive any assistance at all because very little is available or required. Many of these people are far worse off in their new neighborhood, and suffer health, safety, and other problems which worsen their own condition and that of the neighborhood to which they have moved.

THE FEDERAL ROLE

Over the last half-dozen years I have become increasingly disillusioned with the idea that the best way to solve urban problems is to have the Federal Government spend lots of money for new or existing programs. At the same time, I am not in favor of drastic cuts or reductions in Federal money for social and urban problems, because such cuts would inevitably hurt the poor and the disadvantaged far more than they would serve to eliminate incompetent workers or unnecessary expenditures to consultants or for other purposes. Instead, I would recommend that the Federal Government focus primarily on its regulatory and incentive creation abilities than on new expenditures, although clearly there will always be necessary new expenditures, and I will even recommend some myself. But in all the fighting and debate over Federal expenditures for new programs to improve society—really since the New Deal—what is being neglected is the great power of the Federal Government to reorient, stimulate, encourage, discourage, and compel. I would like to apply this theme to several specific recommendations in the area discussed above—older Americans and the problems of neighborhood reinvestment.

First, the Federal Government can itself offer a property tax rebate or encourage States and localities to reform property taxes, so that these taxes do not force senior citizens and others into a lower standard of living or even from their homes because of neighborhood reinvestment. The greatest irony here is that senior citizens in reinvestment neighborhoods are usually the group that showed the most commitment to the neighbor in the first place by remaining there and working to improve it while their children and neighbors were moving to suburbia or Florida.

The Federal Government can itself offer a property tax rebate for senior citizens to allevate this problem, or, through community development or revenue sharing or some other mechanism encourage State and local governments to do the same.

Second, the Federal Government should immediately modify section 2124 of the Internal Revenue Code, an amendment passed in 1976. This provision, ostensibly an attempt to help "revitalize" neighborhoods, gives developers accelerated tax depreciation allowances for rehabilitation of housing in historically certified areas.

While this new provision clearly has fostered increased housing reinvestment in such areas, it has contributed to displacement, indirectly penalized the owner occupant who wants to fix up his or her own home, and added more pressure to the already often wildly speculative and disruptive inner-city land market. In my opinion this provision is unnecessary and should be repealed. At the very least this benefit should be extended to homeowners, be tied to satisfactory relocation of displaced tenants before any tax benefits are received by the developer, and be tied to a functioning local program to help low- and moderate-income residents of historically certified areas to pay the extra costs of historically restoring their own residences and to purchase the building if they are tenants.

Third, it is becoming ever more clear that tenancy will soon be the permanent housing status of most Americans, not just of the poor or rich or a temporary way

station on the path to homeownership. Particularly in reinvestment areas, and especially to senior citizens who are tenants in such areas, economic forces are causing tremendous disruption and injury directly to the lives of tenants and indirectly to the neighborhood in which they live or did live, before being displaced. Particularly serious in reinvestment areas is the problem of long-term, stable, good tenants being evicted for condominium conversions or rehabilitation of the building for much higher rent apartments to which they are not welcome and which they usually cannot afford.

Tenants must be given the right not to be harassed from a building which the owner wants to rehabilitate or convert to another use. Tenants must be given the option of automatic renewal of their leases unless the owner has good cause not to renew it. Tenants must have the first right to purchase or return to the building or the unit in which they live, have credit extended to them by banks to do so, and receive governmental assistance to do so if necessary.

Fourth, where residents of a neighborhood are displaced by private or public reinvestment, they should receive relocation assistance, before property transfer registration, building permits, or other permissions or approvals of a governmental nature are given to purchasers or developers of property. This is the only way in which adequate relocation assistance in the form of services or money will ever be given to the thousands of people being displaced monthly from our neighborhoods through reinvestment. The Federal Government must make this a priority or it will never happen. Furthermore, the primary cost of relocation should be placed on the landlord, new purchaser, or developer, who frequently make tremendous windfall profits from their investments in "revitalizing" neighborhoods. Not only is it fair for them to pay for some of the costs of the problem they create and from which they benefit, but a prior requirement with costs partially on the landlord is the only realistic way in which to guarantee that relocation assistance will ever be extended to most displaced tenants.

Fifth, the Congress and the President should force HUD to take a clear stand in favor of urban reinvestment and revitalization without displacement and with adequate provision for solid, stable, and equitable reinvestment. HUD so far has largely avoided and obfuscated these issues, in part through a misguided sense that "saving the cities" is both incompatible with and more importan than pursuing justice and equality for the very persons for whom cities are to be saved, particularly senior citizens of low and moderate income. While a full discussion of how HUD could fulfill its responsibilities in these areas is both available elsewhere and beyond the immediate scope of these remarks, it is increasingly clear to me that substantial progress in optimizing reinvestment for all and avoiding displacement could be made by a concerted effort, not to spend more government money, but to encourage the private market to reinvest in urban areas still needing reinvestment, and to discourage reinvestment where real or speculative demand is resulting in rapidly rising prices, displacement, and overdevelopment.

Finally, the Federal Government should continue to encourage and create incentives for the participation of responsible, democratically organized, general purpose neighborhood organizations in all phases of public life, particularly in dealing with the whole range of services for and problems of senior citizens in reinvestment neighborhoods. In our experience the few dollars spent for neighborhood office staff and the few flimsy citizen and neighborhood participation requirements in some Federal programs return many times their cost in program delivery benefits and in avoiding program and decisionmaking disasters. Unfortunately, neighborhood organizations spend an enormous amount of time fighting for themselves and their constituents for paltry resources, claiming their participatory rights where they exist, and asserting them where they are not legally supported.

Our Queen Village office spends countless hours watchdogging Federal, State, and local programs, undoing this damage of bureaucratic redtape, snafus, delays, and unconcern, and forcing officials to do their job properly, and then being repeatedly shut out of official decisionmaking processes, being faced with constant snags and delays in promised funding, and as a practical political matter being forced to publicly praise officials for doing what they were supposed to do in the first place.

I would never like to see neighborhood organizations become as fat and lazy and dependent on Federal largess as many sections of city governments have become. On the other hand, a "tilt" in Federal preference and policy toward neighborhoods at this time would cost very little money and pay substantial

dividends in improving the efficiency of existing programs and improving the quality of urban life generally, particularly for senior citizens.

Thank you very much.

QUEEN VILLAGE NEIGHBORS ASSOCIATION TAX APPEALS

(1) Mrs. Mary ———: Assessments: 1974, $1,800; 1975, $2,300; 1977, $4,200.

Mrs. ——— is a widow living on a fixed income. She bought her home in 1921 for $3,500 and has made no major improvements over the years except for painting. Her home faces Interstate 95 and has suffered some structural damage as a result of highway construction. Mrs. ——— is a senior citizen.

(2) Agnes ———: Assessments: 1970, $4,400; 1975, $5,200; 1977, $8,600 (after consultation with the assessor, 1977 was reduced to $7,800).

Mrs. ——— is a widow living on a fixed income. She has not made any major home improvements over the years. Mrs. ——— is a senior citizen.

(3) Salvator and Alyce ———: Assessments: 1974, $2,500; 1976, $3,100; 1977, $8,300 (after consultation, 1977 was reduced to $6,600).

Mr. and Mrs. ——— are living on a fixed income. Mr. ——— is disabled. They moved into property on Monroe Street and have made necessary improvements to make the home livable. It was a vacant shell. They were forced to move because their former home was acquired by the State for the construction of I–95. Both ———'s are senior citizens.

(4) Stephen and Mary ———: Assessments: 1971, $4,300; 1975, $4,900; 1976, $12,000 (after consultation, 1976 was reduced to $5,700); 1977, $8,000.

Mr. and Mrs. ——— are both retired and live on a fixed income. The ———'s have two small trinity houses in the rear of their property which they rent for $65 a month and they are fearful that if their present assessment is not reduced they will be forced to raise their tenants rent which will result in a hardship since tenants are living on social security. The ———'s and their tenants are all senior citizens.

(5) Kascala ———: Assessments: 1974, $2,900; 1975, $3,600; 1977, $8,300.

Mr. ——— is in his eightys, his daughter filed the tax appeal on his behalf. He is living on a fixed income. Mr. ——— purchased his home in 1923 and has not made any major home improvements over the years.

(6) Mr. and Mrs. Harry ———: Assessments: 1970, $3,200; 1972, $4,100; 1975, $4,300; 1977, $5,200.

Mr. ——— is a disabled stevedore and is living on a fixed income. He purchased his home in 1950 for $3,000. A new front wall and gas heater were necessary improvements which were made in 1971.

(7) Stephen and Dorothy ———: Assessments: 1970, $1,000; 1972, $3,200; 1973, $3,400; 1975, $3,800; 1976, $10,500 (after consultation, 1976 reduced to $5,200); 1977, $7,700.

Mr. and Mrs. ———, like the majority of residents filing appeals, are natives of Queen Village. The ——— have only made necessary improvements to their home.

(8) Joseph ———: Assessments: Prior to 1977, $2,300; 1977, $4,800.

Mr. ——— is retired and living on a fixed income. He has made no major home improvements over the years. He is a senior citizen.

(9) Walter ———: Assessments: 1974, $6,700; 1975, $10,400; 1977, $19,800 (after consultation, 1977 reduced to $17,400).

Mr. ——— purchased this property in 1952 for $2,000, at that time the property was a vacant lot, he built an ——— shop on the property which he operates. The cost of construction was $12,500. His shop services community residents. Property faces I–95, and;

Assessments: 1974, $1,000; 1975, $3,000; 1977, $7,900.

Mr. ——— purchased this vacant lot in 1952 for $1,000. The only improvements he has made to this lot is to keep it clean and free of debris. He also regularly cuts the grass. Property faces I–95.

(10) Pauline and Joseph ———: Assessments: 1965, $3,100; 1977, $5,300 (after consultation, 1977 reduced to $4,600).

This property has been in the ———'s family for many years. In 1958 the present owners purchased the property from relatives for $1. Their home is the only existing home on the block. No major home improvements and their property faces I–95.

(11) Gary ———: Assessments: 1966, $3,200; 1972, $5,400; 1976, $7,300; 1977, $10,400.

Mr. ——— is presently on DPA and is in very poor health.

(12) Helen ———: Assessments: Prior to 1977, $2,900; 1977, $5,100.
Mrs. ——— is a widow on a fixed income. She has made no major home improvements only necessary improvements to the front wall of her property. She is a senior citizen.
(13) Alfreda ———: Assessments: 1976, $4,000; 1977, $8,300.
Mrs. ——— has made no major home improvements to her home.
(14) Jane ———: Assessments: 1971, $2,200; 1977, $5,700.
Mrs. ——— is a widow on a fixed income. Recently, Mrs. ——— has had several operations and is in poor health.
(15) Henry and Helen ———: Assessment: Prior to 1976, $3,200; 1976, $13,600 (after consultation, reduced to $5,500); 1977, $7,800.
Mr. ——— is a disabled stevedore and is living on a fixed income.
(16) Valentine ———: Assessment: 1977, $7,200.
Mr. ——— has been reassessed in the past but we do not have the figures on file. He inherited his property from relatives. Mr. ——— is disabled and being forced to retire.
(17) Bronislaw and Helina ———: Assessment: 1966, $3,200; 1976, $5,200; 1977, $7,500.
(18) Joseph and Helen ———: Assessment: 1977, $6,600 (———'s have been reassessed in the past but no figures are available in QVNA files).
The ———'s purchased their property for $3,500. The property is 75 years old. They have made no major improvements.
(19) Raymond ———: Assessment: 1977, $5,900.
Mr. ——— was reassessed in 1975 but figures are not available in QVNA files. Mr. ——— has not worked in three and a half years due to an injury which occurred on the job. He purchased his property in 1973 for $3,000 and has not been able to afford any improvements.
(20) Robert ———: Assessment: 1977, $7,700.
(21) Dennis and Rita ———: Assessment: 1977, $3,800.
(22) Jennie ——— (senior citizen): assessment: 1977, $4,500. [Copy of original appeal retained in committee files.]
(23) Felix and Mary ———: [Copy of original appeal retained in committee files.]
(24) Laura and John ———: Assessment: 1977, $5,100.
Mr. and Mrs. ——— purchased their property in 1964 for $2,800. They have not made any major home improvements.
(25) Lawrence and Nancy ———: Assessment: 1976, $4,100; 1977, $15,500.
The ———'s purchased their property on July 12, 1976. At that time the deed of the properties was combined. Property "A" being 225 Carpenter (a vacant lot) and property "B" 227 Carpenter (existing rehabbed dwelling). The properties are now assessed as one.
(26) Mr. Charles ———: Assessment: No figures available in QVNA files.
Mr. ——— purchased the property in 1973 for $13,500. He installed a new plumbing and heating system into the property at that time, at a cost of $6,000.

Senator DeConcini. Thank you for your testimony.
Mr. Corwin, do you have questions?
Mr. Corwin. Yes.
Mr. Weiler, recently you appeared on the Public Broadcasting System with Assistant HUD Secretary Embry, in a very similar discussion to the one today, and you made a statement during that broadcast. You said, "At present the market is defeating itself and defeating the purpose of saving the city." I wonder if you would just expand on that by explaining it, and by giving us some ideas of how we can encourage the market to work in a way which still guarantees profits but which has a less adverse effect on specific neighborhoods?
Mr. Weiler. Well, this is partly guesswork because I don't think we have had enough experience on the broad scale. But partly drawing upon the work of Rolf Goetze who was referred to in Senator DeConcini's opening remarks and also my own experience, I think this image of risk which perhaps was true 5 or 10 years ago is a self-defeating and in time limiting factor which leads investors from the insurance

companies all the way down to the individual prospective home purchaser to look only in the neighborhoods that the media has already established as a "safe revitalized neighborhood." By the time it makes it into Philadelphia Magazine or New York Magazine or whatever the local equivalent is, the neighborhood probably has far too many people trying to move into it so that even the recent reinvestors themselves are finding tremendous pressures and in some cases are starting to move out themselves.

So I would suggest that maybe we should proclaim a period of national confidence in our neighborhoods and say probably a lot of neighborhoods are capable of taking new people and would like to take them and can do so without very great risk as long as most of the neighborhoods are getting the reinvestment at the same time. The problem is that when only one or two get it, then everybody piles into those neighborhoods and cause diplacement. I would imagine, and again this is sort of guesswork but the theory is that if we got more reinvestment spread out in more neighborhoods, we would have less displacement and more profit for private industry.

Mr. CORWIN. I have one very quick question. Inasmuch as you represent a national association of various neighborhood organizations which face very different situations in very different cities—do you see a danger that Federal programs, if they are oriented more toward neighborhood organizations, will they find their independence and effectiveness stifled as they try to conform to whatever model will most readily receive Federal funding? I guess in that question I am trying to find out if there is any common ground to what the organizations are looking for from the Federal structure.

Mr. WEILER. I would have to reply for myself because I don't think our association has taken a position on this but very definitely, yes, I see a danger and my personal opinion—and I will probably be questioned closely on this after I go back, but I really think it is much more important for the neighborhoods to be given participatory rights than massive amounts of money. I think small amounts of money are critical. That $10,000, that $20,000 is critical but it is really the right to participate and the guarantee of a small amount of money which I think is more important than neighborhoods responding in a massive way or a large way as to Federal programing. I think it should be more interactive and more open. In a brief remark I don't know how to describe it more fully. I think the Neighborhood Housing Services is a model of how neighborhoods can work with the Federal encouragement without being stifled by it.

Senator DECONCINI. Thank you.

Mr. Lewis.

Mr. LEWIS. Can you put yourself in the position to say, on behalf of the association or individually that—we have talked so far in the hearing mostly about housing, but I would like to really expand beyond that issue to more integrated services at the neighborhood levels. Housing is a prominent problem for the elderly, but sort of a parallel issue is also services that go along with maintaining older persons in neighborhoods.

Has the National Association of Neighborhoods taken any look at that whole issue; that is, strengthen the whole issue of neighborhood development as well as neighborhood services to help elderly persons maintain themselves in a neighborhood area?

Mr. WEILER. Well, we did receive the first national VISTA grant to a national group directly for neighborhood associations and many, if not all, of those VISTA's were either to senior citizens or to work with senior citizens.

Other than that, we have not treated the subject as a special issue except that we recognize the interdependence of the whole fabric of the neighborhood life. I am not sure if I have gotten the thrust of your question.

Mr. LEWIS. What I am trying to focus on is, the next two panels have had an opportunity to speak to just looking more beyond the issue of housing and neighborhoods. I think housing is an important issue, but I think there is more to the issue of neighborhoods than just housing.

Mr. WEILER. Certainly.

Mr. LEWIS. Then we need to focus not just on the primary issue of housing, but how do we integrate that which exists at the neighborhood level without a lot of Federal involvement to maintain existing neighborhoods, particularly the elderly persons that live in those neighborhoods? Mr. Fleming pointed out, it is commendable with what they have done so far, but I think what you pointed out before is, that we really don't need, at this point, a lot of Federal dollars at the local level. Perhaps what we need is a greater commitment by localities to be prepared to take care of themselves.

Mr. WEILER. Yes. I think I see what you are getting at and I would say that we have to have responsible neighborhood participation as a full partner in whatever is going on. Sometimes that is a challenge to other agencies and governments. Sometimes neighborhoods are not responsible but it is an unavoidable prerequisite of success in the structure, it is the lowest level of social organization above the family.

Our experience has been very good, I would say. Just as a very brief example, dozens of developers have thanked my zoning committee for giving them a rough time because by doing that we saved them from making disastrous mistakes. They had the money and they were going to build things that were not going to work for them or the neighborhood, so in our way we have contributed to revitalization not because we have money but because we have skill. We have the knowhow to make the money work correctly, work for the interests of the city and the neighborhood and the investor. That is just one kind of example.

Mr. LEWIS. Thank you.

Senator DECONCINI. Ms. Wilson.

Ms. WILSON. No questions.

Senator DECONCINI. Thank you.

Our next witness will be Ms. Phyllis Myers, senior associate, the Conservation Foundation, Washington, D.C.

STATEMENT OF PHYLLIS MYERS, SENIOR ASSOCIATE, THE CONSERVATION FOUNDATION, WASHINGTON, D.C.

Ms. MYERS. Mr. Chairman, my name is Phyllis Myers.

A small grant from the Administration of Aging enabled the Conservation Foundation to examine the implications of neighborhood revitalization for the sizable, growing, and often hidden elderly popu-

lation in cities. My interest in this area of research was triggered in the course of more general research about neighborhood revitalization efforts across the country. I sensed that revitalization was a term that could, by its imagery, be insensitive to the elderly. On the other hand, policymakers might think of the elderly as people who didn't belong in a revitalized neighborhood, who were overhoused if they were homeowners or transients if they were renters. On the other hand, the new trends in cities could also hold out opportunities to improve the conditions of the elderly living there.

I will briefly report the main findings and recommendations of the study which are elaborated on in greater detail in the written statement that I have submitted to the committee.

As others have said here today, we don't know how many elderly people are affected by revitalization activities, nor do we know how much displacement overall is occurring, or even how much revitalization has occurred. But we can say that revitalization is increasing, that the trend has strong forces underlying it, and that the numbers and proportion of elderly living in cities is also sizable and increasing, especially in older cities.

At the neighborhood level, I, like others here, have encountered only rough estimates of how many elderly are in a particular neighborhood. They are often hidden or alone. These estimates often come to 20, 30, 40 percent, sometimes even more. We need to single out these older persons for closer examination, and not just group them in a category of "poor" or "minority," because first, not all of them are either poor or minority and second, as a group they have significant, relevant characteristics. More are homeowners, for example, but more of them live alone. More are women and white as the group ages. Many have low incomes and poor health.

But more important than these statistics are the psychological insights which emerge from research on the aging which stresses the special meaning of home to an aging person, the trauma of an involuntary move, and the importance of family associations and the community network in extending an elderly person's ability to live outside of an institution in various degrees of independence or assisted living. Research on urban renewal programs serve as a reminder that the elderly, as a group, paid a heavy price in involuntary relocation.

Another finding in the research is that, when asked, the elderly overwhelmingly say they want to stay where they are. In the 1975 annual housing survey, for example, 89 percent of the elderly homeowners said they didn't want to move despite their complaints about the neighborhood in response to a census inquiry. The census never asked them what they liked about the neighborhood, incidentally. It was also true that 87 percent of the renters didn't want to move. Sometimes there is a tendency to think of renters as transients whereas renters, particularly those who are elderly, may have lived in particular areas for a long time.

The research on involuntary relocation during urban renewal and the escalating costs of providing new housing for the elderly, which we are now aware, is not just a housing unit but must also include a network of services for the elderly means, if only on a practical basis, that much more emphasis needs to be put on keeping the elderly in their homes and communities. This emphasis makes particular sense as

city neighborhoods revive. The familiar neighborhood may have stores which will again be occupied. Public services are improved. Certainly there continues to be many urban neighborhoods where the old imagery is true—where the elderly are terrorized and public policy should help them to leave—but we also have to make room in our minds for this more positive view of the resources that cities provide for many elderly residents, even in what other people may see as blighted neighborhoods.

The elderly can be an asset in the effort to create stable urban places. In neighborhoods where the elderly are part of the renewal strategy, the result is often in a more interesting and stable area, with an emphasis on local history and culture, or opportunities for elderly to be busy and make money in mom-and-pop shops, fresh food markets, craft and ethnic fairs, home needle shops, and so on.

My recommendations fall into six main categories.

First, we need much more information about the independent elderly, those who are living outside of institutions. Research, like policy, has tended to focus on the dependent elderly. Some encouraging efforts in this direction are underway now at both HUD and HEW. It is very important that such data-gathering efforts inform policymakers. However, I also welcome Mr. Fleming's statement that policymakers will not wait for these longitudinal, long-range data before making some appropriate programmatic responses now.

Second, services for the elderly should be restructured to extend more aid in the communities, especially as neighborhoods revive. In recent years, more emphasis has been placed on home maintenance, chore services, energy conservation, crime prevention, and neighborhood community centers. This should continue and be augmented. We need to find more ways to help the elderly with the real-world problems they face.

Third, we need to know more about different kinds of revitalization strategies which are aimed at combining urban reinvestment with equity, and how they affect different groups of elderly, for example, life estates, reverse mortgages, section 8 subsidies, facade easements, outright grants, low-interest renovation loans, and so on.

Fourth, we also need to look at the increasing involvement of Government in economic revitalization partnerships with the private sector and consider what this implies in the way of responsibility for the impacts of these programs, for example, relocation planning and compensation in case of relocation.

Fifth, public programs tend to emphasize building new housing while good buildings are empty.

When it is not possible for elderly to remain in their homes, the possibility of converting existing vacant buildings in the community—like schools, hotels, and factories—for housing for the elderly should be explored. This could contribute to the neighborhood revitalization effort and provide satisfying, less costly housing for seniors, who can then use the existing neighborhood facilities like parks, public transportation, stores, and keep up their network of associations in the community.

Finally, officials, private developers, and citizen groups should anticipate, as they get involved in city neighborhood revitalization efforts, that there may well be many elderly affected, and tailor their

efforts accordingly, drawing on the experience of others like the neighborhood housing services staff, neighborhood groups, city officials, area agencies, and others who have dealt wisely and positively with elderly residents.

I do not have a pat formula to recommend as to how we solve the problem we are addressing this morning. Reinvestment is good for cities and, overall, beneficial to residents. The elderly were not well served in urban neighborhoods where they were trapped. The extent to which they will benefit from neighborhood renewal will depend on the creativity, capacity, and sensitivity of local people, and the ability of Government to provide flexible resources in response, and to assist in transferring information about ways these references can be used.

Many crucial decisions will not be made by Government. This means the elderly advocate groups also need to change their focus, values, and attitudes. The new trends in cities provide us with special opportunities to look at old problems and create models of exemplary urban communities.

[The prepared statement of Ms. Myers follows:]

PREPARED STATEMENT OF PHYLLIS MYERS

Mr. Chairman, I am Phyllis Myers, senior associate of the Conservation Foundation in Washington, D.C., a private, nonprofit research and communications organization. In its various programs, the foundation views cities, as well as natural areas, as assets which need to be conserved and managed in ways that balance the Nation's social, economic, and environmental goals.

The unexpected rebirth of neighborhoods across the country is a welcome phenomenon, the best hope for cities in a long time; however, as a New York Times editorial observed last week, it "exacts a price." What is that price? What could or should government do about it? This committee's timely hearings call together, for the first time, two important constituencies—persons interested in neighborhood conservation and policymakers in the aging field—to begin a dialog on how to shape constructive policies for a particularly vulnerable group—the elderly.

Little is known about how neighborhood conservation is affecting these long-time residents of cities—on the positive or negative side. A small grant from the Administration of Aging of the U.S. Department of Health, Education, and Welfare enabled the Conservation Foundation to look more closely at the sizable, growing, and often hidden elderly population in cities in the context of how different kinds of renovation activities were affecting them. On one level, the study, published last week, is about displacement and opportunity for the urban elderly in reviving neighborhoods; more broadly, however, it brings together insights from the neighborhood revitalization movement and elderly research which call on us to rethink the values that underlie national housing policy for the aging.

Three examples illustrate why I believe this dialog between neighborhood conservationists and advocates for the aging is so important:

In a Maine town, the revitalization plan of a bright young community development director combined three facts: (1) many poor elderly were living in neglected colonial houses in the towns outskirts; (2) many 3- and 4-story buildings on Main Street were vacant; and (3) a new market of young people was looking for homes in rural areas. The official's plan was to use community development block-grant funds to move the old people out of their houses into town, and the newcomers into the outlying clapboard homes.

In St. Louis, a major university has taken a welcome interest in reviving the surrounding community in a plan which now emphasizes conservation. With the aid of condemnation powers and code enforcement, about 40 single-family homes were designated for extensive rehabilitation. Over a third were owned by elderly persons who had neither the funds nor psychic and physical energy to do the work. Although community development block-grant funds and other Federal and city programs paid for landscaping and bricking the streets and other design improvements to create a pleasant residential environment, since dislo-

cation was not the result of direct Federal action, uniform relocation procedures and payments did not apply.

In Bridgeport, Conn., public officials are promoting the city in order to spark some revitalization spirit. They are looking hard for new uses for the many vacant, still solid turn-of-the-century buildings in downtown. The newest building in Bridgeport, some blocks away from the downtown, is a round high-rise structure-housing for seniors. It sits in a largely vacant six-block area cleared with the help of millions of dollars of urban renewal and block-grant funds for property acquisition, relocation payments, and site preparation. The $3 million cost of constructing 101 new housing units is guaranteed by the State. So far, money to create a parklike setting for the building is not available.

In all these examples, there is a welcome new way of looking at the cities' physical structures. Saving and renewing old buildings and neighborhoods is not only a realistic use of resources, but a policy that will give our cities and growing rural places more style, distinction, and physical continuity.

But the first two examples also show how neighborhood conservation—like urban renewal of the past—can routinely view the elderly as people to move on, who don't belong in a revitalized neighborhood, who are "over-housed" if they are homeowners, or "transient" if they are renters. Assumptions are being made about what is good for cities and what is good for the elderly with little involvement of those affected. In the Bridgeport example, we see the typical expression of the Nation's housing policies for the elderly: a costly new building, isolated from the community and downtown activities, and planned apart from current community development strategies. Too much time has elapsed between razing the area and development for the building to house the elderly who were displaced.

The following are the main findings of my recently published study:

1. We don't know precisely how many old people are affected by neighborhood revitalization. Nor do we know how much displacement overall is taking place in response to revitalization, or even how much revitalization is occurring. We can say, however, with some confidence that considerable rehabilitation is occurring in neighborhoods all over the country, that strong forces underline the trend, and that private interest, neighborhood involvement, and government support are quickening. If this goes on, displacement—which is probably occurring significantly in only several cities now—could become a more important, even explosive issue.

An important point needs to be made about the twin phenomena of revitalization and abandonment now characterizing our cities. Both neighborhood renewal and population loss can and do occur in the same city, and even in the same neighborhood. The empty structures that pose a problem in blighted neighborhoods can be a resource in neighborhoods undergoing revitalization.

While there are no over all statistics on how many elderly live in revitalizing neighborhoods, we do know that one-third of the elderly live in cities, and that the proportion of elderly is higher in our largest cities, and that the Nation's population as a whole is aging. Between now and 1988, those aged 65 and older will increase by almost 5 million or 20 percent. As for elderly population in particular neighborhoods, the 1980 census will provide more data; meanwhile, I—like others working at the neighborhood level in older cities—have found sizable proportions of elderly residents. To cite some local estimates in renewing areas, in Detroit's Woodbridge neighborhood, 80 percent of the houses are said to have elderly occupants; one-third of the residents of the Central West End and the Soulard neighborhoods in St. Louis are elderly; 40 percent of the Pike Place Market area in Seattle are elderly and low income; and Fells Point historic district in Baltimore has 20 percent elderly; about half of the people in the single-family homes in the Detroit neighborhood surrounding General Motors, proposed for a major conservation effort, are elderly. Many elderly are "hidden"—that is, they are loners and roomers in city neighborhoods and their presence is not always a statistical certainty.

2. Neighborhood conservation policies need a special focus on the elderly because they differ in significant ways from an urban population grouped as "poor" or "minority." Over half of the elderly in cities live alone; many have low incomes or are in poor health. Due to the differential mortality rates, there are more women and more whites in older age groups. Many are homeowners—more than any other age group.

More important than these statistics are the psychological insights of research on the aging which stress the special meaning of home to an aging person, the

greater trauma of an involuntary move, the importance of familiar associations and the community network in extending an elderly person's ability to live independently. These are consistent with ideas about the importance of place and continuity with which we have become so aware in the neighborhood movement. What are amenities at some ages can mean life itself to the elderly.

3. The elderly overwhelmingly want to stay where they are. Researchers have persistently ignored the implications of this repeated preference. In the 1975 annual housing survey, for example, 89 percent of the elderly homeowners said they didn't want to move, even after listing all their complaints about the neighborhood in response to a census query. This was true also of 87 percent of the renters. Incidentally, no one asked them what they liked about the neighborhood. The same percentage wanting to stay—89 percent—emerged in a recent study of the elderly in an Australian city. Some other suggestive data: voluntary mobility among the elderly seems to be very low; many elderly renters and so-called transients appear to be attached to certain neighborhoods for long periods of time; studies show elderly occupants rate their living quarters as less blighted than the visiting researcher.

4. The research on involuntary relocation during urban renewal, the escalating costs of new housing for the elderly, and the growing numbers of elderly in our country argue very practically for a housing policy which, as a first step in a continuum of policies, puts more emphasis on keeping the elderly in their homes and communities. The elderly were particularly hard hit during urban renewal, when government failed to provide more standard housing units than it demolishe, despite massive spending. Today, new housing for the independent elderly under HUD's 202 program costs $33,000 per unit; most of these are occupied by persons living alone. These are construction costs which may be supplemented by other public funds; the figure is exclusive of rental subsidies and social services. In view of inflation and the need to recreate a community network as well as build a housing unit, there is no way, realistically, to expect new construction to address more than a fraction of the currently projected needs of the independent elderly for housing.

5. Neighborhood conservation can hold out many new opportunities for elderly residents by improving the familiar neighborhood, lessening crime, raising the level of public services, and reviving local stores. One of the reasons for the focus on relocation and new construction for the elderly is that the image of the city held by many officials is a very negative one. Without diminishing the severe problems faced by the elderly in many urban neighborhoods, we must also make room, in our attitudes and institutions, for a more positive vision of the range of resources cities provide, and for the increasing impact of local, grassroots self-help efforts to improve the functioning of neighborhoods. Policies which emerged out of the urban renewal mentality need to be reconsidered in terms of newer perspectives about conserving cities.

6. The elderly can contribute to the effort to create distinctive, stable urban places. Much as reinvestment and the return of the middle class to city neighborhoods is welcome, a cookie-cutter image of urban revival based on boutiques, gaslights, pedestrian malls, hanging plants, and young lawyers is a limited urban vision. Chinatown in San Francisco, the Pike Place Market Historic District in Seattle, the Soulard Historic District in St. Louis, the East Patterson Park NHS neighborhood in Baltimore, the Victorian Historic District in Savannah, the Woodbridge community in Detroit, are more interesting, often more stable, as well as humane, urban places because they value older residents. Moreover, fresh food markets, craft sales, mom-and-pop shops, ethnic fairs, and home needle industries create activities and earning power for the elderly in reviving neighborhoods. The needs of the elderly for special housing also point to the prospect of adaptive reuse of vacant community buildings, like schools or factories.

7. The various renovation strategies going on in cities need to be examined for their impacts on the elderly. The policy implications of different degrees of government involvement need to be considered, for example. While almost all renovation activity receives governmental aid of some sort, much of it has been primarily spontaneous, privately initiated activity. As private reinvestment goes hand-in-glove with some governmental role—in historic districts, in private/public partnership projects of the type cited in St. Louis earlier, neighborhood housing programs, homesteading activities, and so forth—public responsibility for the fairness of these programs, and the manner in which they address significant urban goals, take on a different character. The cooperative projects

for urban development projects will present new dilemmas for government agencies about relocation payments and responses to projects which wil cause sizable relocation.

Looking at renovation through the special lens of the elderly can also inform and improve local abilities to use effectively the web of resources the Federal Government has provided for neighborhood conservation efforts and integrate these with services for the elderly. We need to learn more about how innovative strategies, which can be compatible with reinvestment and minimization of dislocation, affect the elderly—such as expansion of conventional credit, high-risk loans, facade easement, section 8 subsidies, outright grants, neighborhood self-help efforts, homeownership incentives—and to find ways to communicate this knowledge to major local public and private actors. From my research it looks as if the elderly, compared with other affected groups, are very prudent about paying back loans for housing improvements, more intimidated by government policies which call for code enforcement or put liens on the house, and more in need of special counseling and attention.

My recommendations fall into five main categories:

1. We need much more information about the independent elderly. Research, like policy, has focused on the dependent elderly. We know very little about the lives of the independent elderly, including the homeowner. There are some encouraging new developments at HUD and HEW to identify important research gaps and data needs about the independent elderly. Care should be taken however, not to delay actions until comprehensive, longitudinal data are gathered and analyzed. Some sensible needed responses can be made now.

2. Services for the elderly should be restructured to extend more services in the communities, especially as neighborhoods revive. Such programs as home-maintenance services, energy-conservation assistance, crime prevention, access to communal-type living arrangements all need to be encouraged. Code enforcement should be handled very sensitively while repair services, including changes to accommodate special needs of residents, are very needed. An excellent program in Detroit, the combined efforts of social service practitioners and historic preservationists, provides a combination of outreach and free maintenance services—a ramp for an amputee, locks for the door, weatherstripping of leaded glass windows, and so forth, to elderly homeowners. Interesting features of the houses are carefully protected so that a future, more affluent owner may restore them.

3. Public programs now build new housing, while good buildings are empty. When it is not possible for the elderly to remain in their homes, alternative housing in the community, or adapted older buildings—like schools and hotels—should be fully utilized for senior housing. In Soulard, in St. Louis, State funds are backing the conversion of an abandoned factory into senior housing; in Massachusetts, converted schools now house elderly persons who once learned the alphabet there—again with State funds. Developers of these projects claim considerable money has been saved; at the same time the reuse of familiar community landmarks is a stabilizer in the community environment. Further savings may be realized from the use of existing medical and social services, public transit, stores, and parks—as well as the absence of the need to clear the site and relocate occupants. We need to understand more about the incentives which continue to favor new construction in federally funded elderly housing construction, and the comparative social and economic costs of adaptive reuse versus new construction.

4. Public and private officials and citizens groups working with revitalization strategies should expect to find many elderly in city neighborhoods and sensitively tailer their efforts to this reality. Even if there are not a great many elderly, they will probably require special counseling in any program that affects their homes. Information about how an array of revitalization tools affect the elderly should be gathered and made available. Area agencies, elderly advocate groups, and neighborhood conservationists need to combine their resources at the local and neighborhood level to address the problems, as well as the opportunities.

5. Responsibility for the elderly is fragmented among government agencies, as are policies which address urban conditions. A focus for the independent elderly—which informs all relevant government programs—is needed.

While these seem very commonsense approaches in a society expecting a 20-percent increase in elderly within 10 years, there are—as you know—many barriers to progress along these lines. There is no single formula, no one program or institutional delivery system to recommend. The neighborhood conservation perspective has made us especially sensitive to the fact that successful strategies

are dependent on local creativity and the tailoring of programs to local resources. The change in trends in cities offers ways, however, for us to look at old problems with some new opportunities for creating models of exemplary urban communities.

Senator DECONCINI. Thank you very much.

You call, in your statement, for a focus for independent elderly in Government programs. We have an Administration on Aging which is supposed to be performing such a role. In your opinion is it doing so, and if not, do you believe it can take on the responsibility of coordinating the Federal effort within the neighborhood context?

Ms. MYERS. Well, they did support this research so I am hopeful. In several ways they have indicated interest in turning more attention to this group, but I think that it is fair to say that at this point most of their efforts have gone into the emphasis on the neediest elderly and the institutionalized.

Senator DECONCINI. Do you anticipate greater participation from the Administration on Aging in studies and efforts like yours?

Ms. MYERS. They have indicated such an interest.

Senator DECONCINI. Mr. Lewis.

Mr. LEWIS. Where will your research take you next? You come up with these conclusions and findings and then pass them on to the Administration on Aging. What will the Administration on Aging do with them? What role will the Conservation Foundation now have in terms of the elderly? Will it be a continuing role?

Ms. MYERS. Well, the Conservation Foundation has examined urban conservation as an important aspect of our research and communications efforts in environmental issues. We are looking at important constraints to conservation activities in cities, as well as opportunities, and in that context focused on the elderly. I think one of the things that needs to be done is to expand the dialog, such as we have this morning, among different kinds of groups whose actions affect cities—the private sector, government, and different interest groups. One of the things that we are thinking of is how best to do that, how to expand the awareness of this important issue.

Mr. LEWIS. That was the concern of Mr. Fleming with the Commissioner of Aging of the Administration on Aging.

Senator DECONCINI. Thank you very much.

Our last witness is Solomon Jacobson of the Institute for the Study of Human Systems, Inc., Columbia, Md.

Please proceed.

STATEMENT OF SOLOMON G. JACOBSON, ASSOCIATE DIRECTOR, INSTITUTE FOR THE STUDY OF HUMAN SYSTEMS, INC., COLUMBIA, MD.

Mr. JACOBSON. Thank you, Mr. Chairman.

I know the hour is getting late and my colleagues have other ideas they would like to discuss. I will speak very briefly about an approach which has been tested in Ann Arbor, Mich., and which may serve as the model for organizing the elderly in an approach to improve their own neighborhoods. We hope this approach will be looked upon by neighborhood associations throughout the country as an example of how to focus services for the elderly by using elderly residents themselves in cooperation with residents of all ages.

The impetus to neighborhood senior services—NSS—at Ann Arbor in drawn from two major themes. The first theme was the community planning approaches that have been developed in Detroit, Mich., where small bounded areas were selected for intensive physical rehabilitation. That approach seemed to have a way of drawing residents into the problems of the neighborhood.

The second theme comes from the problems of delivering services to the elderly. In 1972, there was no merger between these two themes. Several staff people at the Institute of Gerontology at the University of Michigan attempted to merge these two themes into what was called the neighborhood approach, and that was essentially an attempt to ask older residents and other residents of an area to organize together to consider the problems of their neighbors who might be frail, who might be impaired, and who might need some help. My testimony will cover in detail the growth of neighborhood senior services from a kitchen table organization to an organization which now serves over 60 people a month and has contact with every older resident in the north side of Ann Arbor. NSS provides information to older people who need services and also provides a way of keeping in touch with those persons who have some problem.

The concept of neighborhood senior service is not to replace but to supplement formal services by voluntary efforts of neighbors helping their neighbors. This is done in as unobtrusive a way as possible.

The physical aspects of the neighborhood approach, I think, are most interesting to this panel. The individuals involved with NSS have worked on problems of property tax reduction, home maintenance, and on street repair. They are in contact with the seniors in Ann Arbor and with the spokespersons for the needs of older persons. NSS has been active in reducing property taxes and getting roads paved and in establishing an ongoing system of chore services provided by neighbors fraternities, and by other volunteers.

In general, an organized neighborhood senior service organization can help deliver services to older people in a manner which is acceptable to them. It is a relatively inexpensive and cost-effective approach but that is not the most important factor here. The most important factor is that a tradition of shared concern is being built by younger and older residents within the boundaries of single neighborhood. It is a tradition that will hopefully last so that a future resident in that neighborhood will say: "We help our older people in this neighborhood. We don't know how the tradition started but it is here and we are glad it is here because it will be here when we retire." That is what the neighborhood approach is all about. Hopefully, neighborhood senior service organizations can be established throughout the country and can help direct some of the social and physical programs that are necessary to help older persons remain in their homes in peace and in dignity.

[The prepared statement of Mr. Jacobson follows:]

PREPARED STATEMENT OF SOLOMON G. JACOBSON

My name is Solomon G. Jacobson. I'm associate director of the Institute for the Study of Human Systems, Inc.

I represent Neighborhood Senior Services, Inc. (NSS), of Ann Arbor, Mich., which is a model for the organization of neighborhood residents to serve their older neighbors. The members of NSS and myself are grateful for this oppor-

tunity to present our views and findings to the Senate Special Committee on Aging. We recognize that the committee has been a leader in calling attention to matters concerning the elderly. We have been working on a neighborhood approach since 1974 and believe there is a real need to examine the neighborhood as a basis for serving the elderly.

My statement will focus on the positive role organized groups of neighbors can plan in improving service delivery for their older or impaired neighbors. The neighborhood approach differs from other programs by working within the boundaries of existing neighborhoods. Although the approach may require the assistance of a community organizer when it starts up, it promises to build a tradition of service by neighbors for their olders neighbors in this Nation's neighborhoods. Instead of replacing existing agencies or programs, it primarily provides a neighborhood base for the delivery of services acceptable to older people. Instead of generalizing about the elderly, it treats each individual with the dignity and respect they deserve as neighbors. Instead of relying on Federal funding, the neighborhood approach is a local effort which can create a climate of concern for the elderly and makes retirement more comfortable for those remaining in their neighborhoods. While members of this panel will discuss the problems elderly persons experience in remaining in their neighborhoods, this statement will reflect an approach which has worked in one neighborhood and can work in others. It is our hope that the important problems raised by my colleagues to be considered by this committee can be solved, in part, by adding the neighborhood approach to the existing supports for the elderly—that is, groups of residents organized on a neighborhood basis to assist in serving their elder neighbors.

There are important reasons for focusing on neighborhoods:

(1) Over 70 percent of all elderly people live in homes they own.

(2) Over 80 percent of all elderly express satisfaction with their neighborhoods.

(3) Over 85 percent of all elderly are able to function normally within their homes and neighborhoods.

(4) Over 98 percent of all elderly, if they move at all, will remain within a few miles of their previous home.

I appear here as an advocate of the neighborhood approach to serving the elderly. With others, I helped found Neighborhood Senior Services, Inc., in Ann Arbor, Mich., in 1974. NSS is an organization which serves the elderly within their own neighborhood on the northside of that campus community. I am also a researcher, currently conducting a study on caregiving in the minority community for the Institute for the Study of Human Systems, Inc., under an Administration on Aging grant.

Frankly, however, there has been very little research on the role of neighborhoods and the elderly. Consequently, my comments are based on the experience of one organization, Neighborhood Senior Services. It is my hope that it will serve as a model for similar associations throughout the Nation. In time it may be possible to compare and contrast the neighborhood approach with other ways of helping people live full lives in their homes. Where appropriate, I will cite examples from NSS or from the few models and studies of the neighborhood approach which are now underway.

REQUISITE CONDITIONS

The neighborhood approach may work where several conditions are met:

(1) There is a concentration of older persons living in an area which, by consensus or by official recognition, is a distinctly named and bounded neighborhood.

(2) There is a concentration of housing units and social services which meet the needs of older persons.

(3) There is support for neighborhood improvement by both residents and local officials.

It might appear that the neighborhood appreach would not work efficiently in rural areas. Ironically, however, it may be in rural areas that "neighboring" is much more common than in many urban areas. In the isolated communities of the Great Lakes States and the Southwest, for example, there are elaborate traditions of helping neighbors. However, except for townships, there are no neighborhoods in rural areas. The great success of the Agricutural Extension Service and such organizations as the Grange indicates that it is possible to reach out into rural communities in an organized and systematic manner. In townships across the country, there are senior citizen associations which work ef-

fectively on behalf of their homebound neighbors. So the basic concept, support for one's neighbors, appears to be applicable in any area where there are a few concerned persons willing to create or reinforce a tradition of support for incapacitated persons.

The neighborhood approach cannot work under all circumstances. The approach would not be a high priority in areas where there is extreme poverty, in areas of high rentals and low home ownership, nor where housing is badly deteriorated or crime rates are high. This is not to say that neighborhood action against crime, for example, is inappropriate, but rather that volunteer services to the elderly take lower priority in such stressful situations. These limitations do not detract from the neighbhood approach, however; there are no programs which work effectively in every situation. Specific solutions for our most needy and impoverished areas are matters of national concern which must be addressed through income and job programs, rather than through the volunteer methods suggested in this statement. However, millions of older persons could benefit from a neighborhood approach, at a net cost of about $2.50 per year for each person.

POSSIBLE SCOPE OF NEIGHBORHOOD PROGRAMS

How many older persons could be served by a neighborhood approach? That would depend upon the number of neighborhoods which can support an organized group of residents who concern themselves with their older and handicapped neighbors. There are about 150 cities with a population of 100,000 or more. These contain about 70 million persons. If we assume that a neighborhood contains about 20,000 persons, then we have about 3,500 neighborhoods. Since the elderly make up at least 10 percent of the population, we have 7 million elderly persons living in those neighborhoods. Let us say that half of these neighborhoods can support a neighborhood service organization similar to Neighborhood Senior Services. We would then have the potential of reaching 3,500,000 elders in 1,750 neighborhoods. Since about 15 percent of the elderly are in need of supports, this would mean that 525,000 elderly at risk of institutionalization would be served by organized groups of neighbors. In other words, I would estimate that 17.5 percent of all the elderly in the United States could have contact with and support from their friends and neighbors in an organized approach which will soon, it is hoped, become traditional in this Nation.

COST

What would be the cost of the neighborhood approach? The basic operating expense of a service group would range from $2,000 to $5,000 per year. This would cover such basic expenses as telephones, mailings, supplies and equipment. It could also include the part-time services of a staff member or work-study student. The basic operating expenses could be by a combination of local fund-raising and allocations from local governments. While direct Federal grants would not be appropriate, the option of providing a portion of the operating expenses from block grants or discretionary funds should be left open to local governments and units on aging. These operating expenses are the only "new" dollars required to introduce the neighborhood approach. If a neighborhood service organization operated by neighbors is successful, it would soon be in a position to administer a limited number of projects, such as outreach or transportation, which could be financed from existing program allocations. However, the basic purpose of the group is to facilitate the delivery of services and it should not compete with existing agencies which are performing adequately in the neighborhood.

BENEFIT

What would be the benefit of the neighborhood approach? Let us take our estimate that 1,750 neighborhoods could support a group of volunteer residents serving the elderly. If the basic expense of each group were $5,000 per year, this would require $8,750,000 in new funds raised locally each year. The neighborhood approach would serve about 3,500,000 people at a basic cost of $2.50 per person per year. Since we estimate that 15 percent of these elderly would be at risk, the neighborhood approach may avoid or forestall institutionalization for 525,000 persons. If the additional costs of institutionalization are estimated at $2,500 per year, then we could say that forestalling institutionalization for 3,500 persons per year, or less than 1 percent of those at risk, would pay for the cost of the entire program. Put differently, if such neighborhood services made unnecessary the

placement of one person in an institution, the savings would pay for maintaining such services for 150 people for 1 year! The potential benefit of the approach and its reduced costs make it worth considering as an additional technique in serving our Nation's edlerly.

ESTABLISHING NEIGHBORHOOD SERVICES

If successful, a neighborhood approach to serving older persons will result in the following activities:

(1) Finding older residents who need help to maintain themselves.
(2) Organizing supports by friends and neighbors for older persons.
(3) Relating the needs of older residents to appropriate service agencies.
(4) Monitoring the well-being of older neighbors.
(5) Following up on those elderly people who need special assistance.
(6) Speaking out on the needs of older residents in public forums.
(7) Advise government officials on social and physical improvements needed in the neighborhood.

A neighborhood approach is not difficult to introduce. It is simply a group of neighbors who concentrate on the service needs of their older or impaired neighbors. The group may be part of an established neighborhood improvement association or it may be independent. It should not be affiliated with an organization with an established clientele. The group should be as broadly based as possible. If it is started by a church, a social service agency, a health program, or a neighborhood center, it will probably be viewed as an adjunct or the agent of that agency or center. This may limit its effectiveness. However, it is essential that existing agencies endorse and participate in the setting up of an independent senior service group. While the initiative may come from anywhere, the neighborhood group should be built around the strengths of those neighbors willing to work on behalf of their older residents. Remember, the ultimate goal is to create a tradition of shared concern which is passed from neighbor to neighbor over several generations. A narrow approach and limited sponsorship defeats this tradition-building and may result instead in just one more isolated program.

The neighborhood approach starts off with trained community workers. It is possible for a group of neighbors to organize themselves without outside assistance, but the service of a trained community organizer is recommended. An organizer can help a group clarify its goals, set up good working procedures, and build a base for long-range growth. In addition, the organizer can serve as the staff nucleus for the neighborhood service organization. If it is successful, the organization will want to hire part- or full-time staff. This does not take away from the voluntary nature of the group, since projects should be undertaken only if there are volunteers to work on setting up the project. For example, staff would not set up a telephone reassurance program unless they were requested to do so by the group and unless there were sufficient volunteers to operate the program. However, staff can provide continuity and recordkeeping services which are essential for the successful operation of a service group working within neighborhood boundaries.

PHILOSOPHY AND GOALS OF NEIGHBORHOOD SENIOR SERVICES, INC.

Since its inception in the summer of 1974, the major goal of NSS has been to give seniors the type of assistance that would enable them to remain in their homes and, thus, forestall institutionalization as long as possible. This has been accomplished through a neighborhood approach to services for seniors stressing a "neighbors helping neighbors" strategy in implementing the program.

The propelling idea of NSS, which is to keep seniors in their homes, is based upon the conviction that the elderly are happier in the familiar surroundings of home and neighborhood. Therefore, it is important to help them stay there as long as possible. Many who might be candidates for the nursing home because of a physical disability or a tendency to lose things or to get confused can get along in their homes through the additional support services offered by NSS.

HOW IT GOT STARTED

NSS originated out of the concern of a few seniors and younger people living in the Northside area of Ann Arbor—a concern about the age-related needs and problems of seniors who resided in their own homes. The start came as a response

to suggestions made by a staff member and work study students associated with the Institute of Gerontology at the University of Michigan. In the summer of 1974 they met with several residents of the Northside of Ann Arbor and NSS was started. This group of community people constitutes the present and very active board of directors of NSS. Seventy percent of the board members are elderly.

It was necessary, first of all, to locate the seniors in the community. This was done by using voting lists of Ann Arbor's Northside and, from this, creating a mailing list of seniors on the Northside. These seniors were invited to meetings to help identify those seniors in the community who needed support services. An in formal needs assessment of the seniors in the community was a part of the identification process.

NSS began on an entirely voluntary basis. Meetings were held in members' homes. Their phone numbers were printed so that any one who needed information about NSS could call. A newsletter was printed, funded by donations, and activities were held in various churches which donated space. A service was established to refer seniors to community agencies.

ORGANIZATIONAL STRUCTURE

All decisions are made by working members who meet once a month to discuss the projects and tasks to be accomplished by NSS. Although NSS now receives funding from the city of Ann Arbor and the area agency on aging, there is a strong reliance on finding volunteers who will carry out assignments. The process of finding suitable volunteers, of assigning tasks and of reporting back about the assignment is totally self contained; it does not involve any outside agencies or institutions.

In addition to the working board, NSS has two paid employees—a full-time director, Mary Baker, and a part-time outreach worker. There are also students from the School of Social Work at the University of Michigan who are assigned to NSS as their field placement, and there is a part-time work study student. A list of volunteers is kept at the office to be called upon as needed.

NSS is housed in a rented office space in the Northside Presbyterian-St. Aidan's Episcopal Church, 1679 Broadway in Ann Arbor. The office is open from 8:30 to 5, Monday through Friday. A telephone at the office is put to good use as a line seniors can call when they are in need of assistance.

Communication is maintained through the use of a log book in which the director, outreach worker, social work students, and work study students record daily what has been accomplished that day, what needs to be done, and what needs to be communicated to other staff. The log is also used for funding purposes to show what kinds of cases are handled and what kinds of services NSS offers. A staff member is usually responsible for recording activities of volunteers. Volunteers must check in each day they work to tell where they are going and what they will do.

A card is kept in a file of each client as they come in. On it is recorded the client's name, address, phone number, who referred the client, what the problem is, and what is being done about it. Any vital and significant data, such as health status is kept up to date on this card.

The mailing lists mentioned previously are updated regularly. These are kept on two sets of cards; one is filed alphabetically and one set by street numerically. This second set is very useful when there is an event or service that must be announced quickly. We are able to contact a senior citizen on each street who will call other seniors in his immediate area.

Meetings of staff members are another means of communication, and staff members keep close tabs on each other so they can be contacted in case of an emergency.

There is a definite procedure that is followed when a referral is made. All possible information is obtained from the referral source which may be an agency, a volunteer, or another senior citizen or even a self-referral. The outreach worker then sets up an appointment to see the new client. On the basis of her discussion with the client, a needs assessment is done and recorded onto a form made just for that purpose. Definite action is taken as soon as possible after the needs assessment is made.

If a referral to another agent or agency is necessary, NSS staff takes the responsibility for setting up the appointment, seeing to it that the client has trans-

portation to and from the destination if necessary, and seeing to it that the goals of contacting the other agency are met as well as obtaining as much information about the outcome of the referral as possible and setting up another appointment.

What has NSS learned from its experiences? While each neighborhood differs, the activities, actions and discoveries of NSS illustrate what to expect from similar groups. The following items were collected at the NSS monthly meeting on November 7, 1978:

Finding: Housing maintenance has become difficult for many older residents.

Action: NSS organizes chore services by campus fraternities, youth groups, and volunteers; refers older residents to existing home repair and maintenance agencies.

Finding: Several older residents require companions to assist in performing small chores.

Action: NSS set up a service which places over 40 nursing students in the homes of older residents as live-in companions or as volunteer visitors. NSS is also considering sponsoring a respite care program.

Finding: Long waiting lists for public housing.

Action: NSS researched and proposed a cooperative housing plan whereby large neighborhood homes would be converted for that purpose. The concept received the endorsement of and a financial commitment from the city of Ann Arbor.

Finding: Street conditions create hazards for elderly.

Action: NSS members gave a city representative a tour of the problem area and succeeded in getting priority action on paving a major roadway.

Finding: Some older people are not receiving benefits and are having difficulty understanding Federal programs.

Action: NSS asked the Washtenaw County Council on Aging to rewrite medicaid material to make it more understandable and to the point.

The following organizing principles, derived from the Neighborhood Senior Service experience, may be useful:

(1) Membership is open to all who are interested in providing supportive services to elderly neighbors.

(2) Members belong as long as they continue to provide service, and decisions are made by the working members.

(3) Those served by the group are encouraged to serve others.

(4) Accurate, confidential records of contacts with neighbors are kept. Followup is routine.

(5) The organization is kept as simple as possible so that it can continue to function even if funding fluctuates.

(6) There is a long-term commitment to make the process work.

RELATIONSHIP TO OTHER AGENCIES

The neighborhood approach differs from other types of service programs for the elderly in the following ways:

COMPARISON OF NEIGHBORHOOD APPROACH WITH OTHER COMMUNITY-BASED PROGRAMS

	Neighborhood approach	Advisory bodies	Agency outreach	Senior centers	Self-help groups
Boundaries	A recognized neighborhood.	A service delivery area or governmental entities.	Usually a self-defined service delivery area.	Varies, usually serves wide area.	Varies, organized by need, not area.
Membership	Neighbors willing to serve.	Selected or elected to serve on body.	Professionals or para-professionals.	Seniors who want to participate in activities.	Seniors with similar problems.
Services provided	Locating elderly in need, matching to services; followup and monitoring, problem identification and solving, develops informal supports.	Review and approve policy of planning or provider agency.	Locating elderly, case management, specific services delivered to home or at agency site.	Recreation; screening, selected services provided on site, providing companionship and group activities.	Group therapy and support.

The neighborhood approach has linkages with current and future service programs for the older person. The following illustrates this point:

SERVICES FACILITATED AT THE NEIGHBORHOOD LEVEL BY AN ORGANIZED SERVICE GROUP

Alliances with existing service groups

Community organizations, neighborhood improvement associations, mutual aid societies, self-help health groups, multipurpose senior centers, agricultural extension services.

Facilitate these existing programs

Protective services, outreach work, case management, deinstitutionalization home health care, home chore services, home maintenance programs, immunization and health screening, consumer advocacy, information and referral, community planning, neighborhood preservation, removal of architectural barriers.

Introduce the innovative approaches

Respite care, personal care organizations, community geriatirc health centers, in-home therapy, small scale residential facilities, detection of adult abuse or neglect, independent living for the handicapped, housing annuity programs, preventive health and mental health programs.

Since the neighborhood approach consists of residents serving their older or impaired neighbors, it serves to complement the work of formal agencies. Since an agency needs to reach out into a community, it would find a neighborhood service organization both an ally and an inforced critic. If properly organized and informed, the neighborhood group would recognize the difference between formal and informal caregiving. While this is an area requiring more research, neighborhood groups can path-find new approaches to collaboration between lay persons and professionals. In an ideal sense, the professional should train the lay person to perform routine services, while the professionals' services are reserved for serious problems. A neighborhood group first matches the individual with needed formal services. If the formal agencies fail to be responsive, then the group should serve as an advocate for improvement. The neighborhood group should never attempt to perform professional services. There is enough to do if the group provides the basic service functions of locating the elderly, informing them of services, matching those in need with the appropriate services, and providing followup. This approach, over a period of time, should develop an in-depth understanding of the needs, concerns, and desires of older neighbors.

If a new program is introduced—for example, respite care service—the neighborhood service organization should be in a position to advise those providing the services on who needs it, where they are located, and the best approach to introducing the service so that it is accessible and acceptable to neighborhood residents.

Those formal agencies which may benefit from an association with a neighborhood service organization include:

(1) Social service agencies.
(2) Home health care or home chore agencies.
(3) Local service departments, such as police, fire, traffic, streets, transportation, sanitation, zoning and community planning.
(4) Hospital, nursing home, and mental health facilities and clinics.

The neighborhood approach may contribute in another way: since it involves all age groups in providing services to the elderly, it is inevitable that common cause will eventually be made between the elderly and other groups at risk of impairment. These others include the handicapped, the chronically ill, the developmentally disabled, and those temporarily impaired by accident, illness, or even pregnancy. The result can be an integration of services around the functional incapacity of the client, that is, around the kind of help needed, rather than around categories such as age or disease.

THE GOAL

The long-range goal of the neighborhood approach is to develop a tradition in many neighborhoods of serving the elderly and handicapped. If neighbors do little things, such as making home visits or putting up storm windows, many elderly who would otherwise need institutional care can remain in their home. In time, younger people can become socialized to the tradition of helping. If many serve, no single person or agency needs to carry the full burden of helping older or handicapped persons. In this manner, a climate of shared concern between neighbors, family, and formal agencies may develop which will result in

increased local supports. As neighbors become more aware of the needs of their older residents, they will serve as effective partners with formal agencies in targeting services to those most in need of support. The result should be improved services, a tradition of local support, and a more efficient use of private effort and public funds.

POLICY RECOMMENDATIONS

While it would be useful to have support at the Federal level for the neighborhood approach, it needs to be a special type of support. In order to keep the local initiative, Federal policy should encourage the use of neighborhood organizations, but I do not believe it should provide direct funding. The funds should come from neighbors, their associations, and from local and State governments. The concept, if it takes hold, must be based on the strengths (and weaknesses) of neighbors working on behalf of their neighbors. Direct Federal funding may negate a local base and, since Federal funding is short term, it inhibits the slow growth necessary for a successful long-lasting neighborhood program.

However, there are several things the Federal Government can do on behalf of neighborhood organizations serving the elderly:

(1) Encourage area agencies on aging to use the neighborhood approach, where applicable, to help organize services for the elderly on a neighborhood-by-neighborhood basis.

(2) Provide interested neighborhoods with technical assistance; such as information packets, training sessions, speakers and expert advice.

(3) Permit the set-aside of HUD community development revenue sharing funds by local governments to provide basic start-up and operating expenses for neighborhood senior service organizations.

(4) Allow established neighborhood senior service organizations to administer service programs under the Older Americans Act or under title XX of the Social Security Act as these organizations demonstrate competence. Such programs could include outreach, information and referral, and protective services.

(5) Send trained community organizers through ACTION into those neighborhoods where there is support for establishing some form of support groups.

(6) Consider tax incentives or stipends for those providing needed supports for impaired older neighbors, friends, or relatives.

(7) Continue support for neighborhood based programs, (such as multipurpose senior centers) and provide financial incentives for them to collaborate with neighborhood service organizations.

(8) Encourage existing agencies, such as home care programs, and future agencies, such as personal service organizations, to work cooperatively with neighborhood senior service groups.

Attachment.

DELIVERY OF SERVICES FOR THE ELDERLY AT THE NEIGHBORHOOD LEVEL: A PRACTITIONER'S GUIDE

The "Neighborhood Approach to Service Delivery for the Elderly," stresses the importance of the neighborhood concept in delivering services to elderly persons.[1] We realize that there are many who are immobilized by old age, ill health, or isolation, those individuals are the ones who must need the neighborhood for the satisfaction of their tangible wants, and for the fulfillment of their intangible needs. In many neighborhoods the tangible needs of the residents, especially those who are less mobile, can be satisfied by activities such as the delivery of food products to their homes, to having friends do their shopping to merely knowing that neighbors or someone is available in case of emergencies. Moreover, the tangible needs of neighborhood residents range from a significant lack of social contact, daily gossip and general neighborhood information and other forms of contact to offset the effects of pathological isolation.

In order to implement a neighborhood approach in locating and servicing elderly residents. It is necessary to understand how an individual identifies the local areas within his neighborhood's boundaries. An understanding of neighborhoods as both physical entities and as social and cultural milieus is useful to a neighborhood organizer who must accurately determine the needs of the residents he seeks to assist.

[1] The neighborhood approach has been developed in a series of workshops and in the field by the neighborhood approach project at the Institute of Gerontology at the University of Michigan. The project team consisted of Solomon G. Jacobson, project director; Michael Bartus, Norman Freedman, Jeffrey Lewis, and Albert White. The project received the support of the Washtenaw County Council on Aging, William Ennen, director, and Anne Alvarez, field worker on the project.

DEFINITIONS OF A NEIGHBORHOOD

Ruth Glass[2] describes a neighborhood as a "distinct territorial group, distinct by virtue of the specific physical characteristics of the area and the specific social characteristics of the inhabitants." Donald Warren[3] talks of neighborhoods in terms of the functions they perform for the residents. He identifies six types of neighborhoods:

(1) *The integrated.*—Here there are high levels of interaction among most neighborhood residents and regular contact with the local government.

(2) *The parochial.*—Residents here may have extensive contact with one another but are indifferent maybe even hostile to the community in general.

(3) *The diffuse.*—Here, people have many shared interests in common with one another in order to build these common interests into concerted efforts for needed services.

(4) *The stepping-stone.*—Residents are examplified by the nomadic corporate executive', having extensive contact with one another, while displaying short-term commitment to the community, and seldomly identifying with the neighborhood itself or its needs.

(5) *The transitory.*—There is infrequent interaction among neighbors and/or identification with specific neighborhood areas. Participation is more likely to be generalized across the community as a whole rather than specific.

(6) *The anomic.*—Residents in these communities lack ties with the neighborhood as well as the surrounding community. This "dehumanized environment" is the specter that haunts all neighborhoods in the anomic community.

A neighborhood may also be looked upon as "an area within which the variation in people and environment are not great enough to produce significant variations in the type and quality of public services or of public and private capital investments."[4]

Neighborhoods vary from large heterogeneous urban configurations to small homogeneous rural units. Ideally, residents of different neighborhoods are marked by particular patterns of life. "In these neighborhoods certain shared norms dictate the subculture of the district including the type of terrain occupied, and the socio-ecnomic structure of the area. The factors used to characterize neighborhoods are separated into two different elements, the social elements and the physical symmbolic elements."[5]

Physical components: The neighborhood is often viewed as either an area or place within a large geographic entity, containing boundaries (i.e., physical/symbolic). Natural or artificial barriers are often used to mark the geographic circumference, as well as sociocultural boundaries, of a given neighborhood. "Natural neighborhoods find their limits where personal relations stop. This makes the boundaries fluid, though still recognizable to those familiar with local custom(s)...."[6]

Neighborhoods many times have names and often their boundaries are well established by customs. The qualities associated with these neighborhoods give the residents value in the eyes of the larger community. Such value depends on whether the area is easily accessible to schools, shopping centers, and recreational facilities. A school (i.e., elementary, secondary, high school, etc.) often serves as an identifier of a neighborhood in rural and urban settings. As a result, residents living within walking distances of the school, may identify themselves as belonging to a "common-community." This being a matter of proximity.

Frequently Federal, State, or local agencies will establish the service boundaries of a neighborhood, to conform with requirements of governmental programs. Sometimes these boundaries follow those established by organizations such as citizen participation groups, or tax payer tract areas. In other cases, the governmental agency sets the boundaries arbitrarily. An example of a neighborhood organization funded through the use of Federal dollars was the community action program (CAP), from the Office of Economic Opportunity (OEO). OEO issued grants to local areas to establish neighborhood centers designed to meet

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[2] Ruth Glass, editor, "The Social Background of a Plan" (London: Routledge & Kegan Paul, 1948).

[3] Donald Warren, "U-M Sociologist Identifies Six Types of Neighborhoods," Ann Arbor News, Jan. 15, 1974, p. 9. Now published in Rachel Warren and Donald I. Warren, "The Neighborhood Organizer's Handbook" (University of Notre Dame Press, Notre Dame: 1977).

[4] Samm Bass Warner, Jr., editor, "Planning for a Nation of Cities" (Cambridge, Mass., MIT Press, p. 187).

[5] Suzanne Keller, "The Urban Neighborhood" ((Random House, New York: 1968, p. 82).

[6] Ibid., p. 100.

the needs of certain groups of residents. The particular "neighborhood" encompassing the center would consist of the people living within OEO's arbitrary boundaries.

When choosing neighborhood boundaries, one should also consider the areas which have been used for former studies by other groups. Examples would be sociological surveys, census tracts, or political canvassing, tools used to enter a given area and sub-divide the residents into different districts for their own purposes often obscuring the real issues that coalesce into interest group action.

Social components: These emphasize the notions of shared attitudes, experiences, values, and common loyalties. Sociocultural components became particularly important when considering large heterogeneous neighborhoods. Groups of different ethnic socioeconomic and religious characteristics living within self defined community boundaries can mean numerous problems for the neighborhood organizer. Gaining their trust is the essential initial consideration.

In isolating the neighborhood boundaries, the organizer must realize that social-cultural components can often be more significant than the physical elements. Although census tracts and natural boundaries define a certain area as composing a given neighborhood, the residents of the area may interpret the neighborhood as estending in different directions. Thus a problem of rapid social change could change upset the traditional balance between "neighbors, neighboring, and neighborhoods, leaving in its wake a residue of disconnected fragments of such neighborhoods." [7]

Suzanne Keller, author of "The Urban Neighborhood," points out that when defining a neighborhood, three conceptual distinctions must not be overlooked:

(1) The neighborhood has a special role implying a particular kind of social attitude toward others as distinguished from the role of friend and relative with which it may at times merge, as when relatives may be living next door or when neighbors become friends.

(2) There are various activities associated with this role ranging from highly formal and routinized neighborhood rituals to sporadic, informal, and casual contacts.

(3) There is an area itself—the neighborhood—where neighbors reside and where "neighboring" takes place. This may be clearly demarcated spatial units, with definite boundaries and long established traditions, or a fluid, vaguely apparent and differentially perceived by the inhabitants.[8]

Therefore, when defining a neighborhood, the practitioner of a neighborhood approach to community organization must consider a range of several indigenous factors in each locality. The organizer must not overlook the importance of cultural components. Understanding people's definition of their own neighborhood is imperative for the organizer. Only after considering the views of the residents, can the neighborhood organizer attempt to adequately address the neighborhood boundaries within which he will implement his policies. Furthermore, the neighborhood organizer must also realize that "where one lives isn't necessarily where one resides." [9]

"It is clear that as people age their dependence on the local surrounding environment is increased; for the age cohorts between 65 and 85 in particular, the neighborhood environment takes on a special significance." [10] The elderly tend to remain in their own homes or apartments upon retirement, generally they do not relocate, however, "if the elderly do relocate, they often find it difficult to adapt or adjust to the surrounding environment. The length of residents and age of a resident strengthen attachment to an area. Older long-term residents express more neighborhood satisfaction than do younger newer residents.[11] In addition, older persons, especially those with decreased mobility, are more dependent upon their neighborhoods than any other age group.

Senator DECONCINI. Thank you very much.

Let me ask you first, and then the other members of the panel, to respond to questions that are troubling me a little bit. A White House Conference on Aging is planned for 1981. First of all I would like to

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[7] Ibid., p. 4.
[8] Ibid., pp. 12–13.
[9] Reginald Issacs, "The Neighborhood Theory," Journal of the American Institute of Planners, vol. XIV, No. 2; spring, 1948, pp. 15–23.
[10] Victor Regnier, "Neighborhood Planning for the Urban Elderly," from Aging, ed. by Diana S. Woodruff and James E. Birren (D. Van Nostrand Comp., New York, 1975, p. 298).
[11] Ibid., p. 299.

know—and I am sure I know Mr. Fleming's answer—is this really going to be of significance in your candid opinion, and what do you see in your particular area as being derived from a White House Conference on Aging?

Mr. JACOBSON. It will be difficult for me to be candid because I am working under two grants for the Administration on Aging.

Senator DECONCINI. I will give you immunity here.

I don't mean to be sarcastic, but I always have some troubles with these White House conferences. They bring some focus to some particular problem and maybe that is sufficient. But I wonder what you can actually get out of them, and whether or not we hold our expectations too high.

Mr. JACOBSON. The White House conferences that were held in the sixties and the seventies, I think had the opportunity to give us some significant benchmarks. I think they did serve to bring people together in their communities and begin to discuss issues and set priorities. I think the White House Conference that will be held in 1981 will have that same function so that they do serve that important role, they do bring people together and they do prepare background material. Whether they will influence policy or not, I don't know. That is up to the structure of the White House Conference itself.

I would hope that the White House Conference would begin to look at the different levels of service provision; what role the individual can play, the role of the family, the role of the neighborhood, the role of the county and local governments and the role of the States and the role of the Federal Government. These are all different levels with different responsibilities. I hope we will begin to articulate some of the different approaches that are appropriate at each level.

For example, housing maintenance should go on as a neighborhood project. Inflation is a national problem and that must be dealt with at the Federal level. So if properly organized, and I hope it will be, the White House Conference could be enormously effective.

Senator DECONCINI. Miss Myers, would you care to respond?

Ms. MYERS. Many people are already referring to the 1981 Conference with the idea of using this forum to focus on the large numbers of elderly who are not served by existing programs and policies. The fact of the impending conference impels people to think seriously about the new issues. You don't turn policy around overnight, but the conference may be important in signaling a shift in direction.

Senator DECONCINI. Does anybody else want to comment? Equal time.

Mr. FLEMING. Just a point, not as a spokesman for the administration, but as a former resident of Georgia. The experience from being a constituent of Governor Carter in Georgia suggests to me, in terms of utility, that as White House conferences may have given the style of this Chief Executive—that they will have greater utility than perhaps in the past. President Carter very effectively utilized a process called goals for Georgia when he was Governor which did a major outreach on a number of key issues which led to a number of very specific steps that he took as chief executive of the State. I rather suspect, given that orientation, that we would probably see the President looking to conferences such as the White House Conference on Aging for that kind of an outreach on that issue. So I would be encouraged, based on what

I experienced several years ago as a resident there when he was utilizing this as a Governor.

Senator DECONCINI. Does anyone else care to comment?

Mr. HOLMAN. This is probably treason since I was one of three directors working under the three chairpersons of a White House Conference. It was called the White House Conference to Fulfill These Rights, and I know I asked my people, "Why aren't those rights fulfilled?" It seems to me that White House conferences certainly do one thing, they focus on a particular area or group and they bring visibility to that area or group for a particular period of time. The real problem always is in what happens thereafter, in terms of the implementing of public policy and recommendations seeing that behavior does change as a result.

Almost all these conferences have one problem, they come up with ideas which cost money, and when they come up with ideas which cost money, you get a situation such as we have now. When our report was finally ready, it was decided that it would not be released right away because it supposedly could have been used by some people as a checklist—did they enact this, did they enact the other thing. We have the "Year of the Child" coming up as well.

I think what this may mean in terms of the aging, is that there is the possibility that there may be more followthrough with program enactment than before. There will be more older people in this country than before unless we get a new baby boom, and no one sees that coming. What I would like to see this conference do is select two or three things and no more, and see if the Federal Government can do them. They should try to be much more specific than conferences normally are about what the private sector can do. They tend to be too heavily federally oriented in terms of recommendations. Finally, they should try to see to what degree they can make use of the energies and the imagination of private citizens themselves. I think a few priorities of those kinds, challenging those separate sets of institutions and working together might be much more useful than the voluminous reports which are sure to come out of such a conference.

Senator DECONCINI. Thank you very much.

Mr. Filer.

Mr. FILER. It would seem to me to be conceivable, following up on that comment, if you had an interrelationship of private nongovernment and government—that is, the problems of this country have some subheads—you might have a greater chance of something happening in it from the point of view that this is not an effort to decide all of the ways to spend Federal money, but rather it is a way to see two unique and different ways to address the problem. Aging could be a subhead. We are talking about today's elderly. It seems to me if we have a focus on you and me, if you will pardon me, we will be elderly one of these days and it is that focus that could be brought that I think might be very useful. This is not a very short-term program.

Senator DECONCINI. Thank you.

Ms. Wilson.

Ms. WILSON. Yes, I do have a question.

I would like to address Mr. Jacobson. I have been concerned for years about what I would call stiffling of the individual, and the small group and local voluntary initiative by the great giver, the Federal

Government. Most particularly, I would cite meals-on-wheels, a voluntary program which primarily helps those people who are not getting adequate meals. The Federal Government comes in and takes over these programs. Do you find this same type of thing to be potential threat to the operation of a really successful neighborhood program?

Mr. JACOBSON. The role of the Federal Government is a very threatening one in many cases. In fact, in my dissertation, I studied the role of the Federal Government in introducing programs at the local level. I found that the Federal Government did not have enough information about local institutions, that they did not provide needed technical assistance, and further, that the Federal concept of time was almost totally different from local time. The Federal Government felt things should be done in 2 years which would in reality take 5 years.

The neighborhood senior service organization grew very slowly based on a motto: "Think small, start big, and hang in there." As a result, it is now quite strong. While the membership is small, you don't need more than a dozen or so individuals in a neighborhood to maintain a vital service unit. The group in Ann Arbor is strong and intelligent. If an attempt was made to change the priorities of the group to meet a Federal program, the group would either reject the program or would attempt to negotiate the priorities of the program so they meet local needs.

It is very important that the Federal Government be flexible enough to adapt to local priorities. The Federal block grant program is a major step in that approach. To have services acceptable to older people, we need to have groups of people within local areas who know how best to introduce those programs and the Federal Government needs to be guided by that.

Ms. WILSON. Thank you.

Mr. FLEMING. The gentleman raises a very good point. Whether you are talking about housing or other types of domestic programs, I think it is fair to say we have seen a major shift in the predisposition of the Federal agencies as a participant in programs. We have gone from the fifties and sixties when we had a prohibitively high categorical Federal agency that pretty well told the Federal Government how to spend the money in very, very minor detail to a program now which has just been alluded to in the case where we get block grant money which balances certain national objectives with a very heavy emphasis on local initiative.

I think it is fair to assume that if we are predicating our programs on a transactive and partnership sort of a methodology with the Federal Government being a partner, that no party comes to the partnership with all of the answers. I think the style of action by the Federal agencies—I know our agency in terms of the action grant program has become much more participatory, much more active with the neighborhood groups, and so on. The neighborhood housing services program has certainly set that kind of a model. I think we have seen a real evolution where the Federal Government is today in that kind of a partnership.

Senator DECONCINI. Mr. Lewis, do you have any questions of the panel?

Mr. LEWIS. One question for Mr. Jacobson.

Because of the trend in the country due to Proposition 13, and other States taking the similar position—California not really feeling the true effect yet—and the way our service system has been developed at the local level with rehab services and educational services all out of separate systems really, not integrated, could you shed some light on the issue of possibly the whole concept of age-integrated delivery systems?

Mr. JACOBSON. The question of age-integrated services, I think, is a very future-oriented question and a very good one to raise at this point because, as Mr. Fleming has just stated, in the past many of the programs were categorical. Now we are reaching a point where we are beginning to realize that there will be a trend in the human services to look at the individual as the basis for delivering services. We are beginning to use one-on-one approaches to individuals, such as case management techniques. If we organize information in an effective way, we are going to find that there are people with patterns of problems that do not fit into the usual categories. An older person may have the same type of problem as a younger handicapped person for example. The important point, it would seem to me, would be to look at how well individuals can function. I think that will lead us to integrated services, based on the functional capacities of individuals.

Mr. LEWIS. Would you agree that that would also lead us in the direction of a greater reallocation of resources in terms of greater direction in truly targeting funds as opposed to tacking funds a little bit here and a little bit there as we are doing now?

Mr. JACOBSON. I believe it will. As the crunch comes on Federal programs, we are going to have to begin to target programs, and I think the current administration is stating that. You know the Administration on Aging is talking about a two-tier program which will look at the persons with the greatest need, those that are impaired, homebound, in need of direct targeted services, and those that require general support or preventive care. As we begin to measure needs more precisely, we will be in a better position to target services.

If I may add one more thing, the idea of a "dependent population" is one which merits greater scrutiny. In a contract under AoA funding, we found that an individual is neither "dependent" nor "independent," but rather will be dependent under certain conditions. We have to begin to define exactly those types of services which will support a person and help them maintain themselves but not stifle their own self-sufficiency.

Mr. HOLMAN. Mr. Chairman, I am interrupting here only to apologize for the fact that we are putting together something called an advisory council on urban recreation with people from around the country coming in. I have agreed to serve as chairperson and to begin at noon. I only wanted to say that our staff members will be staying on.

I wanted to just make one final statement which we didn't get into in our own statement, but which I would like to write a little note to you on, later. I think it is very important that we look at elderly people in neighborhoods and elsewhere in terms of their potential, rather than dealing with them simply as problems. For example, we have been trying to persuade the administration and some foundations, that in terms of community level disputes, many of which are handled very

poorly and badly by the police, there are certain kinds of ways in which, with a little training, you could take elderly people and enable them to alleviate arbitration of community-level disputes.

You are talking about dependency and interdependency. One of the things we found in talking to older people is that they feel that they have so very much to give, and in many cases they do, and there is so little in terms of the way the system permits them to be anything other than objects of the program rather than people who have something positive to give.

I must apologize again for having to leave.

Senator DECONCINI. I understand, and please don't worry about it at all. We greatly appreciate your participation here today. If anyone else must leave, we understand.

Mr. Corwin.

Mr. CORWIN. I have two quick questions.

I just want to add that, with regard to the White House Conference on Aging, our hearing record will be open for the remainder of the month and we would very much appreciate the panel's suggestions for additional information that we should have prior to that conference, and for the type of policy alternatives they feel should be discussed with regard to the issue that we are addressing today. We would like to see the data at that conference be a comprehensive framework for policy decisions.

Mr. Jacobson, I won't ask my questions on it now, but I would like to get more details about the conversion project in Ann Arbor, if you have that, to see how that program operates.

As you know, our hearing today is to try to get a handle on the new demographic and economic trends which many urban commentators see as impacting on the elderly, and on the neighborhoods in which they live, over the next period of years.

In yesterday's Washington Post, the front page of the business section carried a story which seems very relevant—and which I found very disturbing—that the average new home in the United States is now out of reach financially, because of limitations on qualifications for mortgages, to three-quarters of all the families in the United States. Of course, none of us can predict how long this situation will go on, for we don't know how inflation will run or the other costs that contribute to housing. But to the extent that this type of new construction cost is going to close out a significant portion of American families over the next few years, what type of effect does the panel see that as having on the existing housing resources that we are talking about today?

Mr. WEILER. Well, quite obviously I think we have to pay more attention to the status of tenants. It has been the American dream, I suppose, that everybody becomes a homeowner, or can be, but I think that is not going to be true in the foreseeable future. I was in San Francisco a week and a half ago for a west coast housing conference, and I have not spent much time in California, but I was amazed at how much the emphasis was on the problems of tenancy and not just with regard to proposition 13 where there has been some trouble passing that savings back on the tenant, but in general.

Tenancy is really something out of the Dark Ages. It is one of the most backward parts of our law and I think we have to look into the

rights of purchase, rights of return, a whole variety of legal mechanisms for tenants. In part, it is a question of attitude. As a neighborhood organizer, I know theft is a common prejudice against tenants; they don't care, they don't participate, they see themselves as transitional. I don't want to say whether or not this is true, but certainly I think there are some attitudinal changes that have to be made in this country also about tenancy. I don't think that it is good that homeownership should be out of reach, but it is the fact.

Senator DECONCINI. Does anyone else care to comment?

Ms. MYERS. We might also want to know more about the actions of elderly persons who own city homes which have appreciated considerably—or which may be saleable for the first time in many years. In that Baltimore program mentioned earlier, the project director told me at first when elderly homeowners were informed of an opportunity to sell, they said, "Gee, that's a good idea." But later, when they thought it over, most of them said: "What would I do? Where would I go? I'll stay in this neighborhood that is going to be renewed."

If, instead of the offer being made by a Ford Foundation project, it was made by a realtor, the elderly homeowner would have sold out and without enough consideration of the alternatives. One of the points in my study is that there may not be many alternatives. Government programs are not likely to deliver anywhere near the estimates of need for new housing. At the minimum, modest people who suddenly offered an opportunity to sell in upgraded neighborhoods should be able to get advice, counseling, and time to think things over.

Mr. FLEMING. Of course your question has one obvious answer, it is only to enhance the problem. The greater pressure that is going to be brought to bear on existing housing is going to be greater problems of displacement and greater problems of displaced elderly. I was equally impressed in setting through a number of the sessions of that west coast conference that Conrad just spoke of. One phrase, for example, which was quoted there was the fact that this year's graduating class at the University of Southern California is a relatively segmented group in terms of income level and that only one out of five of the graduates would be able to afford a home by the time they came into the housebuying market.

So I think that the whole area of relationship of renters to landlords, renters to neighborhood, and the whole dynamics of a rental group of people as a critical element of neighborhood revitalization is something that is really uncharted. The rights of renters from a consumer standpoint, the relationships between them and the landlords, is absolutely the hottest issue that is going on right now under that scope of rent control measures. A lot of focus needs to be placed on this issue as a result of the increasing pressure that they are going to have.

Senator DECONCINI. That will conclude our hearing. As Phil mentioned, the record will stay open until the 29th of this month, so if you do care to submit anything further we would very much appreciate it. I want to thank you personally for your fine testimony today; you have been very helpful to the committee.

The committee will stand in recess.

[Whereupon, at 11:53 a.m., the committee recessed.]

APPENDIX

LETTERS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER AND ENCLOSURE FROM HENRY S. DOGIN, DEPUTY ADMINISTRATOR FOR POLICY DEVELOPMENT, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE, TO SENATOR FRANK CHURCH, DATED DECEMBER 22, 1978

DEAR MR. CHAIRMAN: This is in response to your letter inviting submission of information on behalf of the Law Enforcement Assistance Administration in connection with Special Committee on Aging hearings on "Older Americans in the Nation's Neighborhoods."

In your letter, you indicated that some of the questions that the hearings may consider are:

(1) What is the extent and expected duration of the "back to the city" movement, and its pluses and minuses for older homeowners and renters?

(2) What Federal policies and programs are presenly affecting neighborhoods, and how can they be changed to better promote stabilization and revitalization that is not accompanied by massive displacement?

(3) How can the Federal sector form more effective neighborhood partnerships with State and local government, community organizations, and the private sector?

(4) How can arson and crime prevention programs, and social services delivery, be better integrated with neighborhood revitalization strategies?

You expressed particular interest in those activities of LEAA which tie crime control and prevention measures to neighborhoods, especially those conduced under the community anticrime program which are either ultizing older individuals' talents or result in reduced victimization of the elderly and a greater sense of public safety.

I am pleased to respond to the special committee's request with the information included in this letter, as well as several documents which are relevent to the hearings. The materials are as follows:

(1) A listing of LEAA categorical awards from fiscal year 1969 to the present specifically relating to elderly programs. [Retained in committee files.]

(2) A statement on "LEAA Programs for Senior Citizens," dated February 1978. [See enclosure.]

(3) Testimony presented to the House Judiciary Subcommittee on Crime on November 21, 1978, by Cornelius Cooper, regarding the LEAA community anticrime program. [Retained in committee files.]

(4) Testimony presented to the Senate Governmental Affairs Subcommittee on Permanent Investigations on September 14, 1978, by James M. H. Gregg regarding arson. [Retained in committee files.]

(5) "Crime Prevention Handbook for Senior Citizens" and a directory of "Crime Prevention Programs for Senior Citizens," both published through support of LEAA's National Institute of Law Enforcement and Criminal justice. [Retained in committee files.]

As you know, under both the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the major share of funds administered by LEAA is allocate in block grants to the States. Each State is required to develop an annual comprehensive plan for the improvement of law enforcement and criminal justice throughout the State in order to qualify for block grant funds. A State planning agency in each State is responsible for developing the plan, making final decisions regarding the award of block grant funds, and administering the program.

While final decisions on the funding of block grant applications are made by State planning agencies based on a determination of each State's needs and priorities several provisions of the Crime Control Act bear on the special committee's area of inquiry. Section 303(a)(16) requires that each State's comprehensive plan must "provide for the development of programs and projects for the prevention of crimes against the elderly, unless the State planning agency makes an affirmative finding in such plan that such a requirement is inappropriate for the State." Section 301(b)(11) provides specific authority for "the development and operation of programs designed to reduce and prevent crime against elderly persons."

The various States have funded numerous projects under the block grant authority which are either targeted at reducing crime against elderly persons or which otherwise impact upon or involve these individuals. Examples of such activities are described in the enclosure dated February 1978, and entitled "Programs for Senior Citizens."

A small portion of LEAA's appropriation is retained by the agency as a discretionary fund which is used to assist programs of national scope and to provide special impetus for innovative and experimental projects. As the enclosed listing of categorical awards indicates, over $20 million has been awarded since fiscal year 1969 to support such activities. Of course, there are many other LEAA-funded activities which benefit elderly citizens, but are not included in the list provided because older persons are not indicated as a primary target population.

A review of the project listing will reveal that many of the more recent awards were made by LEAA's Office of Community Anti-Crime Programs. That Office was established by the Crime Control Act of 1976, and is authorized to make grants and provide assistance to community and citizen groups to encourage their participation in crime prevention and other law enforcement and criminal justice activities.

Concern for the elderly was highlighted in the legislative history of the Crime Control Act of 1976. The community anti-crime program guidelines speak directly to this concern. One of the problems specifically addressed in the guidelines is the increased victimization of the elderly. All projects are encouraged to include activities which address the issue.

Numerous community anti-crime projects either utilize the talents of older individuals directly or result in reduced victimization of the elderly. Brief descriptions of some efforts with significant elderly components may be useful to the special committee.

The Economic Opportunity Board of Clark County, Nev., has two significant components of its program directed specifically at the older population. The retired senior volunteer program has an ongoing program of educating the elderly in areas of crime prevention such as self-protection, home security, consumer protection and self-help activities.

Community resource persons and senior volunteers are used in training sessions. As part of this effort, crime prevention materials are being made available to all senior citizens. Senior citizen volunteers distribute materials at senior centers, nutrition sites, neighborhoods and places where seniors congregate.

In addition, the Economic Opportunity Board of Clark County is sponsoring an escort service for the elderly. Youths 13 to 18 years of age are being trained to provide escort services for senior citizens in the Las Vegas community.

The Northwest Bronx Community and Clergy Coalition, Inc., is trying to reduce senior citizen fear of crime on the streets by organizing a senior citizen daytime patrol and hotline phone service. In the Bedford Park neighborhood, which has the highest concentration of elderly in the northwest Bronx (38 percent over 60 years of age), a daytime patrol of citizens has been organized. The patrol, which is on the streets of the neighborhood from 10 a.m. to 4 p.m., provides assurances to older residents that they can shop, attend senior centers in the area, and visit neighbors with a sense of greater safety.

Northwest Bronx Community and Clergy Coalition has also been implementing "buddy-buzzer" alarm systems in the five neighborhoods with the highest concentration of senior citizens. This is a simple alarm system designed to protect tenants in case of an emergency at home. Switches and buzzers are installed in one tenant's apartment and a neighbor's apartment. If there is danger, the tenant flips a switch and the buzzer sounds in the neighbor's apartment.

In Cleveland, Ohio, the Commission on Catholic Community Action, through a senior citizens' coalition, is uniting elderly in the community through the churches and high-rise buildings for the elderly. By integrating the elderly into

neighborhood block clubs, organizing escort services for the elderly, encouraging, seniors to report crimes and educating elderly residents in suspect identification, this program is working to reduce crime against the elderly.

In Los Angeles, Calif., Service for Asian-American Youth is working to educate the Japanese-American community about crime committed against the elderly and is implementing a number of anti-crime activities designed specifically for the elderly. Volunteers are being recruited from the Japanese-American community to develop escort services and a tenant security program for older residents of the community.

In Prince George's County, Md., Betterment for United Seniors, Inc., is working with senior tenants of apartment buildings to develop improved tenant security. Through tenant surveys of apartment house security Betterment for United Seniors is organizing seniors to directly improve the security of their buildings. In addition, Betterment for United Seniors is helping seniors to work with the Department of Aging to develop improved transportation for seniors and thus reduce their isolation and proneness to victimization.

The Lenox Hill Neighborhood Association, Inc., on the upper Eastside in New York, has developed a victim/witness assistance program and escort service for the elderly. Using both professional staff and trained volunteers, the Lenox Hill Neighborhood Association through the Burden Center for the Elderly, is advising elderly people in preventing victimization and assisting them if they become victimized. The center is using its volunteers to provide escort services for senior citizens going to clinics, senior centers, stores and places of worship.

Harambee, Inc., in Syracuse, N.Y., has developed the aging-citizens neighborhood involvement program, aimed at reducing senior citizens' fear of crime and their isolation from the community. Through educational programs about crime and crime prevention techniques, recreational activities and the development of a documentary illustrating the plight of the elderly, the project is designed to reduce older residents' fear of crime.

Mississippi Action for Community Education in Greenville, Miss., has developed a rural elderly crime prevention program designed to reduce the level of fear and alienation prevalent among elderly residents in the MACE target area. Volunteers are providing in-house education regarding home and personal safety to elderly presons throughout rural Mississippi.

In addition to these activities of the Community Anti-Crime Division of the Office, the Comprehensive Crime Prevention Division is also engaged in promoting and supporting activities addressing the elderly. The Division has 18 active citizen initiative program grants, four of which are specifically designed to serve the criminal justice needs of the elderly. Eight other of these projects, as well as four comprehensive crime prevention program awards, contain a specific component that will directly or indirectly impact on the welfare of the elderly. An objective of all of these grants is the reduction of criminal victimization and fear of crime among senior citizens, and increasing their confidence in the criminal justice system.

In cooperation with the National Conference of Christians and Jews and the Pasadena, Calif., Police Department, the Fuller Graduate School of Psychology sponsors a crime prevention/victim/assistance project for citizens over 50 in the city of Pasadena. The project involves the media, and awareness, neighborhood watch; and victim/witness assistance teams. Senior citizens are used as volunteers in a variety of ways. The project has been acclaimed by the Governor of California as a model program, and a number of neighboring jurisdictions have successfully replicated it.

Law enforcement for the aged serves the elderly poor who live in rural parts of Oklahoma. A toll-free number is available for reporting crime to police. Psychological guidance is provided to persons victimized by certain crimes and legal assistance is secured for those victimized by fraudulent activities. The project staff serves as a national clearinghouse for free distribution of a film entitled "Full of Days, Riches and Honor," produced through the support of a previous grant.

Criminal Victimization and the Elderly: A Community Response serves senior residents of Hillsborough County, Fla., who have been victimized by serious crimes. It attempts to reduce the effect of victimization through volunteer services offered by others in the victim's neighborhood. Community response to the program, which served over 725 victims in one quarter, has been excellent. A community resources/crime prevention booklet has also been made available at no charge through the project.

The National Coordination Project of the National Elderly Victimization Prevention and Assistance Program is a multi-purpose research and demonstration program. It is sponsored by the National Council of Senior Citizens, with support from four Federal agencies and the Ford Foundation. The Administration on Aging and the Community Services Administration provide funds for seven demonstration projects in six major cities. These are in their second year. LEAA funds are used to support coordination and technical assistance for the seven projects. The Department of Housing and Urban Development has joined in supporting evaluation of the program.

A notable aspect of each of the projects described is the extensive use made of the services of elderly persons in a variety of capacities. While research indicates that criminal victimization against the elderly is lower than that of other age groups, elderly persons certainly experience greater material and emotional hardships when victimized. LEAA remains committed to the support of efforts which will reduce the impact of crime on the older citizens.

I trust this information will be useful to your hearings on "Older American's in the Nation's Neighborhoods." The interest of the Special Committee on Aging in the programs of the Law Enforcement Assistance Administration is appreciated.

Sincerely,

HENRY S. DOGIN.

Enclosure.

LEAA PROGRAMS FOR SENIOR CITIZENS

Crimes against the elderly are of major concern to the Law Enforcement Assistance Administration. The unhappy circumstances in which many of the elderly live out their lives are well documented. In the constellation of problems facing senior citizens, crime and fear obviously loom large.

Any discussion of "numbers" can create a misleading impression. Statistics seem cold and impersonal and a discussion of victimization rates may seem to be an expression of callous disregard for the human element. But crime victims are people, not numbers. No matter how large or small, victimization figures represent physical or mental anguish suffered by real people and the loss of property which diminishes the quality of life for individuals.

LEAA is sensitive to the fact that the ultimate value of victimization statistics is the opportunity they present to address the human needs they represent.

STATISTICAL INDICATORS

Despite what common sense and newspaper headlines seem to indicate, statistics show that the elderly are not more likely to be victimized by crime. In fact, a substantial body of data indicates that the more than 20 million elderly throughout the country are far less likely to be criminally victimized than are young persons, whether by personal offenses or by crimes against household property.

LEAA established and funds the National Crime Panel, which is a program designed to develop information not otherwise available on the nature of crime and its impact on society by means of victimization surveys of the general population. The surveys are conducted for LEAA by the Bureau of the Census. Within each locality surveyed, samplings are made of households and commercial establishments representative of the area, in order to elicit information about experiences, if any, with certain crimes of violence and theft. Events that were not reported to the police are included, as well as those that were.

These victimization surveys are supplying criminal justice officials and legislative bodies with new insights into crime and its victims. Among the information being produced by the surveys is data on types of victims and information necessary to compute the relative risk of being victimized. The first results of the National Crime Panel programs were made available in three reports during 1974. These were followed by additional reports in 1975, 1976, and 1977.

The victimization studies show that the highest rate of victimization occurs in the young age groups, with each older group having progressively lower rates. Persons 65 and over had the lowest rates of all. This was true for each of the categories "crimes of theft," "crimes of violence," and "household crimes." Only for the category "personal larceny with contact"—purse-snatching and pocket-picking—did older persons record rates at parity with those for all citizens within the scope of the surveys.

A summary of the pertinent data from the victimization survey follows:

PERSONAL AND HOUSEHOLD CRIMES: VICTIMIZATION RATES FOR THE GENERAL AND ELDERLY POPULATIONS, UNITED STATES, 1973

Type of crime	Rate for the general population	Rate for the elderly population
	1,000 persons age 12 and over	1,000 persons age 65 and over
Personal crimes:		
Crimes of violence [1]	32	8
Robbery	7	5
Robbery with injury	2	2
Robbery without injury	4	3
Assault	25	3
Aggravated assault	10	1
Simple assault	15	2
Crimes of theft	91	22
Personal larceny with contact [2]	3	3
Personal larceny without contact	88	19
	1,000 households headed by persons age 12 and over	1,000 households headed by persons age 65 and over
Household crimes:		
Burglary	91	55
Household larceny	107	47
Motor vehicle theft	19	5

[1] Includes data on rape, not shown separately.
[2] Includes purse-snatching and pcoket-picking.

NOTE: Detail may not add to total shown because of rounding.

The surveys show that the personal crime rates among senior citizens were six or seven times lower than those for persons age 20 to 24. However, additional survey findings on personal crimes have shown a distinct correspondence between increased age and a greater chance of victimization at the hands of strangers. In 82 percent of the surveyed crimes of violence against elderly persons, the offender was identified as a stranger, compared to 66 percent among victims in the general population.

The survey data have led to some tentative conclusions about the physical burden of crime. Although theye were victimized relatively less often by personal crimes of violence during the surveyed period, about 12 percent of victimizations involving crimes against persons age 65 or over resulted in hospitalization.

With respect to crimes against household property, there is again clear evidence of an association between increasing age and diminishing victimization. Among households headed by persons aged 20 to 24, for example, burglary rates were more than two times higher than those for households headed by the elderly. For household larceny, the rate was about three times higher for the younger age group.

These lower victimization rates in no way minimize the severity of crime's effects upon older people. These statistics may cast a cold light on reality, but they do not measure the misery of fear, the apprehension, and the terror, which keeps many of the elderly in our cities virtual prisoners in their homes and apartments. More than one-half of the oldest persons surveyed indicated that they had limited or changed their patterns of living in order to minimize their risk of victimization.

Add to this the diminished activity and increased infirmity that may accompany aging, and there appears a group of people who are infrequently in high-risk crime situations. In the usual sense of the word, they may not be victimized, but such fragile "safety" exacts a high price by restricting their freedom to go about normal activities and lessening their peace of mind.

There is little question about the vulnerability of senior citizens—physical, psychological, and financial. The theft of a television set to a younger person with a relatively good income is certainly a misfortune; to an elderly person on a fixed income and living alone, it can be a tragedy. Similarly, the fear of physical violence is particularly debilitating to the elderly, and the theft of a social security check may deal a devastating blow to meager financial resources. LEAA is aware that for this group of people the needs are immediate and the response must be prompt.

THE LEAA PROGRAM

Under the LEAA block grant program, the major portion of funds is distributed to the States on a population formula basis. Each State, through a designated State planning agency, distributes these funds in accordance with a comprehensive statewide plan for improvement of law enforcement and criminal justice.

The plan reflects the State's determination of its own needs and priorities. LEAA neither approves nor disapproves grant applications for funds under the jurisdiction of the State planning agencies.

When the LEAA program was extended 3 years in 1976, Congress took note of the special needs of senior citizens. Each States's comprehensive plan must provide for the development of programs and projects for the prevention of crime against the elderly. The 1976 amendments also established an Office of Community Anti-Crime Programs, with responsibility to disburse funds to community and citizens groups to enable their participation in crime prevention activities. Services to assist the elderly was specifically identified in the reports accompanying the legislation as one area of appropriate focus under this program.

A small portion LEAA's appropration for action programs is retained by the Agency for use as a discretionary fund. LEAA utilizes this money to assist programs of national scope and to provide special impetus for innovative and experimental programs. LEAA is supporting research and action projects which we hope will help to diminish the impact of crime and fear of crime on older people.

ACTION PROGRAMS TO ASSIST THE ELDERLY

Particular emphasis has been given to the problems of the elderly poor in public housing. In Syracuse, N.Y., for example, LEAA block grant funds have been used for special security patrols and safety measures for elderly public housing residents.

Plainfield, N.J., is equipping its senior citizens' housing complex with closed-circuit television equipment and resident security aides. Montgomery County, Md., has initiated a project which will create a specially trained criminal justice response team consisting of a police officer and social worker to assist elderly crime victims.

In the St. Louis County, Mo., prosecuting attorney's office, an educational program is being launched to alert and advise the public, especally those in high school and the elderly, how to protect themselves from criminal consumer fraud. A senior citizen escort service and an emergency telephone response system for elderly residents of the Crown Heights section of Brooklyn, N.Y., is underway. Other programs for the elderly are underway in South Bend. Ind.; Trenton, N.J.; Cleveland, Ohio; and Portland, Oreg.

LEAA has also joined with HEW's Administration on the Aging in supporting a $211,000 program to aid Kansas City's elderly crime victims. Kansas City found that its elderly citizens were being particularly victimized by burglaries. This project includes public education programs on ways to reduce crime, target-hardening efforts—better locks, and so forth—and involvement of social service agencies with the criminal justice system to provide better service to older citizens. This project is emphasizing citizen and community involvement to help reduce crime against the elderly. Citizens are participating in the planning of priorities and activities, as well as being part of the decisionmaking process.

The Pennsylvania Governor's Justice Commission, the State planning agency, recently awarded $150,000 in block grant funds for a program designed to reduce crime against the elderly, as well as fear of crime, in west Philadelphia. The Police Department of Philadelphia and the Citizens Crime Commission are joining in the project, which will increase special police patrols, develop a media campaign to focus attention on crime prevention for the elderly, and help reduce losses from stolen social security checks or cash. If successful, the program will be broadened to protect the more than 230,000 persons over age 65 living in Philadelphia.

As part of a major LEAA program designed to promote better treatment for crime victims, witnesses, and jurors, the eastern Oklahoma Development District, which includes 49 incorporated communities, has begun a program which will compile statistics on crimes against the elderly and their special needs. Crime prevention programs geared to the age group will be created and law enforcement officers will be trained in special techniques for responding to elderly crime victims. Problems which confront older citizens when they are called upon to be witnesses or jurors will be identified and eased.

The National Council of Senior Citizens has launched a nationally coordinated program designed to reduce crime committed against senior citizens and to assist elderly crime victims. Called the program on criminal justice and the elderly, both LEAA and the Department of Housing and Urban Development are contributing $200,000 to the effort. The program assists, coordinates, and evaluates seven projects in six cities: New York (2 projects), Los Angeles, Chicago, New Orleans, Milwaukee, and Washington, D.C. All the projects have similar objectives but each has a local sponsor and are planning approaches unique to the city and neighborhoods served.

Another LEAA program which has direct implications for the elderly is the National District Attorneys' Association's Economic Crime Project. The targets of this $3.5 million effort are the fraudulent schemes—auto repair home improvements, land swindles—that bilk millions of dollars from unsuspecting citizens, many of them in the older age bracket. Forty-four district attorneys' offices throughout the country are affiliated with the project, reaching approximately 20 percent of the population of the United States.

RESEARCH AND DEMONSTRATION

LEAA's research center, the National Institute of Law Enforcement and Criminal Justice, is moving creatively on several fronts to bring some measure of relief to the elderly. Several devices developed under Institute research could mean new freedom and security for older people. The Institute has developed a reliable low-cost burglar alarm for homes and apartments. Current estimates indicate that the alarm device could be marketed at a lower cost than current systems, thus putting it within reach of people on fixed incomes.

Many crimes are crimes of opportunity, encouraged by the ready accessibility of doors and windows that can be opened fairly easily. Through Institute-sponsored tests, standards have now been developed for doors and windows which, if incorporated into State building codes, could make them far more resistant to illegal entry.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

In many communities, the environment is custom-made for crime. Streets are poorly lit and deserted. Bus and subway stops offer natural lurking places for the criminal. People are afraid to venture out—especially the elderly—or they move about in fear and suspicion. Little by little, the sense of community which once existed in our cities and neighborhoods crumbles.

Several years ago, the National Institute sponsored a landmark research study of public housing units in New York City by planner-architect Oscar Newman. Newman tested the effects of changes in the physical environment on crime and fear. The results were dramatic. Comparisons were made in two housing projects identical in population density and social characteristics. The only difference was physical design—one was principally high-rise; the other a group of small, walk-up buildings. The difference in crime rates was amazing: The high-rise building had 65 percent more crime.

High-rise buildings studied were unwatched and unwatchable. Hallways, elevators, and lobbies were accessible to everyone, watched by no one, and feared by all. In the walk-up building, where a few families shared a common hallway or entry, the residents knew each other and more actively observed what was going on in and around their building.

Other housing units were redesigned, and the results were the same. Altering the phsyical design of the buildings encouraged residents to look out for their families and neighbors. For the elderly, this protective approach, called crime prevention through environmental design, can help restore confidence and peace of mind.

Environmental design projects particularly aimed at the elderly are underway in Portland, Oreg., and Minneapolis, Minn. Residents are encouraged to carry a minimum of cash. Low-cost transportation, improved bus shelters, and telephones for summoning emergency aid are being utilized. Special financial services for low income elderly people are being implemented by local banks. It is hoped that the programs will reduce incentives for purse snatching and street robbery where elderly persons have been particularly victimized.

COMPENSATION, RESTITUTION, AND OTHER AID TO VICTIMS OF CRIME

Certainly prevention of crime before it occurs must remain the first priority of law enforcement officials. However, the criminal justice system must also be responsive to the needs of persons who have been victimized. The problems of victims of crime must be regarded with at least the same concern as is given the human and civil rights of criminals and those accused of crime.

The LEAA program is designed to promote adoption of innovative operational programs. Thus, the Agency does not provide funds to make direct compensation to victims of crime. The effects of direct compensation programs have been studied, however, and support is being provided to other efforts to assist victims.

The LEAA victim/witness program supports the provision of assistance to victims of and witnesses to crime so that these persons will not only be given relevant and sensitive attention, but will be motivated to cooperate more readily with personnel in the criminal justice system. If victims and witnesses receive sensitive and concerned treatment, they will respond by being less apathetic and more willing to report criminal incidents to appropriate authorities. Increased crime rates seen in recent years are due, in part, to increased reporting of crime and better information collecting methods. Many citizens have renewed faith in the fact that they can be helped by the criminal justice system.

A key feature of LEAA's program is the establishment of victim and witness centers. Victim centers are often located within police departments. There, specially trained officers concentrate on the alleged offenses and try to relate to the victims to provide the direct assistance needed. Centers are often geared to meet the needs of special classes of victims, such as rape victims or elderly persons.

Witness centers are usually established in a court. Here the witness is able to receive orientation as to what will be expected of him or her in court. The centers provide a climate supportive of the witness. Services may include transportation, child care services, scheduling notification, and any necessary protection.

A recent study by the Center for Criminal Justice and Social Policy at Marquette University examined the needs and problems of citizens in their roles as victims and witnesses, both in relation to the criminal act and citizen participation in the criminal justice system. The study found that victims frequently incur a number of financial costs not reimbursed by insurance. The average nonreimbursed medical costs for 300 victims experiencing physical injury was about $200. The average noninsured costs for property replacement and repairs was $373 as a result of the crime incident.

While nearly two-thirds of victims are likely to have some insurance protection, one-third, largely in the lower income population, do not. These are the persons commonly victimized by violent crime.

Another Marquette study for LEAA analyzed the different and proposed operational programs for crime victim compensation. The study indicated that victim compensation programs could be effective, particularly in reducing the impact of crime on lower income persons.

Many state victim compensation programs have an indemnification feature, where convicted offenders pay fines used for compensation payments to victims. All offenders pay into one general fund. Recently, the concept of restitution has received a great deal of attention as an alternat method of compenstating victims. Where the offender contributes acsh or services to a victim, the offense becomes more closely linked with the sanction.

Restitution can take the form of repayment for damages or losses directly to the victim by the offender or it can be in the form of work or services to the community. LEAA is interested in this concept and is supporting a program to help fund and evaluate projects in several States. The potential benefits of restitution programs for elderly crime victims is obvious. While restitution cannot alleviate the pain of crime, its application can surely help lessen the burden for those upon whom crime impacts most severely.

SENIOR CITIZEN INVOLVEMENT IN ANTI-CRIME PROGRAMS

In addition to the numerous efforts supported by LEAA to directly reduce crime and fear of crime experienced by the elderly, the Agency is supporting activities which seek to involve senior citizens as participants in anti-crime programs. One example is the San Diego Police Department's Crime Analysis Unit, which has been using the services of 13 senior citizens since August 1977.

Four couples and five single retirees translate raw data from crime reports into coded messages and feed them into a computer file used by police to help solve serious crimes through faster suspect identification. The integrated criminal apprehension program (ICAP) augments police ability to deploy patrol forces. The key is rapid access to information about crime and criminals. During one 5-week period, the senior citizens coded more than 700 robbery cases.

The program frees police for police work, while providing a part-time job for the workers. These senior citizens play an important role in deciding likely suspects in violent crime. It is but one example where the services of elderly persons are being utilized to help reduce crime.

In Cottage Grove, Oreg., a small group of older people visit the homes of other elderly persons and provide tips on household security. The volunteers learned that many senior citizens had problems dealing with certain public service agencies and they now help handle such situations.

In Sun City, Ariz., retirees are active in Neighborhood Watch, a self-help community crime prevention program supported by LEAA. It encourages neighbors to look out for each others' property and guard against burglary. The group also assists police with traffic control at community, civic, and athletic functions.

In Maricopa County, Ariz., retired engineers designed and built a collapsible leg restraint for use by police officers transporting prisoners. They developed the device in a laboratory they built in the department's crime resistance bureau.

Police in the 101st Precinct in Queens, N.Y., call on elderly and disabled persons to back up various positions held by civilian employees. For example, older persons monitor police radio, take messages, and handle telephone calls.

While the Nation's elderly have special needs which must be effectively addressed by the law enforcement and criminal justice community, they can also make a significant contribution. The Law Enforcement Assistance Administration plans to continue to encourage projects aimed at senior citizens.

ITEM 2. LETTER AND ENCLOSURES FROM DOUGLAS P. WHEELER, EXECUTIVE VICE PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION, TO SENATOR FRANK CHURCH, DATED DECEMBER 29, 1978

DEAR MR. CHAIRMAN: The National Trust for Historic Preservation in the United States is pleased to submit these comments concerning the effect of revitalization of neighborhoods on older persons.

As you undoubtedly are aware, the National Trust is a charitable, educational, and nonprofit corporation chartered by act of Congress in 1949 (16 U.S.C. Section 468 et seq.) to further the historic preservation policy of the United States and to facilitate public participation in the preservation of sites, buildings, and objects significant in American history and culture. Accordingly, the National Trust is committted to the conservation and revitalization of our Nation's neighborhoods through means which are sensitive to the circumstances of older residents.

Through the National Trust's involvement with its over 2,000-member and other private preservation-related organizations we have recognized that, in varying degrees, private revitalization of urban areas is underway in virtually every major city in the United States. The current unprecedented demand for housing in older urban neighborhoods has been caused by the major population phenomenon of the "baby boom" generation (peak birth years 1947–57) reaching home buying age and flooding the housing market. We believe that, in most respects, revitalization of center city housing and a reversal of the flight to the suburbs are beneficial movements. These trends give irse to new hope that our cities will regain preeminence as the cultural and economic centers of American life. The challenge to preservationists, neighborhood advocates, and government officials is to utilize this unique opportunity to revitalize our cities while cushioning the impact this activity will have on low- and moderate-income people and the elderly, who, in many instances, are similarly affected.

Initially, most of the revitalization of cities centered in historic districts or historic areas not yet designated historic districts. Several interrelated reasons accounted for this. Action by preservationists in historic districts often eliminated blighting influences such as threat of highways or urban renewal, inappropriate zoning, negative public image, and poor municipal services. In addition, preservation itself became a major component in the revitalization movement as conservation techniques such as historic designation and historic

district zoning to preserve and improve neighborhoods were adopted and utilized. Overall, our experience has demonstrated that both new and long-term residents have recognized that historic preservation helps insure a positive future for their neighborhoods. It must be realized, however, that the successful revitalization of urban historic districts was as much a manifestation of increasing housing demand as it was the result of the historic status of those areas. As evidence of this, historic designation has often followed other private revitalization activity rather than preceded it.

Because it is uncertain how many elderly persons live in historic districts, the specific effect of neighborhood revitalization on older residents is difficult to evaluate. It is obvious, however, that potential negative effects include higher taxes as assessments rise, real estate speculation, and high rates of property turnover. Those who rent are typically more severely affected as property values increase.

Yet, revitalization can benefit older residents in significant ways. Specifically, revitalization can mean improved property values for elderly homeowners whose homes are often their principal assets. In this regard, the development of alternative mortgage instruments such as the reverse annuity mortgage may allow older homeowners to capitalize upon the increasing value of their homes. Other benefits of revitalization include improved municipal services, reduced crime, and a corresponding willingness of many elderly people to end a self-imposed isolation which is one of the products of unstable neighborhoods.

In order to mitigate the displacement problem, we suggest that a strategy of dispersing the housing demand among as many neighborhoods as possible be adopted, seeking steady, carefully paced revitalization activity. This strategy should reduce the incidence of speculation and displacement that result when excessive demand is focused on just one or two areas of a city. By spreading out housing demand, such demand can be better accommodated through vacancies and normal market turnover, thus avoiding skyrocketing prices. Programs such as that of Boston's Parkman Center to inform potential homeowners about overlooked neighborhoods should be replicated elsewhere. Additionally, to effect the dispersement of housing demand, more neighborhoods should be given recognition and protection on local, State, and national registers. In this regard, the plan of the Heritage Conservation and Recreation Service of the Department of the Interior to include "Neighborhoods" as a category eligible for listing in the National Register of Historic Places should be implemented.

Further, it is essential that government programs be employed to provide housing assistance to low- and moderate-income residents, including the elderly, in revitalizing neighborhoods. Programs such as Neighborhood Housing Services and the Department of Housing and Urban Development's Neighborhood Strategy Areas should be utilized to help both homeowners and renters. New approaches specifically directed to the elderly should be explored, such as Detroit's Maintenance Central for Seniors. In this program HUD Community Development Block Grant funds and the Department of Health, Education and Welfare Older American funds are used to provide free home maintenance and repair services to persons age 60 and older.

If government housing resources are efficiently and creatively employed, then low- and moderate-income persons, including older persons, could receive public assistance to improve their housing while other homes in neighborhoods are restored through private means. Such public programs could thus supplement and support existing private neighborhood revitalization activity.

Through a combination of private investment and public incentives, innovative projects involving adaptive reuse of older, often historic buildings, as described in an article entitled "When a Factory Is a Home" in the October–December 1978 issue of the National Trust's magazine Historical Preservation (enclosed,) are providing housing for older people on fixed incomes. Formerly unused hotels, factories, schools, and other buildings have been converted to multi-unit housing. The older residents are able to remain in their neighborhoods with a newfound feeling of personal safety and dignity.

We believe local governments must mitigate the hardships that property taxes may impose on elderly homeowners when revitalization occurs. The National Trust has compiled an annotated list of property tax statutes that offer relief for historic properties. The committee may wish to use this enclosed list to identify laws that deserve further study.

We believe that the private nonprofit sector can play a vigorous role in developing and implementing effective housing and neighborhood conservation strat-

egies. To get out the word about neighborhood conservation techniques, the National Trust, supported by a grant by the National Endowment for the Arts, has embarked on a program to provide basic, practical information to nonprofit citizen organizations. Our new neighborhood office now publishes a bimonthly newsletter, Conserve Neighborhoods, which we have enclosed. Conserve Neighborhoods, sent to more than 2,000 neighborhood groups focuses specifically on the needs of citizen organizations, identifying available public and private resources, describing useful conservation techniques and providing ideas for neighborhood projects. The first issue included a supplement, "Bibliography for Neighborhood Leaders," citing books and pamphlets on such topics as public relations, fund raising, and zoning.

Recently the National Trust awarded two national preservation revolving fund loans to support local programs that assist low- and moderate-income families while accomplishing preservation objectives. A loan to Neighborhood Housing Services, Inc., in Anacostia, a black, working-class neighborhood in Washington, D.C., will expand its program to provide low interest home improvement loans. Savannah Landmark Rehabilitation Project, Inc., will use its National Trust loan to purchase houses in the Victorian District and plans to take advantage of several HUD housing programs to refurbish and rent these houses to low-income residents.

Other National Trust programs are supporting neighborhood conservation. For example, a consultant service grant provided funds for a study of displacement in the Fox Pointe neighborhood of Providence, R.I. The cosponsored conference grant program has supported several neighborhood conferences, including a recent neighborhood revitalization conference in Houston.

The National Trust, speaking for preservationists in the private sector, shares with the Congress a commitment to the goal of neighborhood revitalization which benefits older residents. We appreciate this opportunity to express our views on this subject. If the National Trust can be of any further assistance, please call on us.

Very truly yours,

DOUGLAS P. WHEELER.

Enclosures.

STATE AND LOCAL HISTORIC PRESERVATION TAX STATUS

A number of States and municipalities now offer relief for privately owned historically or architecturally significant properties from real property or income taxation, in addition to the more traditional property tax exemption granted historic properties owned by nonprofit organizations such as historical societies. These measures encompass relief ranging from complete or partial exemption from property taxes to States income tax deductions similar to those found in section 2124 of the Federal Tax Reform Act of 1976.

PROPERTY TAX RELIEF

I. Exemption From Property Tax

A. States

Alaska Statutes section 29.53.025(b)(2)(c)(Supplement 1977) provides that municipalities may, by ordinance ratified by popular vote, totally or partially exempt residential property from real property taxes. The exemption may not exceed $10,000 for any one residence, and may benefit historic sites, buildings and monuments.

New York General Municipal Law section 96-a, which authorizes the creation of local landmark and historic district commissions, and the resignation of significant structures, provides that any controls imposed under these local ordinances that constitute a taking of private property must be offset by due compensation, which may include the limitation or remission of taxes.

Puerto Rico Laws Annotated, title 13, section 551 (1969) offers a complete exemption from property tax for up to 10 years for structures that have been completely improved or restored and are located in the San Juan historic district. Partial restoration, which includes restoration of the facade, vestibule and main staircase, earns a 5-year exemption.

Texas Revised Civil Statutes article 7150(i) (1977), enacted pursuant to a 1977 amendment to the State constitution, authorizes municipalities to exempt from property tax all or part of a historic structure, and the land necessary for its access and use, if the structure is: (a) designated as a Recorded Texas His-

torical Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or, (b) designated as a historically significant site under an ordinance adopted by the governing body of the taxing unit and is in need of tax relief to encourage its preservation.

B. Municipalities

Oyster Bay, New York landmark preservation ordinance, section 23–9 provides that properties designated by the town board as landmarks, landmark sites, or as within a local historic district are eligible for reimbursement of the general town tax; the building, zoning and Memorial Day assistance tax; and the highway tax.

New York City Code chapter 8A, section 207–8.0(b)–(e) authorizes the board of estimate, upon the recommendation of the Landmarks Preservation Commission, to grant designated property a full or partial exemption of property taxes when the property's failure to earn a "reasonable rate of return" would otherwise require granting permission to demolish a structure on the property.

II. Credit Against Property Tax

Maryland Annotated Code article 81, section 12G (Supplement 1977) authorizes each county to allow as a credit against local real property tax up to 10 percent of owners' maintenance and restoration costs on properties in locally designated historic districts. The law also authorizes a tax credit of up to 5 percent of the expenses incurred in constructing buildings that are architecturally compatible with the district in which they are located. Both credits may be spread over up to a 5-year period.

New Mexico Statutes Annotated sections 4–27–4 to 4–37–18 recognize as a credit against local city, county, and school real property taxes the cost of restoring or maintaining historic buildings that are listing on the State register of historic places with the written consent of the owner and that are available for educational purposes. Continued allowance of the credit rests upon approval by a State review board of all restoration, preservation and maintenance plans. Expenses incurred in 1 year may be carried forward for tax purposes for up to 10 years.

III. Abatement of Property Tax

A. States

Arizona Revised Statutes section 42–139 (Supplement 1977) authorizes, under a schedule of different assessment rates for separate classes of property, the assessment of historic property at 8 percent of its actual cash value for a 15-year renewable term. To qualify for this special rate, property must be listed on the National Register, be available for public visitation at least 12 days a year and must be maintained in accordance with standards of the Arizona State Parks Board. The owner must also agree not to use the property for profitmaking purposes, nor to charge an admission fee greater than is necessary to offset the building's maintenance or restoration expenses. Disqualification subjects the owner to a tax penalty of either half the reduction in taxes obtained or half the property's fair market value, whichever is less.

Connecticut General Statutes Annotated section 12–127a authorizes municipalities to abate, in whole or in part, real property taxes on historically or architecturally significant structures if "the current level of taxation is a material factor which threatens the continued existence of the structure." The determination of significance is to be made by the municipality or by a local private preservation or architectural group selected by the municipality. All abated taxes must be repaid by the owner if the structure subsequently is demolished or remodeled and thereby loses its significance. The Connecticut Legislature is required to reimburse municipalities for property tax revenues lost on account of this abatement.

North Carolina General Statutes section 105–278 provides that property designated as "historic" under local ordinances shall be taxed on the basis of 50 percent of the property's value upon annual application of the owner. Disqualification for this benefit, such as by an incompatible alteration that causes loss of designation, but not by change of ownership or use, requires the owner to pay back all taxes saved for the prior 3 years plus interest accumulated.

Oregon Revised Statutes sections 358.475 to 358.565 allow owners of properties listed on the National Register and open to the public at least once a year to receive a freeze on their assessment for 15 consecutive years at the true cash value of the property at the time of initial application. Eligible property owners

must agree to maintain their properties according to standards of the State historic preservation officer. Loss of this special assessment triggers the recapture of all tax savings plus a penalty of 15 percent of those savings. No applications for special assessment may be made after December 31, 1979.

B. Municipalities

Austin, Texas City Code sections 32–49 to 32–55, enacted in 1978 pursuant to an amendment to the State constitution, offer a partial abatement from ad valorem taxation for all structures designated historic landmarks under the city's historic zoning ordinance. Qualifying properties used exclusively as residences or owned by nonprofit organizations shall, upon annual application of their owners, be granted exemptions for 100 percent of the assessed value of their structures and for 50 percent of the assessed value of the portion of the surrounding land found reasonably necessary for the structure's access and use. All other qualifying properties shall be granted exemptions for 50 percent of their structure's assessed values and for 25 percent of the surrounding land's assessed value. If the historic property is rezoned by the city, the owner is liable for all taxes saved during the prior 3 years.

Code of Brookhaven, New York section 85–63R authorizes taxpayers whose property is situated within a locally designated district or within 500 feet of the district to receive a limitation or remission of their property taxes in an amount calculated to compensate them for any added costs in maintaining their property in accordance with the standards of the historic district.

Petersburg, Virginia Historic Zoning Regulations, section 4 provides that the city board of equalization may, upon the recommendation of the board of historic review, grant a reduction in the assessment of the designated landmark structures. To qualify for this benefit, the owners of such structures must agree, by written contract, to maintain the structures in good condition.

IV. Assessment Based Upon Actual Use

California General Government Code sections 50280–50289; *California Revenue and Tax Code* sections 439–439.4 and *California Public Resources Code* sections 5031–5033 were amended in 1977 pursuant to article XIII, section 8 of the State constitution and provide that owners of qualifying historic properties may have their assessments based upon their properties' current uses rather than their highest and best uses. A capitalization of income method is used for this valuation. To qualify, properties must be listed either on the National Register, the State historic properties register, or on a city or county register. In addition, the property owners must enter into 20-year renewable contracts with their city or county governments. These contracts typically require the properties to be preserved and maintained, restrict their use and require their "visual accessibility" to the public.

District of Columbia Code Annotated sections 47–652 to 47–654 specify that eligible historic property shall be assessed at its current use value if that value is lower than its fair market value. To qualify for this benefit, the property must be designated by the Joint Committee on Landmarks of the National Capital Planning Commission, and the owner must sign a 20-year covenant guaranteeing the property's maintenance and preservation. Failure to abide by this covenant causes the imposition of a sizable tax penalty and recovery of the tax savings.

Louisiana Act 572 of 1977 grants an actual use assessment to properties 50 years or older that have been designated as landmarks by State or local jurisdictions and whose owners have signed agreements imposing maintenance and use restrictions on the properties. These agreements, which are renewable every 4 years, require owners at a minimum to forego all commercial uses of the properties and to devote them to their traditional uses or use as museums. The owners must guarantee the properties' architectural character for at least 10 years, and may be required to undertake restoration or rehabilitation. Violations of these agreements will trigger the recovery of property taxes saved during the prior 4 years.

Nevada Revised Statutes sections 361A.170 to 361A.280 provide that open space property shall be assessed at 35 percent of its full cash value for open-space use. For the purposes of this statute, real property used for open space purposes includes lands upon which are situated designated historic sites.

Oregon Revised Statutes sections 308.740–308.790 authorize the assessment of open space land at its actual use value in order to reduce economic pressure

and present the forced conversion of such land to more intensive uses. "Open space" is defined as any land area whose maintenance in its present condition and use will preserve historic sites.

Virginia Code Annotated sections 58–769.4 to 58–769.16 provide that certain qualifying land shall be assessed as open space in order to counter economic market pressures that might otherwise force its more intensive development. "Real estate devoted to open-space use" is defined to include land used for historical purposes under uniform standards prescribed by the Director of the Commission of Outdoor Recreation.

Washington Revised Code Annotated sections 84.34.010 to 84.34.921 authorize procedures for the separate assessment for property tax purposes of open-space land, which for this purpose is defined to include any land whose preservation in its present use would preserve historic sites.

V. Deferral of Increase in Assessment Due to Rehabilitation

District of Columbia Code section 47–651 authorizes the District of Columbia to defer for up to 5 years any increase in the assessed value of a designated historic property resulting from rehabilitation or new construction. The District government has not implemented this provision.

Maryland Code Annotated article 81 authorizes Allegheny County (see section 9C(b)(4) of article 81) and Washington County (see section 9C(u) of article 81) to exempt by ordinance structures within locally designated historic districts from increases in their assessments caused by structural improvements. The exemption declines over a 5-year period from a 100 percent exemption the first year to a 40 percent exemption the fifth year. Thereafter, all improvements made during that 5-year period are added to the assessed valuation. Neither county has adopted this legislation.

VI. Assessments To Reflect Encumbrances on Property

A. A number of States that have enacted statutes validating facade and scenic easements for historic preservation purposes have mandated, at the same time, that property tax assessors must take into account the effect of easements in determining property assessments. These States are the following:

Colorado Revised Statutes Annotated section 38–30.5–109 (Supplement 1976).
Connecticut General Statutes Annotated section 7–131b (open space easements only—owner entitled to revaluation).
Georgia Facade and Conservation Easements Act of 1976, Public Law No. 1280, 1 Statutes 1181 (1976) (owner entitled to revaluation).
Illinois Municipal Code section 11–48.2–6 (easements acquired by governmental bodies only).
Oregon Revised Statutes section 271.710 to 271.750 (1967).
Virginia Code Annotated section 10–155 (1974).

B. State statutes requiring the property tax assessor to consider, for the purposes of tax assessments, the effect of designations by State or local historic preservation commissions or the effect of recorded preservation restrictions on such designated properties, are the following:

North Carolina General Statutes section 160A–399.5(6) (1976).
South Dakota Compiled Laws Annotated section 1–19B–25.
Virginia Code Annotated sections 10–139, 10–140 and 10–142.
West Virginia Code sections 8–26A–1 to 8–26A–5.

C. *Colorado Revised Statutes Annotated* section 39–1–104(5) forbids local tax assessors from increasing the assessed valuation of property on the basis of its inclusion in the State register of historic places.

INCOME TAX RELIEF

Maryland Annotated Code article 81, section 281A (Supplement 1977) enacts for the purposes of State income taxes the tax incentives for historic preservation passed by Congress in section 2124 of the Tax Reform Act of 1976.

Puerto Rico Laws Annotated title 13, section 3022(26) (Supplement 1974) exempts from gross income for income tax purposes all rental income from the lease of buildings in the historic zone of San Juan and in any other historic zone established by the Institute of Puerto Rican Culture.

Many State statutes now offer tax relief for activities and in instances that implicitly, rather than explicitly, benefit historic structures. Listed below are a sampling of these statutes.

PROPERTY TAX RELIEF FOR REHABILITATION OR RENOVATION

A. States

Colorado Revised Statutes section 39–5–105 States that any rehabilitation or modernization commenced on or after July 1, 1976 to a residential structure of 3 units or less and more than 30 years old shall not be taken into account in determining the assessment of the structure for the 5 tax years immediately following completion of the work. Rehabilitation and modernization, for the purposes of this statute, do not include room additions; the conversion of patios, porches, or garages into living areas; the addition of outbuildings; or a change in the structure's use.

Illinois Revised Statutes chapter 120, section 500.23–3, known as the Illinois Homestead Improvement Act, offers a tax exemption for private home improvements, limited to $15,000 in actual value, occurring in counties of 1 million or more in population (Cook County only). The exemption is limited to properties owned and used exclusively for residential purposes, and requires a showing that the increase in assessed value for which the exemption is claimed is attributable solely to the structural improvements. The exemption may be spread over a 4-year period for tax purposes.

Rhode Island Laws of 1966, chapter 15 authorizes the providence tax assessor to abate, for a period of 5 years, any increase in tax assessment resulting from alterations and improvements to existing dwellings that are used exclusively for residential purposes. Alterations and improvements must be completed within 2 years of their commencement. For structures not used exclusively for residential purposes, the increased assessment is apportioned and the abatement benefits only that part used for residential purposes. This statute, which as enacted applied to alterations and improvements commenced between June 1, 1966 and June 1, 1968, has been extended several times and is still in effect.

Virginia Code Annotated sections 58–759.1 and 58–759.2 provide that rehabilitated residential structures of 30 years in age or older, and rehabilitated commercial or industrial structures of 45 years in age or older, shall be separate, special classifications for determining applicable property tax rates. These classifications shall be in effect for 10 years following the start of rehabilitation work on these structures. Residential structures shall be deemed "rehabilitated" only if that portion of the structure 30 years old or older has been improved to an extent increasing its appraised value by at least $5,000. Commercial or industrial structures shall be deemed "rehabilitated" only if that portion of the original structure 45 years old or older has been improved to an extent increasing its appraised value by at least $25,000 or more.

B. Municipalities

Utica, New York Code section 4.340 grants the planning board the right to permit tax relief not to exceed 20 percent of the assessed value of improvements to a building or structure that is undergoing renovation, remodeling, rehabilitation, or new construction.

INHERITANCE TAX RELIEF

Maryland House Bill 275, passed by the 1978 session of the Maryland General Assembly, provides that land used for farming purposes at least 5 years preceding, and 5 years following, the owner's death shall be taxed for inheritance tax purposes at its current use value, rather than at its fair market value.

Prepared by Gregory E. Andrews, attorney, Office of Real Estate and Legal Services, National Trust for Historic Preservation.

[From Historic Preservation, October-December 1978]

When a Factory Is a Home

(By Margaret Opsata)

Ever since Mildred Aird's purse was snatched and her car was vandalized several years ago, the spry 73-year-old has placed a high premium on her security. A long-time resident of Wilmington, Del., she refused to move away from the center city area she calls home—"I'm just emotional and sentimental about this town," she says. Instead, she abandoned her dream of retiring at the usual age and continued working full time to afford the rent on an apartment where she feels relatively safe. "I'm a nurse," she explains, "and nursing is

strenuous at my age. Being on my feet for 7 hours at a stretch took all my pep, but I couldn't see any other choice." She tried not to think about what might happen if she became unable to work.

Then, 3 months ago, her future suddenly brightened. She was able to retire, to stay in her beloved neighborhood and to continue feeling secure in her surroundings. She gave up nothing except financial worries. What made all this possible? Mildred Aird became a resident of Brandywine House—a 19th-century building that was recently renovated to house the elderly in Wilmington's inner city.

She makes one low monthly payment of $195 and receives three meals a day, a private room in the house, a semiprivate bath and full use of the communal areas (living room, dining room, sitting room, kitchen and laundry). Her rent includes all utilities and services of a part-time cook/housekeeper. Although Mildred Aird is not particularly concerned with the broader ramifications, preservationists and city planners are impressed that the rent paid by the nine residents of the house also provides for debt reduction on the Federal loan that made the project possible.

Because it is self-sufficient, Brandywine House is an especially interesting example of a new dimension in preservation: adoptive use rehabilitation in urban areas to provide housing for older people on fixed incomes. Around the country a growing number of projects are creating living units for the elderly from outmoded houses, hotels, factories, commercial properties, schools, convents, and even a prison.

Four years ago Brandywine House was a vacant, badly vandalized double house, built about 1892, that had deteriorated to an eyesore. It is located in Brandywine Village, which was founded in 1637 and is listed in the National Register of Historic Places. In 1974 the Junior League of Wilmington undertook a study of community problems in the neighborhood and found that there was no housing for older people of modest means capable of independent living if they had support services. The junior league bought the abandoned property for $20,500 and deeded it to the Wilmington Senior Center, a nonprofit United Way agency. In turn, the senior center applied for renovation funding through the city, under the community development block-grant program established by the Housing and Community Development Act of 1974, and received an interest-free, 35-year loan of $41,000. Design services for the renovation work were provided by Group Four, Inc., with Peter C. Anderson as the project architect. Neil H. Davis of Acorn Construction, Ltd., was the renovation contractor. The junior league and a local church made grants to furnish and decorate the communal living areas. Residents are responsible for furnishing their own rooms. The senior center handles the minimum administrative details of the house as part of its community commitment. Brandywine House opened at the end of April 1978.

When a facility like Brandywine House does not exist, the fixed-income elderly face bleak housing options; coping with house ownership, subsisting in a cheap apartment, accepting public housing, moving in with relatives, or prematurely entering a nursing home.

At today's market prices an older person with limited resources simply cannot afford to buy a house. For those who purchased houses when they were younger, daily life becomes lonely and increasingly difficult. Too often, such property is situated in once-prosperous areas that are deteriorating. There can be constant fear of muggers, vandals, robbers, and cruel pranksters. At the same time, there are never-ending financial worries about rising taxes, unexpected assessments, and mounting repair bills. As the years pass, the older homeowner becomes less physically able to meet the responsibilities of ownership—shoveling snow, mowing the lawn, painting, and other maintenance chores.

Relatively low-priced apartments can be rented in virtually every metropolitan area, but the majority are drab and poorly maintained. The building owners are often unconcerned about making repairs or improvements, and the units almost certainly were not designed with the needs of the elderly in mind. Stairs are likely to be dangerously steep, hallways badly lighted, security almost nonexistent. Even so, the rent payment may take a large chunk out of a monthly pension check, leaving very little for food and other necessities. Elderly tenants become increasingly isolated because their budgets limit their reasons for leaving the apartment and because their fear of crime is so great. "People pick on our age." Mildred Aird says. "I thought when you had gray hair, they'd be real kind and gentle, but they just go after you."

Today 22 million Americans are over the age of 65; the number will pass 40 million by the year 2000—and those who are concerned about housing for this rising population are alarmed. In *Growing Old in the Country of the Young* (McGraw-Hill Book Company, 1974), Senator Charles H. Percy (R-Ill.) cites some disturbing facts: Nearly 90 percent of older Americans are capable of independent living, but only 3 million housing units designed for the elderly have been built, even counting all the houses in Sun Belt retirement communities. As a result, one-third of all older Americans are living in substandard conditions. In some urban areas as many as 80 percent of those over 65 are trapped in inadequate housing.

Those who are over 65 today were young adults during the 1930's. Most of them take pride in having survived that difficult time without accepting handouts or charity. Being moved into public housing makes such an older person feel humiliated and defeated, bringing back haunting memories from the depression years of "the dole" and "the poorhouse." In addition, they are usually forced to leave familiar neighborhoods and friends to become strangers among other strangers. Loneliness and the sense of isolation increase, and the fear of crime remains very high.

Living with relatives—another housing alternative—creates more problems than it resolves. The arrangement puts a strain on family relationships because both the older person and the younger ones are forced to give us a measure of their independence. Almost always the older person is uprooted from everything that seems secure and familiar. Further many new houses are not designed to accommodate an extra adult. The older relative may have to share a bedroom with a child or sleep on a sofa in the living room, with almost no opportunities for solitude or privacy. He usually feels he must "repay" the relatives generosity by babysitting and by building a life around everything the family has planned.

The final alternative—a nursing home—is necessary if an older person needs extended care but it is too often chosen for a healthy individual who has nowhere else to go. Last year, half a million people in good health were sent to nursing homes for this reason.

The problem is not new and, because housing is a tangible need, various private and public efforts have been undertaken to improve the situation. Many of these, however, have not considered the wishes of the elderly. A decade ago it was generally accepted among social agencies that a good solution in an urban area was to move older people to facilities where they could be surrounded by families. Another popular idea was to put them in apartment towers. But sociologists discovered that the majority of the elderly consider age integration and highrises to be undesirable, only accentuating what has been called a sense of loss of place.

Reaching the age of retirement forces several role changes on a person, including a loss of identity (one is no longer a productive member of society but only a faceless "senior citizen"), a loss of incentive (the goal of retirement has been reached, and what is next?) and a loss of economic status. Frequently, there is also the loss of friends (through lessened mobility) and the loss of a spouse (through death) to contend with. The personal freedoms that remain—a sense of place, and a sense of independence—become tremendously important.

Numerous surveys and studies have reached similar conclusions about the needs and preferences of older people. In their housing situation they want: (1) to stay in the community where they spent their younger years; (2) to be near others of their age; (3) to feel safe from crime; and (4) to live independently, with dignity. When they accept help from social agencies, they want it to be directed toward making these goals possible rather than toward being moved or being institutionalized.

Not only do the elderly themselves benefit from staying in their own neighborhoods, but their continued presence affects the community as a whole. They are far more likely to distribute their spendable income among local merchants than to journey outside the area to shop. If 1,000 people spend only $85 a month in neighborhood stores, the annual total is more than $1 million. When older people continue to take part in community decisionmaking, their self-esteem is elevated and the community gains from their input. Successful projects like foster grandparents, a part of Action's older Americans program, demonstrate that interaction between young and old on a one-to-one basis can be mutually rewarding. We may also conclude that the practice of moving an elderly person who has

been judged unable to live alone actually contributes to insensitivity about the realities of aging. Putting older people out of sight puts them out of mind.

It now appears that the most desirable place to rehouse the elderly is close to where they live (or where they lived until forced to move). Since so large a proportion of the fixed-income elderly are in older neighborhoods and downtowns, the most effective efforts are occurring in these areas. In 1977 the Los Angeles Community Design Center published *Recycling for Housing* for the Program of Retired Citizens (supported in part by the first National Trust Preservation Press Publications Grant). This study demonstrates that downtown buildings can be converted successfully to units for the elderly. Architects are discovering that the adaptive use of almost any large building or complex for housing is economically feasible as well as exciting from a design standpoint. Preservation planners support this trend, recognizing that such adaptations bring a two-fold benefit. Not only are the housing needs of older people being met, but also the progress of urban decay is being arrested. In the case of Brandywine House, for example, when the property was in disrepair, several neighbors had their insurance policies cancelled; when it was rehabilitated their policies were reinstated.

Housing older people in recycled buildings is a new concept that is only beginning to be tested. The early results, however, are enormously promising. Among the pioneer projects in this field are the following:

Academy Knoll Apartments, Malborough, Mass.: a parochial school and convent built in 1888, converted to 109 apartments for the elderly.

Central Grammar Apartments, Glouchester, Mass.: an 1889 surplus urban school building, to 80 units for the elderly.

Cotton Mill Apartments, Whitinsville, Mass.: a textile mill built in 1845, to 55 apartments for the elderly.

Francis Gatehouse Mill, Lowell, Mass.: a 19th-century shoe factory, to 90 units for the elderly.

Franklin Square House, Boston, Mass.: the St. James Hotel, built in 1868, to 193 apartments for the elderly.

International Hotel, San Francisco, Calif.: a hotel built in 1874, considered for rehabilitation as a block of units for the elderly. A coalition of community groups has been awarded a consultant service grant from the National Trust for preliminary planning.

Olde Windsor Village, Windsor, Vt.: the former Vermont Maximum Security State Prison, built in 1850 and used until 1975, to 65 units for the elderly and 10 family apartments.

Pacific Telephone Building, Los Angeles, Calif: conversion to 310 apartments for the elderly with a medical support facility on the premises.

St. Mary's Convent, Cambridge, Mass.: a turn-of-the-century convent, to 39 units for the elderly.

The School, New Britain, Conn.: an 80-year-old former high school, to 127 apartments for the elderly.

Stackpole Mill, Lowell, Mass.: a 19th century factory, to 42 units for the elderly.

Stephen Palmer Apartments, Needham Mass.: an elementary school built in 1914, to 28 apartments for the elderly.

The Tannery, Peabody, Mass.: a tannery complex, built between 1814 and 1920 and once the estate of the Crowninshield family, to 284 apartments for the elderly. A second phase to provide an additional 173 apartments is now under construction.

Vulcan Shoe Factory, Stoughton, Mass.: a factory built about 1850, to 69 units for the elderly.

Whitcomb Towers, St. Joseph, Mich.: a luxury spa-hotel, built in the 1870's, destroyed by fire and rebuilt early in this century, to 140 units for the elderly.

Each of these conversions was carried out at a cost comparable to or lower than the cost of demolition and new construction. During the Central Grammar School renovation in Gloucester, Mass., for example, a new highrise for the elderly was being constructed only a few blocks away on the site of another old school that had been torn down. Since the gross floor space in the two buildings is the same (72,500 square feet), the two projects can be contrasted. A single apartment unit in Central Grammar cost 12 percent less to build and has 50 percent more space. The new highrise took 18 months to construct and several more months to rent; the renovation was completed in only 10 months, and all units were rented within 12 days.

The Central Grammar Apartments, an award-winning design by the Boston architectural firm of Anderson Notter Finegold, Inc., illustrates the concept of adaptive use. Since the structure was sound, the exterior walls, wide hallways, and many classroom partitions could be utilized. Additional living space was created from the basement, previously unfinished attic, gymnasium, and auditorium areas; a portion of the roof was cut back to create outdoor balconies; some ground floor windows were lowered to become doorways; wide hallway corridors were kept as an amenity. Wherever possible the original architectural elements such as oak wainscotting and trim, bookcases, and paneled closets were retained and incorporated into the new design. The design concept is built around a standard classroom, which converts into an ideal, large, one-bedroom apartment for an elderly resident. The result is a building that still looks like a school from the outside, but offers homey comfort in each apartment. Anderson Notter Finegold, Inc., were also the adaptive-use architects (and in some cases architect/developers) for Academy Knoll, Olde Windsor Village, The School in New Britain, Stephen Palmer Apartments and The Tannery.

Until now the majority of projects has been located in Massachusetts, where the Massachusetts Housing Finance Agency facilitates the creation of rental housing by making mortgage loans to nonprofit and limited-dividend developers. A growing number of proposals for adaptive-use housing is coming from other parts of the country. For example, Senator Charles Percy, a long-time champion of the elderly, has suggested that colleges consider the possibility of converting unused dormitories to this purpose as student tenancy drops.

As the cost of new construction mounts, the practice of recycling old buildings for the elderly will become more widespread. But time is of the essence. In 1971 the White House Conference on Aging recommended that a minimum of 120,000 new units to house the elderly be built every year, yet this modest goal has never been achieved. Meanwhile, the number of people turning 65 and the percentage of them on fixed incomes are increasing.

Urban renewal projects and preservation activities should include plans to create adaptive use housing for the elderly wherever possible. Buildings that have outlived their original functions should be considered for their potential as elderly housing. Interested organizations should become familiar with the Federal funding programs that are available for this purpose, including U.S. Department of Housing and Urban Development (HUD) section 202, which makes direct loans for financing new or rehabilitated housing facilities for the elderly and handicapped; HUD section 8, which grants rental subsidies for eligible older tenants, making more facilities accessible to those on fixed incomes; and HUD section 106b, which lends up to 80 percent of preliminary expenses such as land options and architectural fees.

Preservation means not only saving landmarks but also rehabilitating any building from the past that has value to the present and future. With this goal in mind, more of the hundreds of thousands of older Americans for whom the golden years are now a tarnished nightmare will be able to live out their lives in the comfort and dignity that every human being deserves.

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CONDOMINIUMS AND THE OLDER PURCHASER

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 2—WEST PALM BEACH, FLA.

NOVEMBER 29, 1978

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CONTENTS

Page

Opening statement by Senator Lawton Chiles, presiding 75

CHRONOLOGICAL LIST OF WITNESSES

Kantor, Bernard, Village Mutual Service, Century Village, West Palm Beach, Fla 76
Mann, Kelly, president, Village Mutual Service, Century Village, West Palm Beach, Fla 76
Hutchinson, Nan, executive director, Area Agency on Aging, Broward County, Fla 81
Stang, Lucille, Broward County, Fla 82
Garber, Al, Fort Lauderdale, Fla 85
Borenstein, Gladys, Broward County, Fla 89
Weisenger, Len, Broward County, Fla 94
Pflaum, Thomas M., assistant attorney general, consumer division, Tallahassee, Fla 100
Andrews, R. Jeff, Tallahassee, Fla., chief, Bureau of Condominiums, Division of Florida Land Sales and Condominiums 107
Poliakoff, Gary A., of Becker, Poliakoff & Sachs, P.A., Miami Beach, Fla 113
Tennyson, Rod, West Palm Beach, Fla 133
Cahill, Patrick C., Palm Springs, Fla 140
Scholz, William L., Boynton Beach, Fla 145
Porte, Dora, West Palm Beach, Fla 146
Goldberg, Irving, Delray Beach, Fla 148
Benzman, Abe, West Palm Beach, Fla 149
Sklar, Jeanne, Delray Beach, Fla 150
Davis, Mrs. Irwin, Boca Raton, Fla 151
Black, Harold R., West Palm Beach, Fla 152
Rudolf, Anne, West Palm Beach, Fla 153
Nimmo, James H., West Palm Beach, Fla 154
Laminsky, William, West Palm Beach, Fla 155

APPENDIXES

Appendix 1. Material submitted by witnesses:
Item 1. Newspaper articles and legal documents submitted by Gary A. Poliakoff, of Becker, Poliakoff & Sachs, P.A., Miami Beach, Fla 157
Item 2. Excerpts from proposed housing rules by the Florida attorney general, submitted by Rod Tennyson, West Palm Beach, Fla 176
Item 3. Newspaper articles submitted by Abe Benzman, West Palm Beach, Fla 204
Appendix 2. Statements submitted by the hearing audience:
Apfelberg, Fay and Joseph, West Palm Beach, Fla 208
Arfine, Henrietta and Lewis, Delray Beach, Fla 208
Bokar, Harold H., Delray Beach, Fla 208
Cohen, Blanche B., Lake Worth, Fla 208
Ehrlich, Harvel B., Tamarac, Fla 208
Engel, Fred, Lauderdale Lakes, Fla 210
Feinberg, Norman, West Palm Beach, Fla 210
Feller, Rose and Sol, Delray Beach, Fla 211
Frankel, Sam, West Palm Beach, Fla 211
Greene, Doris and Sidney H., West Palm Beach, Fla 211
Gutchin, Shirley, Delray Beach, Fla 211
Ike, Murray H., Delray Beach, Fla 211
Itzkawitz, Mr. and Mrs. A., Delray Beach, Fla 211

Appendix 2. Statements submitted by the hearing audience—Cont. Page

Kagel, H. and J., Delray Beach, Fla---- 211
Katz, Mary, Delray Beach, Fla---- 211
Kogos, Mollie, Delray Beach, Fla---- 212
Kravitz, Morris, West Palm Beach, Fla---- 212
Krublit, Ada and Milton, Delray Beach, Fla---- 212
Lampert, Samuel, Delray Beach, Fla---- 212
Makler, Nathan, Delray Beach, Fla---- 212
Margolin, Mildred, West Palm Beach, Fla---- 212
Mencher, Bertha and Joseph, Delray Beach, Fla---- 212
Moskowitz, Ruth, Delray Beach, Fla---- 213
Nathan, Anne R., Delray Beach, Fla---- 213
Nudelman, Mary, West Palm Beach, Fla---- 213
Reiter, Louis, Delray Beach, Fla---- 213
Sherman, Betty and Ben, West Palm Beach, Fla---- 213
Soldberg, Harry, Delray Beach, Fla---- 213
Stack, Raymond, Boynton Beach, Fla---- 213
Sterling, Sadie, West Palm Beach, Fla---- 214
Truding, Fred, West Palm Beach, Fla---- 215
Vogel, Samuel, Delray Beach, Fla---- 215

CONDOMINIUMS AND THE OLDER PURCHASER

WEDNESDAY, NOVEMBER 29, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
West Palm Beach, Fla.

The committee met, pursuant to notice, at 9:15 a.m., in room 417, Federal Building and court house, West Palm Beach, Fla., Hon. Lawton Chiles presiding.

Present: Senator Chiles.

Also present: William E. Oriol, staff director; Letitia Chambers, minority staff director; Philip S. Corwin, professional staff member; Richard Farrell, legislative assistant to Senator Chiles; Marjorie J. Finney, operations assistant; and Kaye English, information assistant.

OPENING STATEMENT BY SENATOR LAWTON CHILES, PRESIDING

Senator CHILES. Good morning. We will convene our hearing.

My opening remarks will be brief because I don't wish to take time from our witnesses to repeat points that were made yesterday in our hearing in Hallandale, but I will tell you of my continuing determination to seek action for the bill introduced last year as the Condominium Act of 1978. Yesterday's testimony added new substance to the argument for reintroduction and improvement of that bill and I pledge to you to work with others including Senator Stone and Congressman Mica towards those ends.

We will hear more about the legislation today and we will also hear about the growing need for services to maintain independent living for the oldest members of our aging population. Yesterday I was deeply impressed by the almost unanimous support for in-home services for those who may have one or more disabilities but who do not require institutional care. There was given a report on neighborly cooperation in condominiums—people helping each other—with modest or essential support by the area agency on aging. I want to hear more about this and other things that are happening as the condominium way of life continues to take hold in Florida and in other States of the Nation.

Today, we are going to hear from several panels of witnesses and, after we have concluded those panels of scheduled witnesses, then we will have a town hall meeting portion in which I hope to hear from a number of you who have come to give information today.

Our first panel will be a panel of condominium consumers. Bernard Kantor and Kelly Mann, president of Village Mutual Service. Nan Hutchinson is going to be here. She probably got caught in the traffic a little bit today. She is the executive director of the area agency on aging in Broward County. Nan will be here, but I think we will start off hearing from you, Mr. Kantor.

STATEMENT OF BERNARD KANTOR, VILLAGE MUTUAL SERVICE, CENTURY VILLAGE, WEST PALM BEACH, FLA.

Mr. KANTOR. I actually don't have an opening statement, Senator. I indicated at the outset that Mr. Mann and I are going to deliver a joint report, an outline of which has been submitted to Mr. Corwin, and we will proceed on that basis.

Senator CHILES. That will be fine.

Mr. KANTOR. Our initial item has to do with the formation of the Village Mutual Association and I am going to ask Mr. Mann to cover that part of it.

STATEMENT OF KELLY MANN, PRESIDENT, VILLAGE MUTUAL SERVICE, CENTURY VILLAGE, WEST PALM BEACH, FLA.

Mr. MANN. Senator, like any other organization, when a group of people get together they seek out one another to form some kind of an organization to be helpful to the community, whether it be large or small. This, too, happened with the Village Mutual Association. It was formed in 1969 because at that point and from there on problems with the developer happened on an almost daily occurrence, as I am sure you are well aware. However, the purpose of the organization was solely for the good and welfare of the people of Century Village and out of this committee evolved the desire and the need to help the elderly people who were coming into Century Village and buying condominiums.

Senator, one thing that I personally have learned coming into a senior citizen community is that the senior citizen loses a lot of his viability, his strength, because of his age and therefore needs help and support from those who can do that. In other words, people along in years but who still have the strength and fiber to fight or take action for whatever is involved at that time—it was that Village Mutual has taken up the cudgels for the senior citizens of Mutual Village. I am sure you are aware of the many problems we have with the developers and there is litigation going on but the Village Mutual continued in doing whatever it could for the welfare of the people.

Among its needs after the first year—in other words, in 1970, when the warranties ran out—it supplied an organization of contracts for maintenance of appliances. This worked out very well for the people who live in Century Village, and along with that were the problems as they continued in the litigation because of the fact that our appearance in the courts was not at all helpful. We were not getting, we felt, proper justice in the courts. It was our opinion, and I happen to be one of the founders along with Pat Cahill, that the only way we could possibly accomplish something was through the medium of politics. So we formed the nonpartisan Political Action Committee of the Palm Beaches. That was in the year 1973, and there were only two of us nonpartisan at that time, Pat and myself. But I am happy to relate that today we have with us 24 other condominium complexes and an understanding with Dade, Broward, and Pinelas Counties as to the problems of the condominium owners—not only condominium owners but particularly condominiums and consumerism.

Knowledge Deficient Among Legislators

When we got involved in the political field in the year 1973, we asked the legislators to appear before us and tell us why they wanted the job that they were running for and whatever we could learn from them. We were horrified and we were struck by the lack of knowledge of condominium law on the part of the legislators. It was practically nil; those of us who were involved in this litigation, and therefore made a study of the contracts and the law, discovered very quickly that the legislature had passed condominium laws without knowing what in the devil they passed—without having any knowledge of what they passed. Because of that the condominium owners who today are in a true serfdom—it is something very difficult to get out of because of the word "retroactive." It placed them in such a position that many of them—and these are the words of our developer—faced a strong possibility of losing their apartments, their condominiums, because of the escalation and increased costs, and that is true.

Subsequently, through our committee and the help of other areas, a new legislature in Palm Beach County was established who spoke for the voice of the people. We are happy with the legislators as they are today, except for the part that the law says the contract is a contract is a contract, and it can't be changed insofar as retroactivity. However, I note daily the Supreme Court relies on that fact and makes its changes. Only the other day, in the FTC dealing with the used car dealerships, they requested them to make a radical change, and it is a radical change that is required for the elderly in the community because they are being ripped off horribly.

I think the greatest crime perpetrated against the condominium owners took place in 1960 when the developer, with the assistance of his attorneys, came to the legislature and promulgated laws beneficial only to him. They were not beneficial at all to the condominium owner; they were not even fair. If they were at least fair, the condominium owner would be happy and have stayed with it. But they are so unfair, and that, in my opinion, verges on criminality and conspiracy because of the many things that transpired from then on.

I also have to bring into this, Senator, the local and State bar associations for keeping quiet when the legislature was passing these laws that crucified the people. They certainly, as minions of the law, should have stood up and said something. They should have declared themselves that the law was totally unfair. Later on there were attorneys who were doing just that but the law was already on the books and there was nothing that people could do at that time.

I also have to include the courts because the courts were not listening to the people. I am not an attorney nor did I ever study law, but I have been informed by Florida lawyers and many of our retirees who were lawyers that some of the actions of the courts were unheard of.

Computer Delay Causes Citation

I would like to state one item which emotionally upsets me as to why this ever happened. There was a problem in the courts and our attorneys requested that the moneys be held in escrow. That is one of the

few things that the courts agreed on to make our side look good, so we contracted at the time with a new maintenance company. Because we were a large account, they went into a computer system and, for whatever the reason, the computer was a day late in making its payment. For this we were held in contempt of court with the understanding the amount that was required at that time was $100,000 and with the understanding that within 5 days that $100,000 had to be forthwith and paid or the 165 residents who were involved in that $100,000 would be put in jail, and of course that would come to a fine of $165,000 a day.

Now I must remind you, Senator, that I know you are aware that the senior citizen is vacationing—he is running somewhere—so it was at that time that a good many of those people were all over the world and also on vacation, so it was impossible to make contact within 5 days. But this is the way the court saw it at the bequest of the developer, that we pay out that $100,000 in 5 days or pay $1,000 a day fine, or $165,000. I have yet to find an attorney, be he in Florida retired or what, who could understand such a deal from the court, but then again this was the way it went in those years.

At the same time that the court was threatening to put these people in jail, hardened criminals were walking the streets free. They were not troubled by the threat of jail which did trouble the senior citizen. Were it not for the fine, he might have sat in jail, but he did not have the $165,000 a day.

What I am trying to point out is the other impossibility that the senior citizens—the condominium owners—face early on. True, in 1975 through ours and others efforts, many of the laws have been changed.

Senator CHILES. Has that situation improved now?

Mr. MANN. For us it has not improved at all, because of the word "retroactive."

Senator CHILES. All right. Then would you mind getting to that word—that is what we are going to try to deal with in this legislation, hopefully.

Mr. MANN. Hopefully, yes, because I think the Congress needs to do something, otherwise it is going to be terrible for the aged; they cannot stand this constant increase in the cost of living. Many of them are on welfare; many of them are on stamps—even to the point one day on TV where the developer himself made a note that the time will come very shortly when he will own all those condominiums.

Now I cannot for the life of me see how the Congress can let a thing like that happen. Yes; there is a bill that is coming up in this session before Congress this year under the new session, and it deals very well with the problems of the condominium owner. I have only one suggestion to make on that bill where it deals with net lease and gross lease.

We find that with the law as it is and our developer as he is, that he will tear that point down. It will not help us at all unless that bill reads "all leases," so there should be no doubt as to what the Congress means when they say "all leases." This is what is required in that bill; other than that I think the bill can stand up. We find in our minds that there is really no difference because we pay the developer for the

rec lease as opposed to some areas where the people pay directly to the expenses of the rec lease.

Senator CHILES. But there is a difference, is there not, in the net lease, where the developer has just an unconscionable windfall in which he has no obligation to pay the taxes or the maintenance or the replacement costs, as opposed to a lease in which the developer has an obligation, just to take a selected instance, to replace or pay taxes and to pay maintenance? That is a different situation. I doubt very seriously if we are going to get the courts to void those kinds of leases.

Mr. MANN. I believe it is a matter of semantics because indirectly, in the final analysis, you are doing the same thing. Whether as a gross or a net, you are paying for it either way.

"NET VERSUS GROSS LEASES"

Mr. KANTOR. Senator, I just would like to comment briefly on that issue—the net versus the gross leases. First of all, here in the Florida Legislature that distinction has not been made in some recent statutes that came down. But very fortunately, our Palm Beach County delegation was sufficiently alert to warn us of what was going on. Consequently, we made a maximum effort to have that changed, and it was changed so that the statute read "leases" rather than "net,"—net or gross leases.

Your distinction between the net and the gross leases is slightly inapplicable to our situation here, especially in Century Village. What we have attached to our gross leases are many, many unconscionable paragraphs or parts of a lease. Of course the escalation clause itself, as you know, is tied to the Consumer Price Index increase for major cities, which means that it is considerable from year to year. It does not go back to the base year 1969 when the original recreational lease rent was established at Century Village; rather, it is added on year after year after year. In fact, what actually occurs is a geometric rather than an arithmetic increase which we sustain each and every year. Consequently, it is entirely feasible that in the near future we will literally be priced out of our condominiums through the recreation rent increase itself.

It is equally certain that very shortly, should this prevail, that the recreation lease increases will equal and exceed what we now make as our mortgage payments, including taxes. So the gross lease situation especially as it applies to Century Village, must be addressed by the Federal Government in the Condominium Act of 1978, and we hope that it will come out of committee with those corrections that will prevent it from being amended to death on the floors of Congress.

We don't have much hope that it is going to be passed in this session or in the next session. We realize full well that it is almost a political maneuver, that it is expeditious at this time to present such an act. I don't say that it was presented facetiously or whimsically. I do say it was promulgated with the full knowledge that it would have no way of passing for a variety of reasons, but we won't go into that.

Kelly, do you have anything more to say on that, or shall I go into the problem?

Mr. MANN. Yes. I just want to point out one area. We chose one. In complete fairness, there are too many and it would take up too much

time. Under the heading of "indemnification clause," our contract reads that in the event of litigation—win, lose, or draw—you pay the developer's legal fees and all the costs involved. Now if anyone can tell you that that is a fair ruling—this is truly unconscionable along with many other unconscionable events that have taken place and have pushed the condominium owner into the ground.

Do you want to take it, Bernie?

Mr. KANTOR. As long as Kelly mentioned some of the problems we are having with the developer, I would like to continue from the indemnification clause. Of course I would suggest to this particular hearing that the hearings conducted by the Federal Trade Commission in 1975 be made a part of this record. Much of what we are going to say here today, and a great deal more, was taken as depositions and statements at the FTC hearings in 1975.

FULL DISCLOSURE NOT MADE

Another problem, though, that we have with the developer, getting back to the problems, is that we received no full disclosure at purchase. I don't know how that has been rectified since the early days of the condominium boom here in Florida, but suddenly the people of Century Village, several years after having purchased, were confronted with an item called community services which we suddenly found we had to pay for as a separate entity. It was not placed under the long-term recreation lease; a new position was created for it under an item called a management maintenance contract.

Now, in this contract we were called upon to pay additional sums of money—additional sums over and above the already escalated recreation lease rental—for such items as buses and trams, security, main road maintenance and repair, lighting of main roads and entranceways to Century Village, when actually at the time of purchase, at the time agreements were signed for these condominium units, we were assured that we would be subjected only to a lump sum monthly payment and this monthly payment would cover all of the items that I have since mentioned. In fact, the selling point was:

> You don't need a car in Century Village—buses and trams are free. Consequently, you can save a great deal of money, not only by insurance rate reductions, the purchase of the car itself, but also in car maintenance and repairs, gasoline, et cetera.

Also, so many of the elderly people resettling in Century Village were no longer able to drive; they needed a means of transportation and the buses and trams afforded them that means. Consequently, it was a tremendous selling point in getting people relocating down in south Florida to purchase in Century Village. However, we found later, as I stated at the outset of this session, that we have paid, and paid dearly, for that. In fact, part of the ruling that the court made was that we would be subjected to $1,000 a day fine and possible jail sentences.

Of course it would have been much better at that time to have said: "Put us in jail; let's see what happens." I don't think they could possibly have done it, but you are dealing with elderly people and the elderly person says: "How much longer can I live?" You have to keep

in mind that each day elderly people grow older and older; it does not follow the same pattern as with younger people.

Senator CHILES. Now that we have Nan Hutchinson with us, we will get back into our panel discussion. I want to get all of these points that you have. I would like to get some interaction here if we can, because I think that will prove most productive.

Mr. KANTOR. All right.

Senator CHILES. Nan, we are delighted to have you here. We know of the work you have done over the years for the elderly. Do you want to introduce your group?

Stay right on your outline where you are, Mr. Kantor, because we want to get all these points.

STATEMENT OF NAN HUTCHINSON, EXECUTIVE DIRECTOR, AREA AGENCY ON AGING, BROWARD COUNTY, FLA.

Mrs. HUTCHINSON. We apologize. We were sort of delayed in some traffic with not very clear directions—not from your people.

I would like to introduce these people whom I have brought today from Broward County. The one lady that you see on your list, Hilda Bergenfeld—her husband died in the last couple of weeks and therefore she is not here, but Len Weisenger will be delivering her remarks. Gladys Borenstein, Al Garber, and Lucille Stang.

Mrs. Borenstein will talk about the growing need of public services in condominium residences, and Mrs. Stang will talk about the loss of transportation services at one particular condominium. All of these are similar problems with Broward County and particularly to the condominium, Senator.

Senator CHILES. Why don't we just get on to transportation now? That is an area that you were just covering, Bernie, and what you found as I understand is what appears to be the sales pitch that "Don't worry, we are providing transportation." There was transportation out there at the time, was there not?

Mr. KANTOR. Yes; there was.

Senator CHILES. But then you found out that it was not being provided by the developer, that it was something you all had to pay for in addition to that.

RETROACTIVE INCREASE CITED

Mr. KANTOR. It was much more reprehensible than that, Senator. Not only did we find out later that we had to pay for it but our developer had told us that he had been magnanimous in having subsidized us for previous years but, since situations arose, what he would do for us is not only add on the increase for the upcoming year, but he made us pay retroactively each and every increase from the day the papers were signed. So we found that instead of getting an increase of 1 year's rate for buses and trains, transportation, security, road maintenance, lighting, insurance, et cetera, it was compounded in that we received an increase reflecting 4 years and, in some cases, 5, 6, or 7 years' increase at one time. That was in addition to the escalated portion of the recreation lease rentals. So you see it compounded, it built up.

Senator CHILES. Can you tell me what that would break down for an apartment? In other words, what has the increase been, what that means to the owner of an apartment or a condominium?

Mr. KANTOR. Very well. Very fortunately, Judge Poulton determined until the case was adjudicated—and we have litigation on this point in court right now—until this point was adjudicated that the Village Management, Inc., a fully owned subsidiary of Century Village, Inc., would perform these services at cost. Currently it is costing each unit owner between $7 and $8 and change per month. At the time, however, he wanted an advance of approximately $20 per month per unit. That was for the transportation end of it.

Each year we fight him on what he terms his "operational deficiencies" in providing bus and tram services to us. Consequently, we pay so-called one-shot sums of from $5 to $8 each per year to cover operating losses as presented to the court by management. Naturally, the same kind of increase prevailed for the escalated portion of the recreation lease rent. On the one hand he told us that we were being subsidized and on the other hand, the moment he sold the last condominium unit at Century Village he made it retroactive to 1969. So some persons paid the escalated portion alone in amounts, ranging from $8 and change.

Senator CHILES. This is a month?

Mr. KANTOR. This is per month. Eight dollars and change for relative newcomers to over $22 for those who had been here since 1969.

Senator CHILES. So it went up from $8 to $22.

Mr. KANTOR. That was the range of increases but it went up basically from the base rent, in my case, which was $34.50 per month. It went up to over $50 per month, and currently, including the tram and bus transportation, instead of $34.50 per month, I pay almost $60 per month. That is quite an increase.

Senator CHILES. That is double.

Mr. KANTOR. Almost. That is quite an increase.

Senator CHILES. Now this is covering your rec lease; it is covering your transportation. Is that all of the maintenance?

Mr. KANTOR. No.

Senator CHILES. What other maintenance?

Mr. KANTOR. In addition, we pay from between $26 and $29 for land maintenanace—for maintenance of the common elements.

Senator CHILES. The grounds?

Mr. KANTOR. The grounds, the outside of the buildings; yes.

Senator CHILES. So your total fees are roughly $100 a month, aren't they?

Mr. KANTOR. It varies; yes. It varies from about $78 to $92. That is quite accurate; yes. Roughly that is how it works out.

Senator CHILES. What is your transportation problem that you can relate to us?

STATEMENT OF LUCILLE STANG, BROWARD COUNTY, FLA.

Mrs. STANG. Let me say I came down here as a private citizen with my husband 4 years ago and, because he had a history of a heart condition, we were sold with Hawaiian Gardens because they provided a

courtesy service. There were two buses running several times a day which were going to shopping centers and banks occasionally.

Senator CHILES. So that was your reason for purchasing?

Mrs. STANG. Primarily it was. The brochure itself had a picture of the courtesy bus and all the details that went with it. The courtesy bus was used in the newspaper ads as a selling point, but then after he sold the last apartment, we found that he was removing the two buses completely with no offer of any kind of financial remuneration or otherwise. We went into our individual contracts and those of us who had used lawyers to look into the private contracts found that there was no provision for the courtesy bus at all. It was just used as a come-on in the advertising.

We then found it necessary—I certainly did—to go into public transportation and there, too, we find a very limited schedule—almost nothing on Sunday, no evenings. I found I could not go to school in the evening; I had plenty to do. The community has been growing as has all of Broward County. The situation, as it stands now, means that many times we stand in the buses with very heavy shopping bags. I have seen many elderly people falling in the bus when there is a turn or a short stop.

ADEQUATE TRANSPORTATION LACKING

Also, as recently as last week when I had occasion to go to the Morning Hill Shopping Center, after 2½ hours I finally got my bus because the previous ones had broken down. We had no notice at all of the breakdown; we had no way of knowing. They sent no substitutes. I have checked with transportation. The barn is somewhere up in Hollywood. They never sent out a substitute bus or a substitute driver. This is what we are running into now in terms of public transportation.

The Sunday schedule is very limited. There is one in the morning and one in the evening. There was absolutely no transportation in Broward County at all on Thursday because it was a holiday. At that point I found it necessary to go into the needs beyond my own area and I went into the community needs. I have been doing some volunteer work in the community, particularly with the Jewish Federation of Fort Lauderdale. Sitting there one day, I would say that 80 percent of the calls that came in were for transportation to doctors and pharmacies. None of the large chain pharmacies have any delivery services of any kind.

Finally, we have a nutrition situation similar to the one in Margate. We have no way of getting these people down to the nutrition center. We have a great deal of programing, which is available, a library, an educational program, a recreational program, and a social listing program. We have no way at all of getting these people to the areas.

I went a little bit beyond that to find out what Broward County Transportation was doing, and their claim was that they have less buses than they need because there are no Federal funds to allocate. They required a minimum of 2 weeks' notice to transport anybody and certainly that is not practical or reasonable because we get many calls which are almost emergency calls.

There is no service for inner county delivery. I myself use a doctor in Dade County and have to hire a private car to get me to my own physician because whatever services are available are not available beyond Broward County. I talked to somebody in my area who is in charge of the human services for the aged, and there, too, was very limited transportation and she couldn't promise anything at all.

Lack of Insurance Curtails Services

My impression was that Broward County would handle this kind of thing as a county situation. What I found by spending time in the federation office was that the county transportation service is referring people to the federation office because they cannot fill the need. Federation, on the other hand, has no such service available and one of the reasons they don't have it—I have tried very hard to involve volunteers in my own community and others who could take people to doctors and hospitals and so on, but they refuse to do so because they do not have insurance coverage, which the federation cannot afford.

I inquired about the services the United Way has. They have minibuses doing this. They also require 2 weeks' notice. Now United Way covers $1 million in insurance for drivers and for people that they transport. Federation has no such facilities so there, again, we are left without any point of transportation service. I can just sum it up very briefly by saying, as I see it, our sunshine State will be a sunset State unless we take care of these people in some way.

Thank you very much.

Senator Chiles. Thank you.

So the brochure itself has a picture of the bus.

Mrs. Stang. Yes, with a little explanation.

Incidentally, after he removed the transportation service we went to court and got no place at all.

Senator Chiles. Mr. Mann, maybe we will stay in the condominium area right now and get into some of the services.

Has Century Village made any attempt to establish its own transit service or to have West Palm Beach provide better service?

Mr. Mann. As far as West Palm Beach, yes. The management has arranged, through contract with the county bus service, to give bus service to Century Village itself. The trams are something that management is responsible for.

Mr. Kantor. I might add, however, that we paid for that contract with the county of Palm Beach. The transportation is not given to us at no cost. Now I want to point out a discrepancy in this kind of service, Senator. Although we pay as part of our community services costs for this transportation—buses—each and every senior citizen in Palm Beach County merely has to apply, receive an ID card, and receive the benefits of lowered transportation costs, and this is a service provided by the county. So we are paying twice for it. Tax dollars are used to finance this very wonderful reduced-cost transportation system for elderly persons. But at the same time we are paying for that through our community services fees to management so we are paying twice for the same transportation which I think is an inequity that has to be addressed.

Senator CHILES. I think you are going to tell us something on recreational leases from your standpoint, Mr. Garber.

STATEMENT OF AL GARBER, FORT LAUDERDALE, FLA.

Mr. GARBER. Yes. I reside in Lauderdale Oaks, a condominium development in Fort Lauderdale. I have resided there for about 3 years. When I purchased, it was subject to the existing lease and I was not the original purchaser of the building. I bought from a person. Having been an attorney in New York and retired, and I did a lot of this kind of work, I was knowledgeable on the subject and I realized we had to be subject to that or we just don't buy a unit in our development.

What I am concerned about now is our inability to compel the owner of our leasehold to negotiate with us, and on an arm's-length basis. In our situation, the builder had disposed of his lease to an investor and the investor, I understand, purchased it on the basis of a capitalized amount 10 times the annual of the yield. Three years ago when I purchased, the unit owners paid about $218,000 a year rent for this rec lease. Since then the retro payments by virtue of the acceleration clauses in our leases—mine has not reached that point yet—as each building is complete—there are 19 buildings—it has gone up to about $242,000 if you capitalize that at 10 times. The owner of that leasehold says, "I want $2,420,000 and don't bother me; don't attempt to talk with me unless you are prepared to pay that," so it is a take-it-or-leave-it proposition.

Senator CHILES. This is trying to buy out the rec leases.

Mr. GARBER. Yes. In fact, we are having a meeting tonight seeking to get the vote of the people, whether we should negotiate with him further—negotiate with him on the basis of paying him his price or just live with this kind of lease, where in the year 2030, I think, where we are now paying on the basis of about $30 a month, it will be up to about $300 a month.

Senator CHILES. Do you know what the original cost of the recreational facilities was?

ESCALATED BUILDING COSTS

Mr. GARBER. No; I don't have that, sir. Based on my experience, having been involved in the building operation for some of the big buildings around the country at that time, I think it could have been built for about $15 a square foot. I used to represent people from Palm Beach who have since passed away, people of that character, and the big people in New York. I said many times, I could have built that building there for maybe $1,400,000, and now they are asking for $2,400,000 because they bought it on a yield. There is a difference between a yield and a value of real estate per se—I don't have to explain that unless you want me to, what yield is. I think you have a good background on that subject.

Some of our people say we should not offer more than seven times, eight times, or nine times the annual rent. You cannot explain that the man who now owns it, a big corporation—I think it is the Broklin family—I think they control Seagrams Liquor in Canada. They say

they want to capitalize the sales price—capitalize it 10 times our income. In January, two of the buildings are going to be hiked again. This keeps repeating itself every 5 years until there will just be no limit to it. We cannot negotiate.

I am wondering whether there could not be some legislation enacted requiring arm's-length negotiation with these kinds of owners who are required to sit down with you and negotiate on the basis that is fair and equitable. They certainly should not be able to capitalize and expect us now to pay $2,400,000 in the 3 years that I have been there. It just seems unreasonable, it is unconscionable to be in that bind. We have no way of getting out of the bind.

If this man's leasehold is protected under our Constitution, we cannot knock it out of the books because he has tried to do it a few times and is getting no place. The owner of that leasehold is protected under his constitutional rights, and you cannot advocate a contract in good faith. Unfortunately, our situation is, when the people consult with me about this situation about whether we have some cause of action, I explain to them the purchaser of that leasehold must be furnishing to him a so-called estoppel certificate. It turns out that it was not required, but when the people who built it took it upon themselves to sell off or turn over the operation to the unit owners who had purchased it, they were smart enough to obtain, not only a general release in which the unit owners agreed that they would not have any basis to go after these people, but they also included interpolated clauses stating the validity of this lease—clauses that normally are included in an estoppel certificate.

I don't purport to give advice, but they have to consult somebody who is knowledgeable, and they consulted with our friend Rod Tennyson. He said they had no basis for even contesting the validity of this lease any longer. They signed away whatever rights they might have had to go in there and contest it. We cannot negotiate on an arm's-length basis. I think some legislation is possible, and I think under the Constitution it is possible, to sit down with you and negotiate with you.

That's it.

Mr. MANN. Senator?

Senator CHILES. Yes.

UNCONSCIONABLE PROFITS EVIDENT

Mr. MANN. I would like to add a point to what Mr. Garber has been saying about unconscionability in relation to Century Village where the recreation lease cost the developer $750,000 to build. He now asks the price of $31,500,000. That is a bit unconscionable. I might add that where the cost of this recreation lease per year is approximately $1 million, his gross is over $4 million—representing better than $3 million a year net profit—truly unconscionable in any business in any shape, form, or manner.

Senator CHILES. Section 210 of the bill that we are talking about, I think, would give you some relief.

This section would allow the unit owners, by two-thirds vote, to seek a judicial determination that any lease or portions of leases are unconscionable

if the lease was made in connection with the condominium project, was made while the developer was in control of the association, and had to be accepted or ratified by the purchaser or the association as a condition of purchase.

I think you will find those conditions generally true in all of these leases that we are talking about.

If the lease is for 21 years or contains provisions for automatic renewal for a period of more than 21 years, either contains an automatic rent increase clause or subjects the unit to foreclosure for failure to make payments, and contains provisions that the lessees assume all obligations and liabilities associated with the maintenance and use of the property, then the court shall consider the lease unconscionable.

Several factors are listed for the court to consider in determining unconscionability, including any gross disparities between the obligations incurred and the benefits received, the bargaining position of the parties and the adequacy of disclosures. Upon a finding of unconscionability, the court would have the power to grant remedial relief including rescissions, reformation, restitution, the award of damages, attorneys' fees, and court costs.

In addition, this section would provide that any automatic rent increase clause would be unenforceable, as to future increases in rental payments, in a lease which was entered into prior to termination of developer control, had to be ratified by purchasers, and contains provisions that the lessees assume all obligations and liabilities associated with the maintenance and use of the property.

Ground leases in existence at the time of enactment, made in an arm's-length transaction, are exempted from the provisions setting out certain of the provisions dealing with unconscionability and as well as the unenforceable automatic rent increase clause provisions. However, ground leases are subject to judicial determinations of unconscionability.

So what we are attempting to get at in the Federal bill would give the court a number of areas of potential relief, including the rescission—even payment back—of certain fees if the court found that to be warranted. Now, the premise on which this rests is that the States, under the Constitution, are prohibited from impairing the right of contract. That same prohibition in regard to contract does not apply to the Federal Government as such.

There has been a memorandum from the Justice Department. Their position, as drawn in the bill, would allow Federal courts to have jurisdiction as to whether there was unconscionability in these leases, regardless of the constitutional provision on obligation of contracts, because that provision does prevent the States from impairing the obligation of contracts, but does not prevent the Federal Government from doing that.

Court Test Sought

Now again, I think we want to make it very clear to everyone that what we are talking about, if we can pass this bill, is providing the means wherein we would get a court test. It does not mean automatically that we are going to be upheld in this, it is still a justiciable issue. There is still an issue that I think will find good lawyers on both sides arguing whether this is valid or not. We do know that the State supreme court has ruled that you cannot have this reformation, you cannot go back and void this, so we are stopped there. So this is the next best step that we could take to provide some kind of relief.

Again, it is clear that, in the future, in Florida, the law protects people who are starting off now. But what we are trying to do is find some way of providing retroactive relief. If something like this can

pass, I can guarantee you—as you know, these owners won't be hidebound; they will be willing to negotiate, and those would be arm's-length negotiations. And in many instances that might be the best solution, to buy out the lease, but I think you would find the negotiating on that basis.

Mr. GARBER. I am familiar with that provision. Unfortunately, in our situation the leasehold was sold, and at the time of the sale the developer took it upon himself and very smartly included in the general lease that he pay from the 17 autonomous corporations that owned the various buildings in our place. He had these provisions included in the general lease which normally go into an estoppel certificate. Are you familiar with an estoppel, sir?

Senator CHILES. Yes, sir.

Mr. GARBER. I don't think the people who represented our condominium were smart enough to observe that these provisions were included and these people were just imposed upon. I don't know if they were represented by counsel. I understand they were not, they just took it upon themselves to buy it and they are therefore precluded by these estoppel provisions contained in this so-called general release. Normally if I buy a mortgage for $10 million, I know I am going to get the stock certificate.

Senator CHILES. You know, you may have a situation there in which you have been blocked. We will have a panel of lawyers who will be coming up next and I don't know whether we can touch on this or not, but I see that you have a particular problem.

Mr. GARBER. That is why I would like for you to consider whether there is some legislation that could be enacted requiring the negotiation, whether it is enforceable or not, to require these people to sit—to only sit with you and negotiate with you where we are in this bind. We are in a tremendous bind and we cannot get out of it. We are committed, based on this. There was some fraud committed or perpetrated at the time this lease was made up, and that would be problematical, whether that could be sustained or whether a position was so taken.

LONG-TERM LEASES BINDING

Mr. KANTOR. Senator Chiles, the purchasers at Century Village didn't even have the privilege of signing away their rights. The developer very cleverly appointed the first board of directors of each association. I have forgotten the number of associations that we have, but a great number of them. What he did was appoint the first board of directors from among his own employees to oversee each association until such time as it would become 75 percent occupied—at which time it was turned over to the unit owners. In the meantime, these persons entered into contracts with their employer, Century Village, Inc., binding us to all of the clauses of the long-term lease, the declaration of condominium, the bylaws, and the management agreement.

Senator CHILES. That fits you much more within the definition of what we are talking about in the act, because all of that was in the power of the developer at the time. And that is classically what we are talking about here, why this should be released.

Mr. KANTOR. In fact, we now have litigation in this area where we are trying to prove that not only did the first board of directors violate

their fiduciary responsibility, but they also were totally the tool of the developer. This has been pretty much accepted. Just one other comment on why the Federal Government has got to do something in this area. Responsible Federal agencies, as well as very responsible private agencies, have indicated that because of the escalating production costs of homes within the next 5 years, fully 50 percent of all housing starts will have to be in the condominium area.

Even if it is but 30 percent of all housing starts that will be in the condominium area, I believe the Federal Government has to get something on the books that is going to protect the large number of persons coming under the condominium aegis. Of course, this especially applies to young people who cannot afford to buy one-family or two-family homes.

Senator CHILES. You are now speaking to what we think is the main purpose of the bill, and that is the broader utilization of condominium form of ownership. I think that upon that leg—the bill has several legs—but upon that leg is the one that we have to stress in order to try to get the kind of support in the Congress to pass the legislation. You know that the condominium phenomenon, to start with, was almost a Florida/Arizona phenomenon.

Mr. KANTOR. California.

Senator CHILES. Yes, California.

Now, though, you are beginning to see a tremendous spread of that. I happen to be a double condominium owner now, one in Virgina and one in Florida, so I have a vested interest—you might say maybe even a self-interest—in this. I think you are finding that more and more becoming a form of ownership, so it no longer is the problem that is just a Florida one.

BILL SUPPORT NECESSARY

I think what this bill does, of course, is to try to give the rest of the Nation some protection that we have paid very dearly for in Florida, that all of you paid very dearly for. We are trying to correct these mistakes and to see that unconscionable things do not take place in the future. I hope, for that reason, that we can get stronger support for the bill. I think that we will get hearings this year and I hope we can pass it during this session of Congress.

Mr. KANTOR. I hope so. Will it come out of Senator Proxmire's committee in this session?

Senator CHILES. Well, I think it can. I don't want to offer promises; that would be the wrong thing to do. Senator Stone and I are both going to press for hearings, and Mr. Lehman has already had a hearing promised by the House committee, so we are going to press very hard to try to get hearings on the bill.

Let's go on to our public services now.

Mrs. Borenstein.

STATEMENT OF GLADYS BORENSTEIN, BROWARD COUNTY, FLA.

Mrs. BORENSTEIN. I was going to speak on the things also that I think we find most important in our condominium. I live in the same area as Mrs. Stang and I find transportation is the most important thing, especially to the widows and widowers—the people who are

left alone. A lot of them came down here as retirees in good health with cars and were able to take care of themselves. All of a sudden there is a problem with their health, such as a stroke, a heart attack, blindness, or anything crippling. Then we had those with the death of a mate, and the people were unable to fend for themselves.

Now we do have city buses running, but it is awfully hard for a person who has had a heart attack to stand for 30 minutes to an hour in the sun—maybe 2 hours sometimes—and this happens to us in our area quite often. Then the answer is if you cannot do that, you take a cab. Now cab fares to a doctor runs you between $10 and $20, to go and come, and most of the people in our area have to go to Plantation or they have to go to the other hospitals in our area. They are going to the Holy Cross area which is actually a $20 ride there and back. Most people cannot afford this any longer with the rises in the cost of living today. What we really need is to have private buses that will take our people to and from the doctor without their having a call 2 weeks or a month in advance and make an appointment.

Now I have a little article out of the paper if I may go through this. This is just a dollar-ride program. It starts off beautifully. It says: "If you live in Broward County, are over 62 years old, and you need a ride to the nearest shopping center, never fear—Dial-a-Ride is here." So you call them up and you find out what the Dial-a-Ride program is.

The pilot program providing transportation for senior citizens to nearby shopping centers begins this weekend with the county providing three 15-seat buses for a county that has certainly over 1 million people, starting Friday and continuing only on weekends. Now people don't get sick on weekends or go shopping on weekends; we need something daily to take care of our needs there.

Then each van will operate in a specific area and the county has divided it into three areas, and they have been divided into quadrants. Each weekend, a different quadrant will be served. If your quadrant is served in one week, you won't be able to ride again for a month. So what are you going to do the other 3 weeks of the month?

So once a month you are allowed one weekend. Then you sign up in advance. That is good. If I know that I have an appointment in 1 week or in 2 weeks and I sign up for that, that is fine. But what if I get sick at this point and I need to get to a doctor today?

Use of Paramedics Cited

The only service we have for emergencies is the paramedics. Paramedics are the most wonderful thing in bad emergencies. If you need to go to the hospital, they check with the hospital and then an ambulance is called. It is $40 and up for an ambulance which is prohibitive today. Then you must pay the outpatient cost when you go in, which is certainly $35 or more—just to be checked in under the outpatient provision of the hospital. If they find that you are really ill, then they of course enter you in the hospital and at that point you pay a further fee of over $100 for the entrance into the hospital. This is fine. The paramedics are good for these bad emergencies. But what if a person gets sick and needs a private doctor? They can't wait 3 weeks to see the doctor; they must see the doctor that day.

Now that is where a lot of people in our area come into this. We help our neighbors. Some days in the week I drive the car. My health is pretty good, but is it right for me to have to spend 6 or 7 days a week driving people to the hospital, to their doctors, for prescriptions, for groceries?

We feel that we should have a bus service, or private cars or buses, either by the city, or by our own condominiums. Our own condos took our buses away from us, and we do not have the buses for the people who can't drive and must have them.

Senator CHILES. So you really thought, again, that these problems were going to be covered for you when you first went there?

Mrs. BORENSTEIN. When we bought our apartment we were told we would have the minibus service, and then the minute the last apartment was sold they took them away from us like it was magic. We took them to court, but we were not able to get our buses.

Senator CHILES. Nan, as the executive director of the area agency on aging, tell me what you are trying to do to make some kind of service available.

Mrs. HUTCHINSON. Well, for the benefit of some of these people, the area agency on aging is attempting to provide programs for the elderly in each of their districts. Ours happens to be Broward County. I would like to just briefly say that as far as population goes we were the first area agency to be funded in Florida as a model project in the fall of 1972 in Broward County. At that time when I started, we were told to do three things: To find out what resources were there already; to point out the problems; and to grant problems on a priority basis to meet these needs.

We did this. We interviewed every agency in Broward County. There is an agency here north of us in Palm Beach, and so on. We did interview all the agencies of Broward County to find out where theirs was. Second, we did an in-depth survey. We held seminars. We met in small groups, and large groups. We had task forces. We came up with the data. The needs we found back in 1972 or 1973. This year the only thing was—that shifted a little bit.

Those first three needs have never changed: Health, or anything that relates to that; transportation; and nutrition. This year housing jumped from No. 8 up to No. 4. Then comes home services, activities, information, and counseling. Now everything has gone the same until this year when the housing jumped from No. 8 to No. 4.

Senator CHILES. Why did it jump?

DRAMATIC INCREASE IN ELDERLY POPULATION

Mrs. HUTCHINSON. Well, for the very reason due to the influx that we have had. When we started in 1972, the 1970 census said we had 152,000-plus over 60 in Broward County.

Senator CHILES. That was in 1972?

Mrs. HUTCHINSON. That was in 1970. I was using the census. Today we have 304,000 over 60 in Broward County and this is the growth from 1970 and from 1977.

Now when you talk about trying to do services for the influx that we have had so fast in the northwest section of Broward County in

the past 3 years, almost 4—there are now people reasonably into the northwest where you find Coral Springs, Tamarac, and those cities. Now just in the nine cities you have 69,000 people over 60 years old.

Senator CHILES. I understand about 75 percent of the people in Tamarac are over 60 years old.

Mrs. HUTCHINSON. Senator, 85 percent are over 60 years old.

Now look down 5, 10, years from now. We keep saying that in 5 years 7 out of 10 are going to be elderly people. We are already there and past it. We have 29.7 percent population out of the million in Broward County who are already 60 and over, Senator Chiles.

When you say an area agency is doing the planning and coordinating, yes, we did fund programs on the priority basis. We did start with the nutrition 5 days a week. We have home service, we have home touch. We have them all under one roof and it saves administratively, and in every other way. Within the Older Americans Act money—we have 20 of those 43 buses that came through the Older Americans Act money and not the county.

The county is now purchasing some buses, but they have been a long time doing it, but at least we made some inroads. They have helped us in many ways. They have administered this program. The point is the transportation has again set up an escort service. We had CETA workers. My board of directors or the State could not find any insurance through the State insurance office and we worked for months on this until we had to cancel that program. We need to not only have buses, we need to talk about insurance for volunteers or insurance for those people who are willing to volunteer. In addition to those, we have day care and many other services.

Senator CHILES. Nan, from your perspective, are the federally assisted transportation programs for the elderly becoming more or less unwieldy? I am talking about all of the UMTA funds—Older Americans Act, all of them.

Mrs. HUTCHINSON. We just received seven additional UMTA buses last July that we had had on order for 2 years. The minute we get some, we say we will take 10 more, we will find the match somewhere. It has been so slow that we have not been able to get them. I would say that it is very difficult, either the money is not there or we are not allocated enough of the money that comes to Broward County. The other counties go through the same thing. We could find that match if we could just get the Federal money to do it with.

Senator CHILES. What is the match?

Mrs. HUTCHINSON. Eighty/twenty. Twenty percent we do locally. The cities do their fair share. We have excellent cooperation. That is where all match comes from, from the city and county.

TRANSPORTATION EXPANSION NEEDED

Senator CHILES. Broward County gets now the total of how many buses?

Mrs. HUTCHINSON. Forty-three.

Senator CHILES. What would you say the need is?

Mrs. HUTCHINSON. I would say if we had 100 buses that we could put them into operation and probably still not meet the need, Senator

Chiles. Now I am talking about just for the elderly. I am not talking about total matched transportation. We are talking about those buses. They don't have public transportation buses with lifts on them. These people can't walk to the corner. If they do get to the corner, they cannot get up on these buses.

There has to be a demand/response type of transportation system for the handicapped and for the elderly. We need to do this and we need to do it now because it is just to the place where these people cannot get from the condominiums. This lady who just testified, Mrs. Borenstein, works all day every day, practically taking people to the doctor, to shopping, or to get their prescriptions. I don't know what those 15 or 20 who are depending on her will do when she gets ill, and it could happen very easily. The point is that they are there with the limitation of the equipment that we have and the limitation of funds. Yes, we do all we can and we get it from every source that we can, but it is totally impossible—the programs and, particularly, transportation, which is expensive.

Senator CHILES. Can any of you tell me whether, in your particular complex, there has been an attempt to organize some sort of self-help projects, as opposed to just an individual voluntarily providing it as you are doing, Gladys? Or there is some individual self-help? You know what we are really talking about here is the scope of the problem. I don't know that there is any way that we are going to have the total Federal response, taxwise, to provide for all the needs that exist.

One of the things that I notice is that condos are like small towns, people get together and help people. I want to elicit from you what is taking place in your condominium.

Mrs. STANG. Our attempts at getting volunteers is very difficult, particularly due to the insurance situation. What we have found, which has been really an obstacle in terms of organizing, we have found people who are willing to drive and offer their cars to transport people at a price which is usually less than the taxi service, for example. The problem is—I run into it myself, particularly—I go over the county line. One of the reasons I was interested in this at the Federal thing is because the county for some of us is inadequate. Even if they had enough buses, they would not go beyond the county line.

The people who do this privately are really breaking the law in terms of driving for remuneration; yet we use them and it is really dangerous getting into a car of that kind because they are not covered to transport people. That is as far as we got, even though the price is less than insured transportation is. It is very difficult because we are never quite sure, and if anything should happen, we would be covered and, of course, the person that is doing it. So that has not at all met the need and that is as far as we have been able to get which is very inadequate.

VOLUNTEER AGENCIES UTILIZED

Mr. KANTOR. We have a parallel situation in Century Village where unauthorized persons—from a legal point of view—are transporting residents to shopping areas, to the doctors, for injections, for prescriptions, for visiting, if you will. We also have some very wonderful volunteer agencies within the village that managed to get insurance

for these volunteers so we do have insurance on some of the volunteer drivers who perform this service. I will obtain the names of these organizations and send them to you, Senator. They operate at no profit. I believe that the driver is merely reimbursed for the gasoline that it costs him to transport these needy people; the volunteer agency itself undertakes the cost of the insurance. Although we do have such services, it is still woefully inadequate because of the 15,000 people living in Century Village.

Senator CHILES. What type of volunteer agencies? Church sponsored?

Mr. KANTOR. This is within the village itself. It is a self-help type of organization and I will get the names and send them to you.

Senator CHILES. That would be helpful.

One of the problems is this insurance matter, you know it is a very big problem. The White House has a task force that is looking into that, and they are expecting some proposals and a conference in the White House by March of 1979, with some way of trying to address this insurance problem.

Mr. MANN. Senator, may I add this? While this volunteer system is helpful, it is not the answer because, when you analyze the volunteer system, you are talking about people who themselves are sick; they have their own problems. While they may be OK for today, tomorrow they are laid up or they have to go to the doctor. Many of them are with 99-year leases and they will never live out that 99-year lease, and this is a big problem. Volunteer service is good, but it is not the answer to what the senior citizen needs.

Mrs. BORENSTEIN. Senator Chiles, I would like to say we are not reimbursed for any of our services. We do it and we do not get paid 1 cent. If you call private people, they will grab you for a certain amount of money, but in our area we do not. We do it as a neighborly thing and try to help our neighbors, but, no, we do not have a regular system for this and we are leaving ourselves open in case you have an accident that someone may sue you. Someone was sued by a neighbor because she had an accident after going out of her way to help the people, so this is bad. I say we do need the public service or the county, whatever we can get.

Senator CHILES. Len, do you want to tell us something about home health care?

STATEMENT OF LEN WEISENGER, BROWARD COUNTY, FLA.

Mr. WEISENGER. Yes.

The tremendous cost of health care has fortunately occupied the position of the Government for the past few years. In the meantime, medicare does provide certain health care services on a part-time basis, such as skilled nursing care, physical therapy, and speech therapy. The expansion of these services could also be implemented, including occupational therapy, home services, medical and social services, and medical supplies.

It is true that these services are being provided, and I like to emphasize that it is on a part-time basis. What this reduces itself to is that these services are provided for lots of 2 hours per week per person.

For example, statistically speaking, any time as of the end of September we have provided these services to 6 of the 11 persons, yet we have a waiting list based on that closing date for an additional 300 people.

As you can plainly see, the needs do exist. They become much more emphatic because the population is growing older. Many of these communities that are on the average 15 years old have been started way back in the middle sixties and the health has deteriorated concomitantly with the tremendous increase of the cost of living, and also was accompanied by the erosion of their resources. For this reason, in order to help these people, the Government should expand these services.

I think that the Government should look at the need of the total person. The benefit for the Government, as well as the services for these people who are in need, would be twofold. First of all, these people would be taught to take care of themselves independently. As far as the Government is concerned, I think the cost would be far less than to have to institutionalize them. So as you see, Senator, I think an expansion of these services would be of mutual benefit.

More Chore Services Needed

Mrs. Hutchinson. Senator, if I might just add a little to what Mr. Weisenger has said. He was talking about the home service program that we do have. We have the home chore service that goes in to help with the housework and that sort of thing. We were serving people 60 and 65 when we started. Today we are serving the majority between 70 and 74. Remember they have been there 5 and 6 years, and 5 years from now they will have more problems and less mobility and unable to do for themselves. What we are saying is, we need something now. We have not touched the middle-income group; we have not even touched past the poverty level in this program, Senator. We have not really touched that much of it basically.

Senator Chiles. Well, home care is an area that Senator Domenici on the Committee on Aging and myself have held a series of hearings on, and we are going to go into that again this next year, and I hope we can come up with some legislation. I am convinced that trying to have some in-home services makes a great deal of sense, especially if we are talking about quality of life, because it is ridiculous to force people to be hospitalized or institutionalized in any form when they could have stayed in their own home. I think in many instances you are not doing the taxpayer any favor when we see the prices of the nursing homes and the prices of the hospitalization. We also see these people, many times, just deteriorate very quickly when they are placed in these homes.

Mrs. Hutchinson. We have only four in the county and this is certainly one of the best things that we have found as an alternative to institutionalization. The family can work who needs to work. They have to be supervised 24 hours a day. These people come to the day care center and they don't mind it being called a day care center. What you see when they come and how much improvement they make, the enjoyment they have not only for themselves but what it was for the members of the family, this is one of the best things we have done as an alternative, along with community care legislation that Florida has done.

Mr. KANTOR. Senator, Mr. Weisenger just a moment ago mentioned how the senior citizen's income has been eroded through inflation, through escalation clauses, et cetera. Well, concomitant with that comes all of the fixed-income problems of retirees.

In Century Village we discovered an appalling situation. Not only are people on welfare, but the welfare rolls have increased dramatically in the last year and a half. I don't even want to disclose the number of people on the public welfare rolls in Century Village at this time, but it is fast reaching what can be termed an astronomical figure. It is bread and water for many of these people for the last week of the month. Many of them are much too proud to enlist outside aid. Many of them are much too proud to approach others for help.

What many of our in-village organizations have done is very quietly sustain these people by making funds and food and clothing available to them, and I say "very quietly," because you can well understand the jolt to one's pride to have it known publicly that you are in a situation where you have to accept this kind of help.

MEDICARE SEEN AS INADEQUATE

At the same time, there has developed a greater dependence on medicaid because medicare at this point is woefully inadequate. Its unrealistic schedules for repayment and, I hate to say it, some unfeeling physicians who just won't accept medicare patients, and the hospitals that won't accept medicare patients create additional problems. You do have some unscrupulous physicians who will list additional visits to make up their "fair share" of medicare money.

The high insurance cost for that portion not covered by medicare, the extremely narrow coverage—there is no drug coverage under medicare—compounds the problem. You have no dental or eyeglass services. I think along with all of the health and social services problems that have been mentioned here some kind of an adjustment on the Federal level has to come about. It has to be adjusted to meet the growing needs of a very large segment of the American population.

We have been given additional years to live on this Earth through medical research and scientific advances. For many people those additional years are not the heaven that was promised but a partial hell. I know nobody promised us a rose garden, but neither did they tell us we were only going to get the thorns and not the flowers. So I think, along with what has been said, is this tremendous need for Federal intervention, either through shared costs with the State or through a more realistic medicare program. Even if it means primarily catering only to the needs of those who are least able financially to care for their medical needs, it may mean introducing a sliding scale so that the more affluent may receive less from the medicare program. Something has to be done now to take care of those persons who are suffering enormously at this time.

Senator CHILES. Nan, what kind of long-range planning are you doing? Are you beginning to project? You have just been talking about the citizen aging beyond 65, and now we are talking about that aging and, especially let's say in Broward, where we have this tremendous concentration of our senior citizens in condominiums, the growing need

that is going to be there for services. What kind of long-range planning do you project doing?

Mrs. HUTCHINSON. This is what we are planning and this is what we are recommending—we hope through legislation, through some source of additional moneys. We need all we have now, but with the additional moneys—I think with the population as it is, as you just said, I see a real need for a social services network within the condominium complex. In this system we have done, I will say, this type of multipurpose centers and our little mini centers, but being the sort of townships that you were just talking about I think this is coming to the point where we are going to have to face this and deal with this realistically with condominiums.

I think that a system would include a social worker to provide counseling, information regarding available condominium services and community services. Referrals should be made to available community services and coordination of the social services within the condominium project. I also feel the same is true in our day care center and multipurpose center which goes along with the health screening we are doing, and we are only doing it in two of them because of the physical facilities as well as the money. A nurse should be there to provide health screening, referral.

SERVICES SHOULD BE PROVIDED

I definitely feel there should be a transportation system including vehicles and drivers within these condominium complexes. There should be a recreation/social program coordinator to assure the residents of a viable activity program and one or more service aides to aid disabled residents with their shopping and so on.

I feel that we are beginning, and we are working in the condominiums now because we have helped organize the buddy system—the mailbox system—whereby they check on someone. They have the hall captains that report back to the condominium manager or building manager.

There have been some monitoring systems and I hope you see this next week in St. Pete, this total monitoring system which fortunately I did get OK'd from Sylvania. It cost $125 to set it up as a model in Broward County which would be 200 people that would be monitoring their entire home. For instance, the telephone is the one where it all comes back to the refrigerator, the radio, the TV, the light, the bathroom, and so on. This is the best monitoring system that I found, not only for safety, but for those who are living alone and for those who are physically handicapped. Monitoring systems we are trying to set forth now.

In addition, I feel we are also assisting the volunteers whom we are helping to organize in the friendly visitors, telephone reassurance orders, shopping aides, transportation escorts and, hopefully, this insurance will be worked out so that we can get the CETA workers and get it back into a program. I really feel with this type of network within the project and within the condominiums, I think that these residents will be assured of more comfortable retirement years, in particularly the condominiums that they have chosen.

Senator CHILES. How do you see that sort of total network being undertaken?

Mrs. HUTCHINSON. I think it should go back through AoA. We are doing it now. We could start on a small basis, which I hope to do with or without the money, some way in Broward County, at least take two or three of the condominiums and start this as a model project, because there is the money to do this. It is a matter of writing them and getting them funded.

Senator CHILES. Assuming this pilot proves itself out, and I would certainly think it would, how would you attempt to expand it?

Mrs. HUTCHINSON. Well, the thing that we do with the other programs. People pay what they can afford to pay for the services, and that expands the program.

Senator CHILES. So you have some kind of a fee, on the basis of ability to pay, for some of these services?

Mrs. HUTCHINSON. Yes. I think the title III moneys that are there and you do get some dollars additionally each year. I think the seed money could be put into condominiums with the key people that need to get it started. As Gladys Borenstein has stated, in the condominiums they are willing, several of these people, to volunteer to help supplement and fill in the gaps where we don't have the money to fund these hired people to put on the staff. I think the need is there and I don't want to feel like I am going to have to wait another year to do it. We have more or less sort of started and are in the planning stages for one condominium right now so we hope that we can do this.

Senator CHILES. It sounds like a wonderful array of services and I am sure everybody here would probably like to see that incorporated in all of this.

Mrs. HUTCHINSON. We have the services. Unfortunately, we are not able to serve the numbers that we know are out there and who really need them.

Senator CHILES. I know that that is very true.

POPULATION PROBLEM SERIOUS

Mrs. HUTCHINSON. I would like to make one other point if I may, talking about population. We have a very serious problem and other States like California and Arizona, I am sure, have the same, but being here I know with 4 million coming in here during the 6 months of the season—now I will use one center as an example. We have between 450 and 500 people going through this northwest center every week, and I mean unduplicated people. We run twice that in the months of January and February, right around Christmas time on. These people are getting these services up North; they expect them when they get here. We get money for the population for our census, and what we have been allocated——

Senator CHILES. We try to get you some help but it is awfully hard to get other States to recognize that they are sending us in many instances their problems, and we are having to take care of them.

Mrs. HUTCHINSON. Would there be any way of a formula for the money to come to Florida and some of the other States in addition to our regular amounts that we are appropriated, because we have it and

we have the statistics to show it, so would they not consider it important?

Senator CHILES. Statistics are important, and you have to send them to us. We have to get it to the attention of these other States so they really recognize that we have this kind of problem. It hits us in all areas.

Mrs. HUTCHINSON. I understand.

Senator CHILES. We did some work on this. Senator Stone has done a lot of work in trying to update the census numbers constantly because, again, being a growing State like we are in Florida, if we have to go back and rely on the 1970 census all the way until the 1980 census comes, we will have difficulty. During that time we almost doubled in population of older persons.

Mrs. HUTCHINSON. The three counties in southeast Florida are really catching up because we are getting more.

Senator CHILES. In addition to that, this additional burden of our tourism population that comes down for the winter.

Mrs. HUTCHINSON. In the nutrition program some will come twice and somebody else will come once, but that is not right when you have your own population here year around. They are willing and they do cooperate and they are wonderful, but we need to do something.

Senator CHILES. I want to thank you all for your discussion this morning. I think it is very helpful to us and very helpful to the record we are attempting to build here. We do appreciate your coming very much.

Mr. MANN. May I add one point, Senator?

Senator CHILES. Yes, sir.

Mr. MANN. We have heard a lot said today against our developers, and we will gladly volunteer to have a shootout with our developer, but the concept that we have at Century Village—the recreation concept is a boon to gerontology, because the most important change of the senior citizen when he retires is what he is going to do with his time and with his life. If he is not at all active, he just deteriorates. The concept that we have, there are so many activities for the individual to participate in that if he doesn't, it is his own fault.

I would appreciate, Senator, if you and your committee would give some thought to those people who cannot afford any kind of a condominium, yet build for those people with the same kind of concept and give them the same privileges that those who can afford have.

Thank you.

WORKING ON PROVIDING SERVICES

Senator CHILES. We are already working on that in trying to provide the multiple services within some of our highrise complexes, even where there are rent subsidies in trying to provide all of the services. We are just beginning to deal with that problem.

Thank you very much.

Mrs. HUTCHINSON. May I say just two quick things? You mentioned medi-gap once. I hope you don't dismiss that because we have had so many outreach people that have indicated they have people they are concerned about. They are getting in the mail all of these proposals as well as by telephone. I hope you don't let that go.

The second thing is having been in Washington and having worked on this——

Senator CHILES. We have held hearings on that and we are not going to let it go. I assure you on that.

Mrs. HUTCHINSON. Good.

The other is the White House Conference. What you are doing here in Florida, having the number of elderly that it has, there will be leadership in some States some place, and I would like to say to you, Senator Chiles, being from the State of Florida and with the new Governor, that we do get at the grassroots and not let these issues go awry through the Older Americans Act. All these things that we have been talking about, and talk about them from now on—start at the grassroots and not let the planning just come from the top, but from down here. We could do this with your help and the new Governor-elect, as well as at the local level. That would be of assistance to the State of Florida, as well as getting the data that they need in order to help do the planning.

We would just like to say we are here, the area agency in Florida. We want to help, we would like to assist, and we would like to see the State of Florida take the leadership role in the White House Conference planning.

Senator CHILES. We want your help and we will try to work it out.

Mrs. HUTCHINSON. Thank you.

Mr. MANN. Thank you, Senator Chiles.

Senator CHILES. Our next panel is going to be a panel of State officials and private attorneys. I will ask them to come up and take their seats if they will. Before we get started, we will take a short recess.

[Whereupon, the committee took a short recess.]

Senator CHILES. We will get started again.

We now have our panel of State officials and private attorneys. We will start with Mr. Thomas Pflaum, who is the assistant attorney general, consumer division, Tallahassee. If you have a full statement, we will be glad to put it in the record.[1] You can sort of summarize your remarks so we will get into some questions and answers.

STATEMENT OF THOMAS M. PFLAUM, ASSISTANT ATTORNEY GENERAL, CONSUMER DIVISION, TALLAHASSEE, FLA.

Mr. PFLAUM. I have made available to the committee a written synopsis, or historical sketch describing the attorney general's efforts over a 5-year period to obtain relief for condominium owners from oppressive recreational leases. I do not think it necessary to restate that historical synopsis because it is quite detailed, so perhaps I might simply state my views on where we have been and where we have come.

Senator CHILES. All right, sir.

Mr. PFLAUM. I am here on behalf of the attorney general and the Florida Department of Legal Affairs. As you know, the attorney general has dedicated nearly 5 years of hard-fought litigation, administrative and legislative proceedings, in an effort to provide legal relief from condominium recreational leases.

[1] See p. 102.

Senator CHILES. I think the attorney general has been a tremendous force and power in trying to effect some relief here, and that effort certainly has to be part of the reason that we have come up with the Federal bill. Because, where it appears finally that the courts cut you off from the remedies you could effect in Florida, we now see the need for trying to address this federally.

Mr. PFLAUM. And that is the main point I would like to make. At the risk of overemphasizing our losses, I think I must say that in retrospect, if we stand back and look objectively at the present status of the laws, we have failed. We have been unable to accomplish our ultimate goal, which was and is to generate a Florida Supreme Court decision of good precedential value declaring these recreational leases invalid, or at least reform them. Of course, we have had victories in the sense of successfully assisting individual condominium owners escape from a specific lease usually by "persuading" the developer to negotiate a settlement, or "buy-out" of the leases, but to the best of my knowledge we have never obtained that sought-after appellate decision.

ANTITRUST TIE-IN THEORY REJECTED

As you are aware from other testimony, the Florida courts have basically rejected the antitrust tie-in theory, which, incidentally, I think is still the best theory and remains active in the Federal courts, and have held that the "little FTC" act, section 501.204, Florida statutes, cannot be applied retroactively to leases assumed in the 1968 to 1974 period. In addition, certain Florida appellate courts have gone so far as to hold that the "little FTC" act, which is our principal enforcement remedy, does not even apply to "real property" transactions such as leases—a principle which is wrong but which is currently binding.

Accordingly, although litigation continues, and although we may some day vindicate our theories, the present status of Florida law looks to me a little grim.

And in light of this unresponsiveness by the Florida courts, we must recognize that the economics of continued enforcement of condominium recreation leases is stressing. I have been involved in cases where the rent under the lease has increased 100 percent or more in 5 years, and unless the government intervenes, will probably do so again. As you are aware, these leases typically run for 99 years, many are indeed for a perpetual term which will cause an inflationary bubble of almost inconceivable proportions. My written presentation details the unconscionable elements of these leases, and need not be restated here, but I hope that Congress appreciates how totally unfair these leases are, and how impossible is the economic burden which they impose. Suffice to state unequivocally my belief that, in light of the failure to obtain State court relief, Federal relief is undoubtedly needed.

However, I must note my skepticism that the proposed Federal legislation will generate the necessary national support. Certainly, it appears to me that there is a commerce clause "nexus" between these leases and Federal jurisdiction; I think in a historical sense, as you have pointed out, Congress has often had to intervene when the States have failed to safeguard citizen rights, and I think we have reached

that point now. However, I think we should recognize that these leases are not yet truly "national" problems and that this is perhaps not the era for such remedial social legislation. Perhaps Rod Tennyson might speak more on this strategic issue, but it may be worthwhile for your committee to also consider alternative Federal measures, such as changes in the tax system, which I understand actually promotes these unfair leases, and which may discourage settlement.

In conclusion, let me say that I think we are facing a major social and economic problem caused by the enforcement of condominium recreational leases, that we have failed to obtain the needed State court relief, that the proposed legislation is excellent and undoubtedly needed, and finally, that alternative Federal remedies should also be considered.

Thank you for allowing me to speak to you, and I will be pleased to answer any further questions you may have.

[The prepared statement of Mr. Pflaum follows:]

PREPARED STATEMENT OF THOMAS MARTIN PFLAUM

Mr. Chairman and members of the committee, my name is Thomas Martin Pflaum, and I am appearing today on behalf of Attorney General Robert L. Shevin, who is Florida's chief legal officer. I am the assistant attorney general who has, for the last year and a half, been principally responsible for the attorney general's condominium litigation and related condominium activities. It is a great honor to appear before you to express my views of the severe psychological and economic problems which confront thousands of elderly condominium residents in this State, and which arise from the enforcement of unfair land and recreational leases and management contracts.

As you know, for approximately 5 years the attorney general of Florida has attempted to obtain relief on behalf of elderly Florida citizens, many of whom simply can no longer afford the ever-escalating costs of their land and recreational leases and management contracts. Based on my experience in this area since mid-1977, and my review of the attorney general's previous efforts since 1974, I firmly believe that Federal relief, particularly in the form of remedial Federal condominium legislation, is not only the best means of assisting these tens of thousands of elderly condominium residents but indeed appears to be the only effective relief available.

I believe the most useful contribution I can make to this committee is to fully advise it of the history of the attorney general's efforts to obtain relief on behalf of these elderly citizens. As you will see from my historical summary below, the attorney general's efforts in this area have been diverse, complex, persistent, and only marginally successful. I should acknowledge, of course, that the agency with principal authority (some would argue exclusive authority) over condominium matters is the Florida Department of Business Regulation, Division of Land Sales and Condominiums. Assuming proper support by the Florida Legislature, and given the full disclosure requirements of the current Condominium Act, I think the division will be able to prevent a reoccurrence of the type of massive overreaching and deception which occurred from the late 1960's through 1975. However, it is apparent that not even the division's Jeff Andrews, whose skill and dedication is widely and deservedly recognized, can provide relief to the thousands of elderly condominium purchasers who purchased prior to current legislation.

HISTORICAL SUMMARY

In the late 1960's and early 1970's the condominium market of Florida's housing industry underwent an explosive increase in building and sales, primarily affecting the three lower southeast counties of Dade, Broward, and Palm Beach, as well as the Tampa Bay area. Presumably this surge of condominium development and marketing reflected substantially increased costs of traditional, single-family housing, as well as increases in Florida's retired population. It is these tens of thousands of elderly purchasers, who purchased their units in

the 1968–74 period prior to remedial Florida legislation, who most desperately require Federal assistance.

As you may be aware, the Florida "little FTC" act, which generally prohibits unfair or deceptive trade practices (section 501.204, Florida statutes), did not take effect until 1974. Immediately thereafter, the attorney general, as the act's primary enforcing authority, conducted a series of public hearings to determine what Florida's citizens viewed as their most pressing consumer problems. Problems concerning condominiums were those most frequently voiced. In descending order of importance, their specific concerns were mandatory land and recreational leases and similar arrangements, mandatory management and maintenance contracts, construction defects, and transfer of control from the developer to the condominium association.

These consumer complaints, voiced during the attorney general's original public hearings, clearly illuminated the misrepresentation, overreaching, and nondisclosure then common in condominium marketing. These concerns were later supported by the findings of a study, entitled "Condominiums: Their Impact on the Southeast Florida Housing Market," which was prepared for the attorney general by William Bosher, an economist assigned to the Department of Legal Affairs from the Federal Civil Service Commission, as in intergovernmental fellow.

Based on this data, it was obvious that the situation having the greatest potential hardship to condominium purchasers was the prevalent use of recreational leases. This marketing format arises from the developer's retention from the property submitted to the condominium form of ownership of those areas on which recreational or other common facilities are located. This property is then leased to the condominium association and its unit owner members under a long-term (usually 99 years) lease.

In practical economic terms, these leases were devised by developers and their attorneys in part as an indirect method of financing the sale of the condominium units, and perhaps indeed of concealing the actual cost of the transaction. Many developers have conceded that the competition to sell condominium units in the 1968–74 period placed them in a position of having to advertise the units at a relatively low price, often below their actual value. Accordingly, the device of recreational and land lease was used to permit the solicitation of sales based on a low (e.g., $25,000 or less in many cases) advertised price, thus attracting purchasers without disclosing the fact that the actual investment cost would be recovered by means of the leases. Consequently, the advertised price was often only a small part of the true cost of the investment. In light of the ever-escalating "rent" for the land or the facilities, the actual costs may be two or three times the nominal, or disclosed price. Accordingly, the enormous rent paid under the leases seldom reflects the value of the leased property, which is often unimpressive, but rather the developer's profits on the entire project.

The pernicious effect of these leases can hardly be exaggerated: Under the leases, the unit owners rent certain limited areas of the common elements (such as the swimming pool), and are irrevocably bound to pay rent, whether or not they are able to use the facilities, or even whether or not the facilities continue to exist for 99 years. The leases thus run with the land so that each successive purchaser (and their heirs) are, for all practical purposes, eternally obligated under the leases. In addition, the leases contain lien provisions which permit the developer (and its successors and heirs) to foreclose the unit owners' very dwellings, and often also all other condominium property, for failure to pay the rent under the leases. In addition, and most importantly, the leases contain escalation clauses which permit the developer to continually raise the lease rent, for 99 years, to reflect changes in the Department of Labor's cost of living (CPI) index. (Remarkably, many of the leases even provide that the rent can only be increased to reflect increases in the CPI, notwithstanding hypothetical decreases in the CPI.)

Owners Responsible For All Services

Finally, in addition to all of the other unfair provisions, the leases are generally "net" leases, under which the developer has no obligations or duties whatsoever except to collect the ever-escalating rent from the unit owners. The leases thus provide that the unit owners are responsible for virtually every obligation of ownership, including insurance, taxes, maintenance, repairs, replacement, and servicing, and require the unit owners to return the facilities to the developer, in

the middle of the 21st century, in the same condition as built. Accordingly, the unit owners are obligated to assume the costs of so maintaining, insuring, and replacing the rented facilities, which costs have themselves doubled, in addition to paying ever-escalating rent to the developer, even though the developer has no costs or obligations which would justify such escalated rent.

It is also critical to understand that these palpably one-sided and unfair leases were never executed or accepted by the unit owners. One of the most remarkable aspects of the lease procedure was that the developer, having created the condominium, simultaneously created the condominium association to represent the unit owners. However, since the developer initially is the sole owner of all the units, the developer obviously controls the association and can execute the leases on behalf of himself and on behalf of the unit owners; as both lessor and lessee. In other words, typically the lessee association, controlled by the developer himself, agrees to the lease without any participation at all by the people who are subject to it. Upon purchase of a condominium unit, the owner is required to adopt the lease either automatically and without his knowledge or pursuant to an assignment during closing. Indeed, many of the purchasers were never even provided with the leases and other obligations which they were assuming by purchasing the unit and becoming members of the association. It is obvious, in either case, that the elderly purchasers could not have understood what they were getting into, even if they had the opportunity to review the documents, for the pertinent documents may be over 100 pages of single-spaced, interrelated legal provisions, which even competent attorneys have difficulty understanding. In many cases, purchasers were actually misled about these obligations. For example, purchasers were advised in their purchase agreement of a lease which required them to pay "$15 a month," but were verbally told by the developer's agents that such rent would "never be increased," or would be increased only "a little." In fact, the current inflation rate has caused the rents to increase 100 or more percent for many condominium purchasers since 1972 alone.

The principal oppressive features of such leasing arrangements are thus: (1) Acceptance of individual liability under the lease was made a mandatory condition of purchase of a unit without proper disclosure of such liabilities; (2) the rent was subject to escalation clauses which caused the rent to increase in direct proportion to increases in the Consumer Price Index; (3) obligations under the leases were secured by a lien which could be foreclosed on the unit of any unit owner failing to pay; (4) the lessee unit owners were seldom, if ever, in a position to understand what they were getting into, much less negotiate the terms of the relationship; (5) the rent under the leases has no reasonable relationship to the value of facilities or services provided; (6) the leases were offered and accepted by the developer himself, with no participation by the individual unit owners; and (7) the leases are commonly net leases, under which the unit owners assume all the costs of operating the facilities. As inflation rose at unprecedented rates in the early 1970's, the lease payments for tens of thousands of unit owners have been escalated beyond reasonable limits of affordability, and thousands of elderly condominium owners now suffer legitimate fear of losing their homes by foreclosure. Having worked with many of these elderly unit owners, it is apparent to me that these unfair and unforeseen obligations have caused them great distress and induced in them a sense of helplessness and vulnerability which cannot easily be remedied.

Due to limitations on personnel and resources, it was originally felt that the main focus of the attorney general's efforts to redress these problems should be to use the Florida "little FTC" act, based on two legal theories: (1) The leases constituted a tying arrangement and per se violation of State and Federal antitrust laws, thus making the arrangement an unfair method of competition in violation of the act; (2) the recreational leases were unconscionable at common law at the time of their creation, thus rendering their enforcement an unfair and deceptive act or practice in violation of the act. Both theories contained allegations of misrepresentation, nondisclosure, and deceptive conduct, but did not assert actual fraud.

Attorney General Initiates Test Cases

Accordingly, four test cases were initiated by the attorney general in the fall of 1974. These test cases invoked the administrative enforcement powers of the "little FTC" act by seeking to impose cease-and-desist orders against the allegedly unlawful practices, through administrative rather than judicial

proceedings. Although both antitrust and common law theories were alleged, emphasis was placed on the antitrust tie-in theory. The four projects involved in these cases were Century Village and Golden Lakes Village in Palm Beach County, and Pine Island Ridge and Holiday Springs in Broward County. After a year and a half of jurisdictional litigation, the result was: (1) Century Village obtained a writ of prohibition prohibiting the continuation of the administrative proceeding against it. The effect of the writ was to make it appear that procedural and jurisdictional objections could be more easily overcome if administrative rules were adopted by the Governor and cabinet which specifically covered the tying arrangements. Such rules were proposed by the attorney general and they remained pending until the supreme court's Avila South decision required their withdrawal; (2) Golden Lakes Village removed the administrative proceedings to the circuit court, and a voluntary dismissal was taken by the attorney general as a result of factors described below; (3) Holiday Springs settled with the unit owners; (4) Pine Island Ridge petitioned for bankruptcy and obtained reorganization in the Federal court, based in part on a settlement of the recreational lease dispute under which purchasers were given the option to reject the recreational lease and the rights thereunder.

As described more fully below, these initial efforts to challenge the leases through the "little FTC" act and the tie-in theory were ultimately frustrated by appellate decisions holding that: (1) the act could not be retroactively applied to leases which were executed prior to its effective date, without violating the constitutional prohibition against retroactive invalidation of existing contract rights; and (2) that no tie-in existed under State antitrust laws, because the sale of the units and the simultaneous lease of recreational facilities was essentially a single real property transaction, without two separate products.

In the meantime, private litigation involving the same or similar legal theories was proceeding in both the Florida and Federal courts. Legal theories for challenging the enforcement of land and recreational leases were (and remain): (a) Federal antitrust tie-in theory, based on the fact that the purchase of a condominium unit is mandatorily tied to the acceptance of the lease; (b) unconscionability at common law or under the U.C.C., based on the one-sided, overreaching nature of the leases, the unequal bargaining power of the parties, and the inherently unfair provisions of the leases; (c) the prospective incorporation (contract law) theory under the *Kaufman* v. *Shere* and *Century Village* v. *Wellington* decisions, under which the developer is deemed to have (inadvertently) adopted subsequent amendments to the Condominium Act which invalidated the lease escalation clause; (d) the corporate self-dealing and breach of fiduciary duty theories, arising from the developer's execution of the lease with himself as both lessor and lessee.

Of course, in the 1974 session, the Florida Legislature enacted a complete revision of the Florida Condominium Act. Theretofore, the act had been one of the minimal permissive regulation of the industry, leaving maximum flexibility to developers. The 1974 revision, which formed the basis for the present Condominium Act, attempted to specifically address many of the consumer problems which had become evident by that time. This included a provision which expressly declared unlawful and unenforceable rent escalation clauses based upon increases or decreases in consumer and commodity price indices.

After the 1974 legislation, litigation ensued raising the issue of the constitutional applicability of this legislation (prohibiting escalation clauses) to leases executed prior to the effective date of the statute. The attorney general was involved from the beginning in such litigation, which ultimately resulted in a holding by the Florida Supreme Court that retroactive application of the Condominium Act amendments would unconstitutionally impair the obligations of contract. The decision in this case, usually referred to as the *Fleeman* decision, struck down the retroactive application of the escalation clause prohibition, leaving only its prospective application intact.

No Relief For Purchasers of Condominiums

The court's decision on the "impairment of contract" issue, in conjunction with other cases decided at the same time (e.g., *Avila South*) made it clear that the Florida courts were viewing the sale of condominium parcels and the lease of recreational facilities as a single process, and that the Florida Legislature would not be capable of providing relief to the 1968–74 purchasers. Thus, the legal

underpinnings of the prevailing anti-trust and "little FTC" act theories were negated, at least with respect to the Florida courts.

However, these same negative decisions by the Florida courts included dicta suggesting the doctrine of unconscionability as a remedy for aggrieved unit owners. Both the attorney general and the legislature responded to this dicta. In further amending the Condominium Act, the 1977 legislature enacted an evidentiary provision creating a rebuttable presumption of unconscionability where certain elements were present in a lease, which could be used by litigating unit owners. See section 718.122, Florida Statute (1977). The attorney general similarly proposed, and is now defending, the adoption of administrative rules specifying that the "little FTC" act provides a remedy against the enforcement of leases that were unconscionable at the time of their execution. These unconscionability rules are designed to be useful to aggrieved unit owners both independently or in conjunction with the statutory presumption and in conjunction with common law unconscionability actions.

Prior to the proposal of these rules, the attorney general urged both sides of the recreational lease dispute to lower the emotional level and to engage in good faith settlement negotiations. The attorney general agreed not to initiate new actions during the cooling off period. After a 4 to 5 month period, when the cooling off period failed to have the desired effect, the above-described unconscionability rules were proposed. Simultaneously, the attorney general's office began to review complaints and gather additional information which could be used to initiate new test cases emphasizing unconscionability and corporate self dealing as grounds to invalidate the leases. The proposed rules have been aggressively challenged pursuant to the Administrative Procedures Act, and there is no expectation that they will soon be made effective.

In 1977 and 1978, we initiated as a party plaintiff or appeared in as amicus in numerous trial and appellate condominium cases seeking to obtain a judicial remedy for unconscionable recreational and land leases. The two original cases were *Rothmoor* in Pinellas County and *Plantation* in Broward, both of which have been settled by the unit owners. Other such cases are pending or proposed. Although litigation is still in progress it has become apparent that, with a single exception, our efforts have been noticeably unsuccessful. I use the term "unsuccessful" in the context of our failure to generate an appellate decision striking down or reforming a land or recreational lease on a theory which has ready application to other developments throughout the State. Stated differently, as a practical matter it is not a sufficient solution to the lease problem merely to convince a trial judge to invalidate or reform a specific recreational lease on grounds of unconscionability or self-dealing, (nor to frighten a single developer into settlement) for such "victories" do not have statewide applicability, and cannot be applied to other condominiums without a separate full scale trial on the merits. Therefore, although the attorney general's office has succeeded in individual cases, at least to the extent of forcing a buy-out of the lease on terms favorable to the unit owners, there has yet to be an appellate decision supplying broad legal precedent to solve the land and recreational lease problem. The single exception I noted above was the decision of a Florida appellate court in *Kaufman* v. *Shere*, which held that any recreational or land lease which referred to the Condominium Act of Florida "as amended from time to time" should be construed (by all courts) to mean that the developer had prospectively adopted the later changes in the condominium act prohibiting escalation clauses in such leases. In other words, *Kaufman* v. *Shere* provided a means, with statewide applicability, or circumventing the Florida Supreme Court's decision that the 1974 protective legislation could not constitutionally be applied retroactively to prior leases, for *Kaufman* construed certain language in the leases to mean that the developer prospectively incorporated such legislation. The *Kaufman* decision, however, has yet to be clearly affirmed by the Florida Supreme Court. Moreover, *Kaufman* only provides a partial remedy, for the case is only relevant where a developer or his attorney made the error of using the "magic" language referring to "the Florida Condominium Act as amended from time to time." In most condominium cases, such error was (unfortunately) not made by the developer's lawyer.

Attempts Made to Reform Leases

As demonstrated above, the attorney general has initiated successive attempts to invalidate or reform the unfair recreational land leases in this State. There is

no way of safely predicting the eventual outcome of these efforts, but it can be stated unequivocally that there is no present indication that this office will be able to obtain the desired decisions for many years, if at all. Even aside from the numerous retroactivity problems noted above, the attorney general's efforts to assist condominium unit owners is often frustrated by jurisdictional, standing, and capacity challenges which the parens patrae doctrine only partially answers.

Thus the problem for tens of thousands of elderly condominium residents who cannot reasonably afford private counsel and lengthy litigation can only become more grave. It is self-evident, as a matter of mathematics, that the rent escalation "bubble" must eventually burst, for there is no way that our elderly citizens, living largely on limited social security, pensions, or other such income, can pay rent and assume maintenance costs which escalate so frequently that they essentially double every 4 to 5 years. To take an example from a recent case I initiated (which has since been settled), original annual recreational lease rent which was $21,000 (or $200 per unit) when the 100 unit owners purchased their units in 1972, had, by 1974, jumped to over $26,000; by 1976, the rent had jumped to $34,000, and by 1978, the rent had been "adjusted" upwards to approximately $40,000. In addition, the maintenance costs for these 100 unit owners had a commensurate increase from $24,000 to $40,000. Thus, in this typical development, the total income to the developer for rent and maintenance of the recreational facilities was from 1972 through 1978 approximately one third of a million dollars. This despite the fact that the original cost of the facilities was approximately $50,000 and the 1978 value did not exceed $80,000. Thus the developer obtained over 600 percent profit in the first 6 years of a 99-year lease. Projecting such costs into the future, and assuming only a 6.5 percent inflation rate, we can see that by the early part of the next century, each unit owner (or their heirs or assignees) will be required to pay tens of thousands of dollars per year in rent and maintenance fees. Despite the fact that the facilities leased are only a swimming pool and shuffleboard court, the developer can reasonably expect to be making over $1 million per year in rent, within 40 years. In the aggregate, such yearly rentals will amount to tens of millions of dollars over the 99-year term of the lease, for a single small condominium.

It is obvious that such rental obligations are an impossible economic burden for the individual condominium dwellers, even aside from the severe social and inflationary pressures which such schemes promote. Unconscionability theory, or theories based on corporate self-dealings and breach of fiduciary duties, offer only a prospective and partial solution to this economic disaster, for such theories can only be used after extensive litigation by each and every condominium unit owner in the State. For the poorer of the State's elderly condominium dwellers, such litigation is so lengthy and costly as to be no solution at all. And as has already been noted, the Florida Legislature is evidently incapable of providing a remedy, because of the constitutional prohibition against retroactive impairment of contracts by the State. For that reason, a Federal solution is imperative. I would therefore respectfully urge this committee to support the proposed Federal legislation to prohibit the further enforcement of escalation clauses in recreational and land leases, whenever such leases were executed.

Senator CHILES. Thank you very much.

Next is Mr. R. Jeff Andrews, chief, Bureau of Condominiums, Tallahassee.

STATEMENT OF R. JEFF ANDREWS, TALLAHASSEE, FLA., CHIEF, BUREAU OF CONDOMINIUMS, DIVISION OF FLORIDA LAND SALES AND CONDOMINIUMS

Mr. ANDREWS. Thank you, Senator Chiles. I also will briefly touch on some of the items that I have covered in my written testimony which is of record here.

Senator CHILES. Again, your statement in full will be included in the record.[1]

[1] See p. 109.

Mr. ANDREWS. I am going to deal basically with 2 of 10 areas that I had designated as problems that we are currently having in Florida. One of those areas has been very thoroughly covered already which is the recreation lease problem. The two areas that I would like to deal with that I think we need to look at on the State level and also on the Federal level are those areas of complexity of documents and the area of problems of community living.

It has been the experience of the division that the problems of community living are very numerous and very difficult, and we are of the opinion that the problems of community living come mostly from a lack of information, education, knowledge, and the kind of material that the purchaser or prospective purchaser has not been privy to and is not getting before he moves into the condominium. As you know, the condominium way of life and the condominium concept is relatively new in the United States, and we have had only a few short years of dealing with it in Florida. We have a lot of people who are choosing this style of living who are not familiar with high density living, the proximity and closeness of neighbors, the democratic rule concept, and the whole concept of condominium living. It is very difficult sometimes for people to accept this way of life.

CONDOMINIUM PUBLICATIONS AND SEMINARS

On the State level we are trying to deal with this through various approaches, publication being one, and seminars another. Hopefully we will eventually get more courses offered in the universities and the colleges in the State to better inform people as to exactly what condominium living is and what they have to deal with as a condominium unit owner.

The other problem which I will briefly touch on is the problem of complexity of documents. As you know, the documents that a prospective purchaser has to go through to buy a condominium are voluminous, verbose, and difficult to understand. They are mostly in legalese, it is very hard for the average person to realize exactly what he is getting into and even if he reads it and thinks he understands it, oftentimes there are clauses or provisions that tie him into unknown obligations, for example, recreation leases.

A new scheme that we now see surfacing is the mandatory social club, where a person buying into a condominium is required to join a social club which has a monthly fee, a recreation clause, and is not prohibited by the provisions passed by the Florida Legislature in 1975. Thus, we have a new scheme developing that we are going to have to deal with and we will probably have to address it through additional legislation.

The complexity of documents is such that even—and I think you heard it in some of the earlier testimony—persons having legal counsel oftentimes do not realize what they are getting into. Part of that problem, of course, is that some of the attorneys dealing with condominiums are not familiar with condominium documents, and it is difficult for them to understand the complexities involved in the documents.

I brought what I think is a good example of a set of condominium documents. I brought it to show what the purchaser is facing when

he buys a unit. This set of documents, as I say, is what I think is a good set—it is well laid out, it is well indexed, it has a glossary, it has an overall index to all the sections and the various parts of the documents. The complexities include such things as a declaration, articles and bylaws, easements, and other complicated items. A purchaser's ability to deal with this is practically impossible, and unless he has an attorney who has done condominium work previously, he is not going to get much help with these documents.

Standardization of Materials Needed

I am not sure what can be done to simplify documents. Florida, as you know, has passed a rather far-reaching disclosure law and I think it has helped, but there still is the problem with the sheer volume of materials that the purchaser has to go through. We are making some approaches to the title companies to see if there is some way we could standardize some of the documents, such as the declaration and others of the more complex items. I think some States may possibly—New Jersey, for example—have the title insurance companies insure the legality of title which is not done in Florida.

These two sections are very important to the division. The approach to dealing with these problems is to attempt to work with the association groups and the other interest groups around the State to accumulate and disseminate as much information as we can about living with and resolving problems in a condominium.

The Federal Government could be of great assistance to the States in this particular area by lending the State the expertise of the Federal agencies concerning the condominium lifestyle and its application to everyday living. It could also fund various informational-type projects such as seminars, educational courses, and encourage through the use of Federal funding the establishment of condominium courses in the universities in the State, special projects for creation of simple pamphlets on condominium living and also to distribute educational-type materials.

If the condominium concept is to work, we are going to have to make more of an effort to provide support to the concept. The Federal Government must make a fairly substantial commitment monetarily to resolve some of the problems and to disseminate information to persons choosing the condominium way of life. Those persons will then be able to purchase a condominium with their eyes open and with an understanding of what they are getting into and an understanding of some of the problems of condominium living.

[The prepared statement of Mr. Andrews follows:]

Prepared Statement of R. Jeff Andrews

In the early seventies the Department of Housing and Urban Development (HUD) commissioned a study on condominium and cooperative living which was produced in finalized form in 1975. In that study it was found that approximately 4 million Americans then lived in condominiums. In the last 3 years there has been a tremendous increase in condominium living and in Florida the condominium concept has spawned a mini-economic boom in condominium units. In 1975, three States—Florida, California, and New York—contained approximately 50 percent of the entire condominium and cooperative housing inventory in the United States. During the past 3 years Florida has not relinquished its share of

the condominium and cooperative market and has increased the total number of units constructed in the State by approximately 30 percent. The total number of condominiums and cooperatives now existing in the State are estimated to be greater than 12,000. As a leading condominium and cooperative State, Florida has approximately 25 percent of the total number of cooperative and condominium units in the Nation.

There are many positive aspects to condominium living that make the purchase of a unit attractive to the older resident moving to Florida for retirement purposes. However, the thrust of this hearing is to determine what the problems are and what might be done to resolve some of those problems. In the last 3 years we should have learned how to prevent the problems that were plaguing condominium and cooperative purchasers in 1975. Unfortunately, the 10 most significant problems for consumers of condominium and cooperative housing that were identified by the HUD study continue to be areas of significant concern to condominium purchasers today. These problems apply equally to all purchasers and especially to the older purchaser. A discussion of the problems as they apply to Florida follows:

(1) *The long-term recreation lease.*—This problem is still with us, although decreasing in total numbers. Florida law now prohibits the use of a recreation lease with a Consumer Price Index escalation provision included. The older leases containing these provisions are being bought out by the associations and settled in other ways by the parties involved. Of the filings stored in the Division of Florida Land Sales and Condominiums file room, approximately 5 percent have recreation leases.

That is not, however, a valid percentage for all condominiums in the State. The older condominiums (pre-1975) were not required to file if sold out, and are therefore not of record with the Division of Florida Land Sales and Condominiums.

The division has requested and has received from the Board of Regents a small amount of money to study the recreation lease problem to determine if there is a formula that can be established for buy-outs and to establish a pattern of negotiation for the buy-out of the recreation lease. Two professors from Florida State University are currently working on this project and will have a completed study by the summer of 1979. The outcome of that study will provide a negotiation buy-out model for use by other associations encountering the same difficulties with the recreation lease.

(2) *Low quality construction.*—This is a problem that seems to creep into the condominium and cooperative housing field when economic times are good and units are selling rapidly. Strong remedial, consumer oriented, legislation is probably the most equitable way to deal with warranty questions on a State level. Florida has addressed the problem by codifying common law warranty provisions through statutory construction.

(3) *Complexity of documents.*—The documents now being provided the purchaser are technical, lengthy, verbose, difficult to understand, and in general beyond the comprehension of an average purchaser. Florida has attempted to simplify the document problem by requiring that a prospectus be provided the purchaser which summarizes the content of the documents. However, the prospectus, as a part of the whole package of documents presented to the purchaser, is often so overwhelming to the purchaser that he does not make the necessary effort to determine what he is purchasing. Additionally, Florida has placed the right of remedy on the purchaser by statutorily providing for civil remedy by the individual. A claim may be brought against the developer for false and misleading information if the improvements do not contain all of the amenities or the promised state of completion of the unit has not been achieved at time of closing on the unit. Simplification of the documents as agreed to by the legal community, the lending institutions, and the consumer, and aggressive legal assistance by the State agency empowered with enforcement of the act, are the most effective ways to deal with this particular problem. The division is actively seeking effective alternatives for simplification and standardization of documents. Initial contacts have been made with the lending and title insurance industries for assistance in this matter.

(4) *Displaced tenants in conversions.*—Some States have taken the approach that displaced tenants must be provided with suitable comparative housing and that the tenants cannot be required to move if they are a certain age or have been a tenant for a certain period of time. Florida has taken the approach that

a person cannot be moved out of his apartment at time of conversion until his lease expires if greater than 120 days or following a 120 day period if less than 120 days. The elderly and lower income families are the ones that suffer the most from displacement by conversion of existing units. There are two answers to this problem: A prohibition against displacement of elderly persons; and construction of low-cost housing for the elderly and low-income families.

(5) *Association operating problems.*—This particular problem is a grave one and necessitates a massive educational program by the States and the Federal Government to inform prospective purchasers and unit owners of the techniques and difficulties of properly operating an association. Often board members and officers are inexperienced and have not dealt with the management and operation of a large corporation such as an association. Frequently, older Americans do not wish to assume responsibilities commensurate with those of the officers and directors of an association. Informational pamphlets, educational seminars, public interest film strips, and similar materials are needed to inform prospective purchasers of the condominium concept and lifestyle. The purchaser that deals from the strength of knowledge will be the unit owner that can positively contribute to the condominium way of life.

The approach of the division to this problem is to reorient the direction of the division toward educational and informational type programs to attempt to assist the associations in bringing its members into active participation of the running of the condominium or cooperative association. The division is not equipped to provide the materials and programs needed to inform prospective purchasers.

(6) *Problems of community living.*—This is probably the most difficult area to deal with of all of the areas listed in the HUD study. There are innumerable difficulties in adjusting to the condominium way of life. They include lack of familiarity with high-density living, multifamily ownership, lack of accurate information on what is purchased, and the rights and responsibilities that accompany that purchase.

The unit owner who has been a tenant expects someone to be available to resolve the problems confronting him, as was the case in the rental situation. The association becomes the surrogate landlord in a complex made up of erstwhile tenants. Therefore, the association must resolve problems. As the association is made up of unit owners and is ultimately controlled by them, each owner must contribute to the resolution of condominium problems.

Often the exhomeowner may have unrealistic expectations about condominium ownership. He may believe that, as he has bought and paid for his property, he may do as he wishes with it. Association rules can limit his activities regarding his unit. It is essential to the purchaser to learn those limits before buying and to understand that majority decisions prevail and that the condominium operates according to its rules and regulations.

The greatest problems confronting the division are problems dealing with unit owner difficulties and community living. The emphasis of the division in the coming year will be to deal with those problems through the associations and other groups who are constantly in contact with the condominium community. The division is undertaking projects on several fronts to develop educational pamphlets, to put together informational seminars and to encourage the publication of materials dealing with condominium living and the condominium concept. As previously noted, division efforts are aimed mostly at unit owners and do not directly affect prospective purchasers. The Federal Government could greatly assist the States by providing expertise and funding for the publication, dissemination, and institutionalization of the condominium concept.

(7) *Misuse of consumer deposits.*—This is an area which has always been a problem to condominium developers and to purchasers alike. Often the developer does not intentionally misuse the deposits but finds that economic problems and lack of proper planning for the development of the project have caught up with him and have caused him to misuse funds that were to be deposited and kept separately as a safeguard to the purchaser's money. In Florida, we have addressed this problem by requiring that 10 percent of the deposit moneys be placed in escrow to be utilized only as a refund to the purchaser or as payment on the contract at time of closing. Ten percent is not adequate for completion of a building and the deposit amount will have to be greater if it is to provide an assurance to the purchaser that he will receive the product as contracted for. Contrarily, a larger deposit amount would be harmful to the small developer and

would inhibit his construction activities. Nevertheless, it is very important to the purchaser that he understand that deposit moneys can be used in different ways depending upon the applicable State enabling act.

(8) *Nonpayment of association dues by the developer.*—This is the one problem of the 10 that is practically nonexistent in Florida. The Condominium Act requires the developer to pay his proportionate share of all units being offered for sale.

(9) *Warranties and engineering reports.*—These problems have been inadequately dealt with in many cases and are controversial legal problems as indicated by the large volume of litigation concerning warranties. A purchaser should evaluate carefully any warranty provisions being provided at time of purchase and should attempt to clarify any language that is vague or unclear in his contract or other documents.

The warranty section in Florida's Condominium Act does not clearly detail the warranties available to the purchaser under the act. Statutory warranties should be detailed clearly and simply, outlining specifically the protections and remedies available to the purchaser.

The most important area in which warranties and engineering reports are necessarily required is in the area of conversion of existing units. In the conversion situation the purchaser is buying an older unit and should be aware of the possible defects and problems that might arise when one purchases a unit in an older building. Florida's law is inadequate and only requires that disclosure be made of the defects, not that they be corrected. It is also inadequate in that the warranty provisions of the act do not apply to the conversion unless the building is less than 3 years old. Effectively that means conversions in practically all cases are not covered by the warranty provisions of the statute. Additional protection for the purchaser under the existing State statute is needed and should provide for absolute warranty periods for the purchaser when buying into a conversion situation.

(10) *Underestimating operating expenses ("low-balling").*—This particular problem is again one of considerable consequence to a purchaser of a condominium or cooperative unit. The solution to the problem presented herein is to require a reserve fund to be established by the developer to cover any misrepresentations as to budget amounts in the first year of operation by the association.

Florida has attempted to resolve this problem by requiring total disclosure of all budget items and, if managed by a management company, a specific breakdown as to the cost, number of employees, and time spent in the services being provided by the management company. As of this date that approach has not been totally effective and problems of low-balling are still apparent in some condominium developments.

Even if "low-balling" is not evident, older Americans on fixed incomes find that the spiraling costs of the association budget due to inflationary factors are devastating. Inflation accentuates the effects of "low-balling" causing the fixed income individual to pay a greater percentage of his income for nonessential items of operation and management of the association.

STATE AND FEDERAL COOPERATION

What, then, is Florida attempting to do about these problems and how can the Federal Government assist Florida in dealing with the problems confronting the condominium industry? The Division of Florida Land Sales and Condominiums has launched an offensive which changes the main thrust and emphasis of the division to that of education and information dissemination rather than caretaker and enforcer of provisions of the act. The basic method of operation of the division will be to deal with the umbrella association groups in providing educational materials to those groups and in assisting them with educational seminars and similar informational presentations for use by the association. Additionally, various condominium interest groups will be called upon to provide assistance in conducting the seminars and producing the materials needed for the educational efforts made by the division. Those groups will include the umbrella Association groups, the Florida Bar Association, the Condominium Advisory Board, the Community Associations Institute, the Building Managers International, and other groups interested in making the condominium concept succeed in the State of Florida. The staff of the division will be greatly involved in dealing directly with unit owner problems and complaints in attempting to answer the numerous inquiries that come into the division on a daily basis.

The Federal Government can assist by providing additional informational items and technical assistance to the division in its efforts to carry out a comprehensive program of information and education dissemination concerning condominium living. Funding will be of utmost importance to the States in attempting to deal with the innumerable problems confronting the condominium community and regulators, such as the division. There is a great need for simplified pamphlets concerning condominiums and cooperatives which can be read and understood by the average purchaser contracting to buy a unit in today's market. The scarcity of good statistical data available to the division is frightening when its thought that approximately 10 percent of the State's population currently lives in condominiums and cooperatives. The Federal Government could be of great assistance in providing staff and funding to bring together valid, reliable, statistical data for use by the division and the condominium industry.

Adequate funding and expertise would provide the necessary ingredients for successfully producing a large scale educational effort that would make all Americans and especially the older Americans aware of the condominium concept and condominium living. Outreach in the form of pamphlets, leaflets, films, college and university courses, and other methods of instruction could be undertaken with the necessary support from the Federal Government. A properly informed condominium unit owner is the key to the successful operation of a condominium and the successful application of the condominium concept as an alternative means of meeting housing needs.

There is not a need for additional regulation by the Federal Government. Another layer of bureaucracy for filing purposes or other reasons is not helpful to the industry. Close cooperation with the State and assistance as needed by the State is what the Federal Government can best offer to the State.

Living in a condominium can be and should be a positive and enjoyable experience. The benefits of shared expenses, recreational facilities, and planned community living are worthy of consideration when purchasing a home. Older Americans can benefit from the condominium way of life is properly informed and protected. The charge to the division and the mandate to the Federal Government is that condominiums be made a part of American life. Through cooperation, coordination, and a commitment to the condominium concept it can be made an essential part of the housing industry

Senator CHILES. Thank you, sir.

Gary, you have had some experience in being a member of the task force that helped to draw this legislation. We are delighted to hear from you.

STATEMENT OF GARY A. POLIAKOFF, OF BECKER, POLIAKOFF & SACHS, P.A., MIAMI BEACH, FLA.

Mr. POLIAKOFF. Thank you, Senator.

I am Gary A. Poliakoff from the firm of Becker, Poliakoff & Sachs. I did participate in the interagency task force in drafting proposed Federal legislation and also conferred on a regular basis with Mr. Pettigrew in his briefings to the White House on the proposed legislation.

I have prepared some 21 pages of testimony and obviously time will not permit me to give it all now, but I would like to highlight some of the major areas, particularly those that cover this matter.

Senator CHILES. The statement will be included in full in the record.[1]

Mr. POLIAKOFF. Thank you.

It has been estimated that in excess of 1 million Floridians reside in condominiums. A substantial percentage of those individuals are senior citizens over the age of 65 who came to Florida seeking carefree

[1] See p. 121.

living in their retirement years. In a number of instances their dreams have been shattered, life's earnings lost, and health impaired by condominium related abuses. In some cases the problems have been caused by the purchasers themselves. In other cases the problems were created by a few unscrupulous individuals, marginal developers, and investors looking for a quick profit. Most of the problems, however, relate directly to the inexperiences of a rampaging industry which grew too fast to enable it to accumulate a history of experiences and solutions which would have provided readily available answers to the problems associated with the operation and maintenance of commonly owned property.

My testimony will focus on the areas of condominium most likely to have a direct effect on the older purchaser. The remarks are based upon 6 years of firsthand experience working with over 100,000 condominium owners in solving the day-to-day problems of community living.

MAINTENANCE OF PROPERTY NO. 1 PROBLEM

To me the No. 1 problem facing the condominium owner is maintaining the commonly owned property, in light of escalation and inflation factors. In fact, as we all read in the newspaper today, since 1967 we have now increased exactly 200 percent in those 11 years and we are paying double today what we were in 1967.

The problem of inflation is not limited to condominium owners. Every segment of the population has had to make adjustments and sacrifices to meet the spiraling costs of living. To the fixed income or retired condominium dweller, however, the gravamen of the problem is accentuated by situations unique to commonly owned and maintained property.

In my opinion, there are eight factors that contribute outside of the normal cost escalation factors to the increasing costs in condominiums, and those are: Lowballing and misrepresentation as to cost of common expenses; misuse of startup funds or capital accounts; construction deficiencies; cost of maintenance of commonly used facilities during construction of phase developments; misapplication of association funds; mismanagement; cost-of-living clauses in compulsory recreational leases and long-term management agreements; and failure to provide adequate reserves for contingencies and long-range maintenance.

I would like to highlight several of these areas.

Lowballing and misrepresentations as to cost of common expenses is a situation wherein, during the developer process, the projected budgets are underestimated, understated and, as a result, the buyer buys anticipating paying so much, and in reality his costs will be substantially higher.

Misuse of startup funds is a process wherein condominium owners are required to contribute a certain amount to the developer and we have found these funds are exhausted by the developer under the control of the association.

Senator CHILES. Gary, what kind of provision does Florida law make now to try to protect against lowballing? Is there anything covered in the act?

Mr. POLIAKOFF. The Florida statutes do require the issuance of a projected operating budget. The Florida statutes do not have the type of provisions in them which I would recommend and have in my conclusion, those which are now used in the State of California. California requires that the projected budget be submitted to the committee and the board reviews the budget in terms of realistic costs of operation. If they find the budget is not realistic, they make the developer revise the budget. Flordia does not require that.

CONSTRUCTION DEFICIENCIES: UNEXPECTED COSTS

The third area relates to the construction deficiencies. With the sole exception of escalation clauses in compulsory leases, the area of abuse which most frequently results in unexpected costs to the condominium owners is that which relates to construction deficiencies. The magnitude of the problem is such that a congressional investigation is warranted in this area alone. In my opinion, the contributing factors which interplay to create market conditions conducive to allowing poor construction practices are the following:

First, real estate investment trusts. You might ask how does the problem of real estate investment trusts tie in directly with the problems of construction defects? The answer is simple. In the rush to loan out as much as possible as rapidly as possible, unqualified builders, with little or no prior experience in the development of multifamily housing, were given the green light to build substandard housing. A thorough investigation of the situation would reveal hundreds of stories of builders borrowing over 110 percent of the cost of construction, pocketing hundreds of thousands of dollars and then abandoning the projects. The counsel for one REIT related the story of a builder who, rejected by a savings and loan, went to a REIT which granted the loan. The REIT then borrowed the money from the same savings and loan which had previously rejected the builder.

Second, failure of municipal inspections. Consumers, often inexperienced in the technical language of building codes, must rely upon the municipal building inspectors for assurance that their home or condominium is built in accordance with all safety requirements. The issuance of a certificate of occupancy is too often looked upon by the consumer as a stamp of approval indicating that the building has in fact met all code requirements and has been constructed in accordance with approved plans and specifications. In reality nothing could be further from the truth. The following excerpts are from the report of the grand jury of Dade County issued on May 1, 1976. The entire report is included in my written statement. Let me read just one paragraph.

> The grand jury heard testimony concerning building inspection practices in Dade County and the city of Miami. One former inspector told us that inspection practices of the last several years have resulted in the construction of buildings which could be blown away in another "1926 hurricane." The evidence we heard support this statement.

Third, lack of building materials.

Fourth, absence of qualified workers.

Fifth, disregard of code requirements by both developers and design professionals. Developers, architects, and engineers are either ignorant of the construction codes or more cost conscious than they are concerned for the safety of the inhabitants and the utilitarian use and maintenance of the structure.

Maintenance Cost Should Be Emphasized

This is extremely important. Developers and architects should place greater emphasis on construction of buildings in a fashion which would assure lower maintenance cost for condominium owners.

During testimony at a recent trial on construction defects at the Bay Colony Club condominium, Charles W. Griffin, a noted expert in the field of roofing, when asked who installs the type of roofs most frequently found on south Florida condominiums, replied, "It's speculator and others who don't have to live with the consequences of their roofs."

It is not uncommon, Senator, for associations to have to assess their members tens of thousands of dollars to replace or repair construction defects. Implied warranties created by statute are of little assistance to the condominium owner since no bonding requirement exists and most developers are shell corporations without assets created solely for the purpose of developing a particular building or project, and when the project is completed they are gone.

The fourth area, the inflationary factor, was that of the cost of maintenance of commonly used facilities during construction of phase development. As a means of promoting large planned communities, developers often constructed elaborate recreational and commonly used facilities prior to the completion of the condominiums which would ultimately support said facilities. When the recession came they stopped construction. As a result, condominium owners found themselves trying to support the cost of communities planned to operate 3,000 or 4,000 units, with 400 or 500 families paying the full cost.

The fifth area is the misapplication of association funds. During the developer period we most frequently find the misuse of association personnel to repair buildings or help with the problems of the sales personnel or the association being charged with the cost of phase development tying into the existing building site. We have actual photographs which would document this statement. After transition, the most frequent problem in misapplication would relate to improper salaries paid to officers and directors and embezzlement of association funds by officers and/or agents. Interestingly enough, the Florida Legislature now requires the bonding of officers or directors controlling the association funds. Those areas of embezzlement that I have been familiar with this year are by managing agents who are not covered by the bonding provisions.

The sixth area, mismanagement. As in any business, mismanagement is a major cause of cost escalation. Unlike the traditional corporate operation wherein mismanagement may ultimately lead to business failure, in condominium the costs of mismanagement is merely passed on to unsuspecting unit owners in the form of higher

maintenance costs. Mismanagement is not necessarily an intentional act. In fact, in most instances it is caused by well-meaning individuals who, out of negligence, ignorance, or outright stubbornness, refuse to admit their limitations when it comes to operating a multimillion-dollar condominium community. The cause of mismanagement may vary depending upon whether an association is developer or owner controlled.

Mismanagement Results From Preoccupation

During the period of developer control we generally find that mismanagement results because of the developer's preoccupation with the development and sales program and not able to devote the time necessary to the successful operation of the community.

We also have unit owner control mismanagement. Leary of professional management, having associated their bad experience during the period of developer control with same, unit owners too often undertake the responsibility of association operations without the benefit or guidance of qualified professionals. Notwithstanding their dedication and good intentions, lay persons whose previous experiences were in the areas of retailing, secretarial, medical, et cetera, cannot be expected to possess the tools necessary to make the decisions necessary to properly operate these multimillion-dollar communities and yet, throughout the United States, inexperienced lay boards and condominium owners on a daily basis make decisions affecting the lives of millions of individuals and billions of dollars in real estate. Unit owners should take an active role in the day-to-day affairs of the association and in the policymaking decisions, but they should act with competent professional guidance.

The problem is further accentuated by the absence of an adequate number of qualified professional managers and independent management companies. This situation was created in part by the use during the early stages of condominium development of management contracts which tied into the development long-term developer management agreements and eliminated the competition in the field. As we began to eliminate these, there were more and more management companies coming into being.

You have heard a lot said about the compulsory recreational leases and their clauses, and I would like to address myself to it from a different aspect—from the viewpoint of the advocates. These leases have been referred to by the author of Florida's 1963 Condominium Act as "perversions" of the act. Although consumer awareness in recent years and efforts by State, Federal, and local agencies have significantly reduced the marketability of leases in new developments, a substantial number of Floridians, particularly senior citizens living in pre-1975 condominiums, are still tied to said leases.

There was a recent article that was published in the Miami Review. The article was, "The Other Side of the Recreational Lease Story." The author was Mr. Bergman. Mr. Bergman is known to those in attendance at this hearing since he was one of the principals involved in the Century Village complex. What he stated was to build a condominium

with recreational facilities requires costing of common areas by one of two generally accepted methods: Dividing that cost by the total number of apartments in a community and then equitably apportioning the cost by adding it to the base price of the units; and prorating the cost of the facilities, their maintenance and supervision, over the expected longevity of the community, and offering the option of a monthly payment without increasing the base unit price. He then contended that the recreational lease offers buyers a method of payment without increasing the basic unit costs. For that reason, the lease provided supportable condominium housing with recreational facilities to buyers who would otherwise not be able to afford them.

Buyers Not Given Choice

I do not agree with Mr. Bergman's position. The facts do not substantiate his statement. In the first instance, buyers were not traditionally given the choice between paying their pro rata share of the facilities cost or electing financing through the vehicle of a recreational lease. Their choice was simple, either purchase with a compulsory lease or buy elsewhere. In fact, Florida statutes prior to 1971 did not require any disclosures as to the existence of the leases and few, if any, purchasers were even aware of their existence.

Furthermore, even if we placed some credence on the proposition that the owners should pay a pro rata share of the cost of the amenities, an individual's pro rata share financed at traditional lending rates would not approach that amount paid under the leasing arrangement. In truth, the standard escalation clause found in the long-term leases used in Florida condominiums acts similar to a mathematical progression. As an illustration, the recreational facilities of one Broward condominium built at a cost of $200,000 returned $300,000 the first year and, based upon an annual cost-of-living increase of 5 percent, will return over $700 million over the term of the lease.

Advocates of leases would have one believe that the predominance of condominiums offering long-term leases provide their owners with extensive recreational facilities. This is very important, Senator. Nothing could be further from the truth. The average recreational facility is not even that similar to one you might find at Century Village or King's Point. The average recreational facility contains little more than a swimming pool, a card room, and a sauna. Instances exist where the recreational lease consists of no more than an easement right across a strip of land providing access to public beaches.

Equally fallacious is the developer's contention that he can provide housing at lower prices by selling the units at his cost and returning his profit over a long period from the recreational lease. The facts indicate that the base price of condominium units with recreational leases do not materially differ from similar units sold at condominiums without leases. Furthermore, a significant number of leases were sold by the developers—we have heard testimony to that effect—within a short period of the developer's completion of the project. This is important because if the developer contends he expects a return on his property over a long period of time, why didn't he break that cost

among the unit owners? They would have been happy to have paid it as part of the initial purchase price.

Adequate Reserves Need To Be Maintained

The final area I mention on the escalation factors is that dealing with the failure to maintain adequate reserves for contingencies and long-range maintenance. This is one of the areas I indicated, I believe, is partly the responsibility of the condominium owners themselves.

A popular board member is one who can state at the end of his term: "We are pleased to advise that maintenance costs for next year will remain at the same level as they have for the past 2 years." Then a new board takes office and discovers that $100,000 is needed to paint the buildings and there are no funds in reserve. Suddenly the owner is assessed $200 to $1,000. I have seen it. Of course they are not in a position to come up with that type of money, but had they planned over a period of time we might not have had the situation. They must maintain reserve accounts in order to eliminate the necessity for special assessments necessary to liquidate prior year's deficits and to meet contingencies.

Evidence of the problem is beginning to manifest itself in the increasing number of foreclosures being filed. In fact, this past year we happened to see the first instances of abandonment of condominiums by owners no longer able to meet the escalating cost of maintenance. In my testimony, which I won't get into, I made several recommendations for resolving the problem and solutions.

It does not really affect the majority of the owners here in the chambers today but I do just want to make one or two comments about what I call coerced ownership—the conversion from rental to condominium—because it is a serious problem.

The tenant purchaser, even under the most favorable of conditions, is still a coerced buyer. For unlike the individual who sought out condominium ownership, the tenant given the choice between ownership and renting had already elected to rent. Then suddenly, often without prior warning, the tenant receives notification that the building is being converted to a condominium. The typical "buy or get out" letter advises the tenant that if he fails to purchase his unit within a given period of time, usually 30 days, his apartment will be sold to one of the hundreds of outside buyers who allegedly have already placed a deposit for available units.

The pressure placed on elderly tenants by the conversion process can be devastating. On occasion anxieties develop. Instances of emotional illness, strokes, and heart attacks have been allegedly caused by the pressures of conversion. To understand the reason, one need only examine the characteristics of the tenants and setting in which conversions often take place. To the elderly tenant who has resided in the same apartment for a number of years, the building and its occupants become the home and family. The familiar neighborhood surroundings and long-term friends and acquaintances provide a feeling of security. To disrupt this setting is to create a major crisis. Thus, the decision whether to purchase or move is not solely an economic one, it is often based upon emotional considerations which distort logic.

SERVICES AND MAINTENANCE PROBLEMS

The problem includes the question of continuing services for those who do not elect to buy and the problems of building maintenance because most conversions do not have any implied warranties as to the conditions of the building, a very serious problem. We find that in older buildings being converted, although the purchaser may think he is paying lower costs, they are in fact higher, because in many instances the entire building system must be replaced after the conversion takes place.

In March 1975, I had the opportunity to testify before the Condominium Task Force of the Department of Housing and Urban Development and at that time I noted, and I quote:

> Any thorough investigation into abuses and/or potential problem areas in the condominium field must evaluate what is today becoming one of the most serious problems—the operations and management of condominium complexes by unit owner controlled boards.
>
> Each day, as more developers relinquish control of condominium associations to the unit owners, a new dilemma is created. Suddenly, lay persons who had previously equated their obligations as condominium owners to that of remitting monthly maintenance payments find themselves responsible for the operation of multimillion-dollar complexes.

Many of the problems of condominium operation stem directly from a lack of understanding of the condominium concept by various coowners and/or an intentional disregard for it. The Florida Fourth District Court of Appeals said it best in dicta in a recent case enforcing the covenants of a condominium:

> Every man may justly consider his home his castle and himself the king thereof; nevertheless, his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others.

Condominium ownership is not for everyone. The entertainer who feels compelled to rehearse at all hours of the day and night or the socialite who enjoys entertaining 20 guests around the pool on Sunday should each seek housing alternatives other than condominium.

For the older condominium owner, disenchantment with the condominium concept is most likely to result from one of the following areas, and excluded from this discussion are potential problem areas I have already noted.

Senator CHILES. We are running out of time.

Mr. POLIAKOFF. I will just highlight.

One of the main areas is the absence of anticipated services. You have heard some reference to that in some other testimony. They expected buses; they expected amenities.

Another area is children and pets. If you want to start an argument in a condominium, it's not politics or religion you have to be concerned with, it's children and pets. Between them, no single issue is more controversial than is age restrictions. On the one hand the elderly see it as a form of discrimination when applied against them in the job market. On the other, it is a totally permissible means of maintaining a community of congenial residents.

Another area is conflicts in association operation. Association operation is what I refer to as the consumption of condominium leaders. There is a problem in getting individuals to volunteer to serve on boards of directors because of the pressures that are incidental to the community and the abuses that are perpetrated sometimes by the condominium owners themselves.

Let me say in summary that there are measures that could be taken to curb a substantial number of these abuses.

Thank you.

[The prepared statement of Mr. Poliakoff follows:]

PREPARED STATEMENT OF GARY A. POLIAKOFF*

With the advent of the Federal Housing Act of 1961, which provided for the extension of the Federal Housing Administration insurance to condominium projects, "condominium" became a viable form of real property ownership. The almost instantaneous acceptance of the condominium concept by homeowners and the building industry has led to a growth rate unparalleled in the history of housing. The United States Department of Housing and Urban Development projects that nearly 50% of all new housing starts in the 1980's will be condominiums. This phenomenal rate of growth has been attributed to several factors, including the following stated in the "HUD Condominium/Cooperative Study".[1]

"Condominiums offer renters a product which combines some of the best characteristics of a rental project with some of the preferred ownership qualities of traditional single-family housing (e.g., tax incentives).

"Condominiums can provide traditional single-family homeowners the convenience and ease-of-maintenance characteristics of a rental product without foregoing tax benefits or the chance for equity appreciation.

"The rate of new household formations has increased in recent years while the average household size has declined. As a result, the demand for housing has increased while preference for space has declined, thus increasing the attractiveness of condominiums.

"Due to many factors, including rapidly rising land values, the cost of housing has increased at a higher rate than the cost of other products. This trend increased the demand for ownership as compared to renting by increasing the expectations for property appreciation.

"Condominium units can be sold for a lower purchase price than single-family homes.

"Sharply increased property taxes in most metropolitan areas have reinforced the effect of rising land values, and have increased the relative cost of larger homes.

"The increased total household income of many young couples (particularly professionals) has increased their preference for ownership. This increased household income is partially due to a higher female participation in the labor force, which also increases the household's preference for accessibility to both places of work.

The HUD study concluded that while many purchasers find benefits in condominiums, the major consumers have been:

"Retirement-age people with moderate or over-average wealth who would like to live in a warm climate.

"Persons under 65 who wish to move to a smaller, more convenient residence (frequently because their children have left home). Their preference for condominiums will be greater where a capital gain was realized on a previous home.

"New or young households with above-average income who do not expect to have children for at least several years. This group favors condominiums because they combine convenience with equity and tax benefits. In addition, core

* See appendix 1, item 1, p. 157 for additional material submitted by Mr. Poliakoff.

[1] Under mandate issued by the Congress of the United States, the Department of Housing and Urban Development (HUD) conducted a study on condominium and cooperative housing. On August 25, 1975 HUD published its conclusions in a three volume report.

area condominiums might be preferred by this group due to their accessibility to place of work and to other urban activities preferred by young couples.

"Middle-aged households with above-average income and/or wealth without children who would like (a) to move out of rental units in order to build up equity (or who hope for property value appreciation) while retaining the conveniences of rental units, or (b) to move out of single-family housing in order to enjoy the conveniences of condominiums and/or their accessibility features.

"High income and/or high-accumulated-wealth households with or without children seeking a second home in a resort area."

It has been estimated that in excess of one million Floridians reside in condominiums. A substantial percentage of those individuals are senior citizens over the age of 65 who came to Florida seeking carefree living in their retirement years. In a number of instances their dreams have been shattered, life's earnings lost and health impaired by condominium related abuses. In some cases the problems have been caused by the purchasers themselves. In other cases the problems were created by a few unscrupulous individuals, marginal developers and investors looking for a quick profit. Most of the problems, however, relate directly to the inexperiences of a rampaging industry which grew too fast to enable it to accumulate a history of experience and solutions which would have provided readily available answers to the problems associated with the operation and maintenance of commonly owned property.[2]

My testimony will focus on the areas of condominium most likely to have a direct affect on the older purchaser. The remarks are based upon six years of first-hand experience working with over 100,000 condominium owners in solving the day-to-day problems of community living.

I. Factors Contributing to the Escalating Costs of Maintaining Commonly Owned Property

The problem of inflation is not limited to condominium owners. Every segment of the population has had to make adjustments and sacrifices to meet the spiraling costs of living. To the fixed income of retired condominium dweller, however, the gravamen of the problem is accentuated by situations unique to commonly owned and maintained property. The following factors contribute directly to the inflationary costs of community living:

(1) "Lowballing" and misrepresentations as to cost of common expenses

Evidence exists to support the conclusion that some projected operational budgets are understated during the period of developer control and operation. As a result, sales personnel often present to prospective purchasers an estimate of their monthly costs which are far below the amount required to adequately maintain the commonly owned property. In addition to the hardship created when budget figures are increased to a realistic level, condominium owners must often bear the cost of a special assessment levied to liquidate past operational deficiencies created by the low budgets.[3]

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[2] In 1973, perceiving the need for a central source of data collection and dissemination of information geared toward the successful creation and operation of condominiums and Planned Urban Developments, the Urban Land Institute and the National Association of Home Builders, with funding support from the United States League of Savings Associations, the Veterans Administration and the U.S. Department of Housing and Urban Development, created the Community Association Institute. The CAI group, based out of Washington, D.C. is unique in that it is the only group in the country to represent all the segments of the condominium, co-op and homeowner association industry, with membership comprised of Community Association Leaders, Builders & Developers, Association Managers & Management Agents, Public Officials and Association Colleagues, including Accountants, C.P.A.s, Attorneys, Realtors and other professionals. Through research and education, CAI assists all automatic-membership community associations in condominium and planned developments serve their purpose: to preserve the quality of life and protect property values by maintaining the common elements, operating shared facilities and delivering community services.

[3] The unit owners at a 460 unit Miami condominium discovered at the time of transition from the developer to the owners, that during the two year period of developer control and operation of their condominium, an alleged deficit of over Four Hundred Thousand Dollars had been incurred. The matter was ultimately settled with the owners having to levy a Two Hundred Ten Thousand Dollar special assessment to liquidate the deficit.

(2) MISUSE OF "START-UP" FUNDS OR "CAPITAL ACCOUNTS"

Under the current Florida Statutes [4] a developer may be excused from payment of its share of the common expenses on developer owned units providing that the developer guarantees maintenance and/or makes up the deficiency between the amount collected and that expended for common expenses. Most developers collect from purchasers at the closing, a 'start-up' fund or 'capital contribution' equal to a month or two month's maintenance. The purchase of the funds is to provide the Association with a reserve account for contingencies. Many cases exist wherein the developer exhausts said funds in lieu of the developer paying its share on developer owned units.

(3) CONSTRUCTION DEFICIENCIES

With the sole exception of escalation clauses in compulsory leases, the area of abuse which most frequently results in unexpected costs to the condominium owners is that which relates to construction deficiencies. The magnitude of the problem is such that a congressional investigation is warranted. In my opinion, the contributing factors which interplay to create market conditions conducive to allowing poor construction practices follow:

A. Real Estate Investment Trusts

During the past few years, South Florida experienced several billion dollars of foreclosures against major real estate developments (see exhibit C).* The losers in these unregulated schemes were the consumers-taxpayers. In Florida and other states where deposit monies are used in the construction of the condominiums, individuals have collectively lost millions, often representing their life savings, where projects have failed prior to completion (see exhibit D). Bank failures, aborted only because of existing Federal legislation (and paid for by taxpayers), were precipitated by careless, unsupervised investments of depositors' funds in Real Estate Investment Trusts. The fundamental theory underlying operation of REIT's is a return to the advisory group and their law firm of fees based upon the amount loaned as opposed to the profitability of the REIT. The elimination of time proven industry standards and guidelines for lending is, in my opinion, one of the primary reasons for the current rate of failures. Another is greed! Traditional investments were abandoned in favor of the lucrative appeal of the REITs. So long as the boom continued and the prime rate remained at workable levels, the system worked. As soon as a fluctuation occurred in the market, with increased prime rate, the balloon burst. At the bottom of the rubble is the unprotected consumer. A system prescribed by Congress as a means of stimulating the housing industry has come close to destroying that very industry!

How does the problem of REIT's tie in directly with the problems of construction defects? In the rush to loan out as much as possible, as rapidly as possible, unqualified builders, with little or no prior experience in the development of multi-family housing were given the green light to build substandard

[4] Florida Statute 718.116(8): "(8) No unit owner may be excused from the payment of his share of the common expense of a condominium unless all unit owners are likewise proportionately excused from payment, except as provided in Subsection (6) and in the following cases:

"(a) If the Declaration so provides a developer or other person owning condominium units offered for sale may be excused from the payment of the share of the common expenses and assessments related to those units for a stated period of time subsequent to the recording of the Declaration of Condominium. The period must terminate no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

"(b) A developer or other person owning condominium units or having an obligation to pay condominium expenses may be excused from the payment of his share of the common expenses which would have been assessed against those units during the period of time that he shall have guaranteed to each purchaser in the purchase contract, declaration or prospectus or by agreement between the developer and a majority of the unit owners other than the developer that the assessment for common expenses of the condominium imposed upon the unit owners would not increase over a stated dollar amount and shall have obligated himself to pay any amount of common expenses."

*For exhibits cited in this statement, see appendix 1, item 1, p 157.

housing. A thorough investigation of the situation would reveal hundreds of stories of builders borrowing over 110% of the cost of construction—pocketing hundreds of thousands of dollars and then abandoning the projects. The counsel for one REIT related the story of a builder who, rejected by a Savings and Loan, went to a REIT which granted the loan. The REIT then borrowed the money from the same Savings and Loan which had previously rejected the applicant.

B. Failure of Municipal Inspections

Consumers often inexperienced in the technical language of building codes must rely upon the municipal building inspectors for assurance that their home or condominium is built in accordance with all safety requirements. The issuance of a certificate of occupancy is too often looked upon by the consumer as a stamp of approval indicating that the building has in fact, met all code requirements and has been constructed in accordance with approved plans and specifications. In reality nothing could be further from the truth. The following excerpts are from the report of the Grand Jury of Dade County issued on May 1, 1976 (see exhibit E for full text of report) :

"The Grand Jury heard testimony concerning building inspection practices in Dade County and the City of Miami. One former inspector told us that inspection practices of the last several years have resulted in the construction of buildings which could be blown away in another '1926 Hurricane'. The evidence we heard supports this statement.

"County officials themselves condemned inspection practices during the period of increased construction in Dade County. A building department official said that to keep construction ongoing an inspector has to inspect 30–36 sites a day. No inspector could properly and adequately inspect that many sites in one day. In other areas we heard that Dade County building inspectors failed even to perform inspections. No excuse, whatsoever, can exist for the County to permit such inaction."

"Instead of requiring thorough, proper inspections, the County gave into the pressure of the building industry. The County should have been prepared to adequately staff the Department during peak periods of construction with trained personnel. It was not prepared. . . ."

"Building department officials told us that often inspectors rely simply on contractors whom they feel they could trust. The sad fact is, however, that the building department cannot be sure that the contractor who secures the building permit will actually supervise the construction. Neither the City of Miami or Dade County Building Departments have been able to insure that licensed contractors are supervising a particular job. This is a sad commentary on inspection practices."

Experience has shown that the findings of the Dade Grand Jury could apply to every municipality in South Florida. According to a newspaper account, a chief building inspector of the City of Tamarac failed the building examination one month before he became Chief Building Inspector (see exhibit F).

An additional factor complicating the situation is the anachronism of our law which 200 years after the Declaration of Independence still ties us to an ancient English concept of Sovereign Immunity. Except for limited protection afforded in the last two years by a legislative enactment, most municipalities and their building inspectors are immune from suits by consumers. Thus, they have no incentive to adequately supervise construction activities. In fact, it may be more profitable not to do so!

C. Lack of Building Materials

During the peak of the construction boom, developers were often forced to accept inferior building materials from secondary sources due to a shortage resulting from labor disputes and supply and demand.

D. Absence of Qualified Workers

The story is told of the construction foreman who gave all applicants for construction positions a simple test. He held up a hammer in one hand and a screw-driver in the other. If the applicant could properly identify the tools he was given a job building highrise buildings. As humorous as the story may seem, it is closer to reality than some would want to admit.

E. Disregard of Code Requirements by Both Developers and Design Professionals

Developers, architects and engineers are either ignorant of the construction codes or more cost conscious than they are concerned for the safety of the inhabitants and the utilitarian use and maintenance of the structures.

Evidence of the problem first appeared at the El Conquistador Condominium project in South Dade. A television investigative reporter, Bob Mayer, noted on his "Not On The Blue Print" series (WTVJ), that the building had substantial building deficiencies. On July 31, 1975 a Circuit Court Judge entered a judgment after trial in favor of the condominium unit owners, due to construction defects, in the amount of $1,174,000.00 (copy of judgment attached as exhibit G). The owners are still in the process of trying to collect on the judgment. In 1976, the trial court did find that assets of the developer were fraudulently conveyed to avoid creditors and ordered the assets sold to satisfy the judgment.

During testimony at a recent trial on construction defects at the Bay Colony Club Condominium, Charles W. Griffin, a noted expert in the field of roofing,[5] when asked who installs the type of roofs most frequently found on South Florida condominiums replied "It's speculators and others who don't have to live with the consequences of their roofs."

It is not uncommon for associations to have to assess their members tens of thousands of dollars to replace or repair construction defects. Implied warranties created by statute are of little assistance to the condominium owner since no bonding requirement exists and most developers are shell corporations, without assets, created solely for the purpose of developing a particular condominium.

(4) COST OF MAINTENANCE OF COMMONLY USED FACILITIES DURING CONSTRUCTION OF PHASE DEVELOPMENTS

As a means of promoting large planned communities, Developers often constructed elaborate recreational and commonly used facilities, prior to the completion of the condominiums which would ultimately utilize said facilities.[6] As a result when the recession hit the construction industry, many condominium owners found themselves paying astronomical amounts to keep the facilities in operation. At one development in Lee County, Florida to alleviate the purchasers' fears of such a situation occurring, the Developer printed a brochure entitled "Questions and Answers About Seven Lakes Country Club Condominium Community". One of the questions asked was, "How do you propose to maintain the golf course and the pavilion on the monthly maintenance fees that are collected from the people who presently reside here?" To which the answer was given:

"We, of course, realize that the income from monthly maintenance fees at the outset will not begin to pay for the upkeep of these facilities. Leisure Technology of Florida, Inc. and Leisure Technology Corp. therefore, are prepared to subsidize the Association until such time as there are enough people residing here to make Seven Lakes amenities self-sustaining. If you multiply an average of $50 a month for monthly maintenance fees by approximately 2,000 units, you can readily see that this will provide enough financial support. But again, our company will subsidize the Association until that time, or until expenses are balanced by income."

In spite of said assurance, the owners' monthly maintenance has continued to escalate, while the amount of developer subsidy has substantially decreased.[7]

(5) MISAPPLICATION OF ASSOCIATION FUNDS

Many developers mistakenly believe that during the period of developer control of the Association's operation that association revenues belong to the developer. Although the developer may in fact pay all expenses of the Association, even those in excess of collected revenues, the effect is similar to that of under-

[5] Charles W. Griffin of Danville, New Jersey, was retained by the American Institute of Architects to write the manual of Built-Up Roof Systems. A civil engineer, Mr. Griffin has a Master Degree from the University of Pennsylvania.

[6] When constructed in 1976, the Environ Cultra Center was designed to serve 3,800 projected units. When the recession hit, only 756 units had been completed. Fortunately, for the unit owners at Environ at Inverrary, Seay & Thomas, the subsequent developer (a fully controlled subsidiary of IC Industries) agreed to subsidize the maintenance for unbuilt units. Owners at other condominiums have not been as fortunate.

[7] I was recently informed that when the Developer learned that the owners had sought legal counsel as to their rights, the Developer threatened to cut-off all subsidies.

estimating the operational budget. Additionally, surpluses may be depleted and deficiencies incurred due to improper expenditures of association funds. The most common abuses include:

(a) Warranty repairs by personnel on association's payroll.

(b) Sales efforts by personnel on association's payroll.

(c) Association charged for construction costs of phases under construction through devices such as that of tying into existing condominium utilities, service lines to job site.

After transition (passage of control from the developer to unit owners) misapplication of funds manifest itself in the following fashions:

(a) Salaries improperly paid to officers and directors.

(b) Embezzlement of association funds by officers and/or agents.[8] [9]

(6) MISMANAGEMENT

As in any business, mismanagement is a major cause of cost escalation. Unlike the traditional corporate operation wherein mismanagement may ultimately lead to business failure, in condominium the costs of mismanagement is merely passed on to unsuspecting unit owners in the form of higher maintenance costs. Mismanagement is not necessarily an intentional act. In fact, in most instances it is caused by well meaning individuals who out of negligence, ignorance or outright stubbornness refuse to admit their limitations when it comes to operating a multi-million dollar condominium community. The cause of mismanagement may vary depending upon whether an association is developer or owner controlled.

A. Developer Control Mismanagement

Developers, fearful that an owner operated association may unreasonably increase maintenance costs, levy special assessments for costly renovations or interfere with the developers' sales program, insist upon association control during the development and sales period. The developers' preoccupation with the development and sales program, however, affords them little time to devote to the association's operation. As a result little, if any, attention is paid toward enforcement of the covenants and restrictions of the community, and efficient and effective operation of the Association.[10]

B. Unit Owner Control Mismanagement

Leary of professional management, having associated their bad experiences during the period of developer control with same, unit owners too often undertake the responsibility of association operations without the benefit or guidance of qualified professionals. Notwithstanding their dedication and good intentions, lay persons whose previous experiences were in the areas of retailing, secretarial, medical, etc. cannot be expected to possess the tools necessary to make the decisions necessary to properly operate these multi-million dollar communities.[11] And yet throughout the United States, inexperienced lay board and condominium owners on a daily basis make decisions affecting the lives of millions of individuals and billions of dollars in real estate. Unit owners should take an active role in the

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[8] 718.112(L) added in 1978 as follows: "(L) The fidelity bonding of all officers or directors of any association existing on or after October 1, 1978, who control or disburse funds of the association. The association shall bear the cost of bonding. This paragraph shall not apply to associations operating a condominium consisting of 50 (fifty) units or less; however, any condominium association may bond any officer of the association and said association shall bear the cost of bonding."

[9] See Exhibit "I" for evidence of agent embezzlement.

[10] One Pompano Beach condominium was able to reduce its operational budget by over one third after assumption of control from the developer by merely renegotiating existing contracts for Association services and placing others out for competitive bids.

[11] Unit owners at a Broward condominium when presented with an alternative of spending $750 per unit to repair their roofs, which contract provided for complete removal of the existing roof, or spending only $500 per unit by placing a new top over the existing one, acting without professional guidance, elected to accept the $500 contract. As a result, when their roofs began caving in due to the fact that the structure was unable to support the additional weight, had to recontract for the $750 job. As a result they wasted over $75,000. Another condominium, given the alternative of two painting contracts, one for $60,000 the other for $80,000 elected the lesser. The more expensive contract would have provided much needed weatherproofing. Within one year of the original contract the condominium had to spend an additional $80,000 to repaint, this time using the weatherproofing to stop water intrusion.

day-to-day affairs of the association and in the policy making decisions. But, they should act with competent professional guidance.

The problem is further accentuated by the absence of an adequate number of qualified professional managers and independent management companies. This situation was created in part by the use during the early stages of condominium development of "sweetheart" management contracts which tied in to the development long term developer management agreements. As a result, the independent companies were not, until recently, able to actively pursue condominium management.

(7) COST-OF-LIVING CLAUSES IN COMPULSORY RECREATIONAL LEASES AND LONG-TERM MANAGEMENT AGREEMENTS

Referred to by the author of Florida's 1963 Condominium Act as "perversions" of the Act, and by former Florida Supreme Court Justice Ervin as "long term contracts of adhesion", compulsory long term "net-net" leases with cost-of-living escalation provisions are the single greatest inflationary factor in condominiums which have leases. Although consumer awareness in recent years and efforts by State, Federal and local agencies have significantly reduced the marketability of leases in new developments, a substantial number of Floridians, particularly senior citizens living in pre-1975 condominiums, are still tied to said leases.

Advocates of leases contend that:

"To build a condominium community with recreational facilities requires costing of common areas by one of two generally accepted methods: (a) dividing that cost by the total number of apartments in a community and then equitably apportioning the cost by adding it to the base price of the units; or (b) pro-rating the cost of facilities, their maintenance and supervision, over the expected longevity of the community, and offering the option of a monthly payment, without increasing the base unit price.

"The recreation lease offers buyers a method of payment without increasing basic unit cost. For that reason, the lease provides affordable condominium housing and recreational facilities to many buyers who would otherwise be unable to afford them." [12]

Advocates further contend that, "leasing payments, when compared to mounting equity in the rising value of apartments, provides buyers with tremendous financial equity which far outstrips pro-rated leasing costs." In reaching his conclusion, Mr. Bergman used a formula which increased the initial payment by 10 percent for a five year period, while similarly increasing the owners' apartment value by 10 percent per year.

Bergman's position is not substantiated by the facts. In the first instance, buyers were not traditionally given the choice between paying their prorata share of the facilities cost or electing financing through the vehicle of a recreational lease. Their choice was simple, either purchase with a compulsory lease or buy elsewhere. In fact, Florida Statutes prior to 1971 did not require any disclosures as to the existence of the leases, and few, if any, purchasers were ever told of their existence. Furthermore, even if we placed some credence on the proposition that the owners should pay a prorata share of the cost of the amenities, an individual's prorata share financed at traditional lending rates would not approach that amount paid under the leasing arrangement. In truth, the standard escalation clause found in the long term leases used in Florida condominiums acts similar to a mathematical progression: As an illustration, the recreational facilities of one Broward condominium built at a cost of $200,000, returned $300,000 the first year, and based upon an annual cost-of-living increase of 5 percent will return over $700 million over the term of the lease (see exhibit K).

Advocates of leases would have one believe that the predominance of condominiums offering long term leases provide their owners with extensive recreational facilities. Nothing could be further from the truth. The average recreational facility contains little more than a swimming pool, a card room and a sauna. Instances exist where the recreational lease consists of no more than an easement right across a strip of land providing access to public beaches.

[12] Comments by George Bergman, Chairman of the National Association of Homebuilders during a Board Meeting, September 14–19, in Denver, Colorado. Mr. Bergman is a principal in the development of the Century Village Complex in West Palm Beach and Delray, Florida.

Equally fallacious is the developer's contention that he can provide housing at lower prices by selling the units at his cost and returning his profit over a long period from the recreational lease. The facts indicate that the base price of condominium units with recreational leases do not materially differ from similar units sold at condominiums without leases. Furthermore, significant number of leases were sold by the developers to third party investors within a short period of the developer's completion of the project. If we can assume that the amount of the sale was equal to the developer's desired return on his investment, we can readily determine that the rate of return under the lease is unconscionable under any theory.

(8) FAILURE TO PROVIDE ADEQUATE RESERVES FOR CONTINGENCIES AND LONG RANGE MAINTENANCE

Although this category of cost escalating factors may well fit within the area of mismanagement, the seriousness of the problem warrants separate treatment. Sound management practices dictates the maintenance of a contingency or reserve fund to handle emergency repairs and long range planning, e.g., painting every four to five years. Such reserves are rarely maintained by either developer or unit owner boards. The developer's rationale is "Why be concerned?" I'll be out of the project long before the buildings need painting, and in the meantime why increase my monthly maintenance?".

A popular board member is one who can state at the end of his term, "We are pleased to advise that maintenance costs for next year will remain at the same level as they have for the past two years". Then a new board takes office and discovers that $100,000 is needed to paint the buildings and there are no funds in reserve. As a result, owners receive in the mail a special assessment for $200, which cost could have been accumulated over a long period, but now must be paid in a single lump sum.

The Board's position is merely a reflection of the prevelant attitude among older condominium purchasers, namely, "I'm not going to live that long, let the next man worry about what's going to happen five years from now." Then five years pass and suddenly they are faced with the problem.

It is this attitude of the older purchaser ("I'm not going to live that long") which makes them most susceptible to the abuses discussed. It's difficult to convince a 75 year old condominium owner as to the merits of reducing a 99 year lease to a 25 year mortgage when, in fact, they feel that they won't live beyond five years.

CONCLUSION

Escalating maintenance costs along with special assessments necessary to defray the costs of the prior year's deficit, repair and replace construction defects, and to meet contingencies, are placing an increasing burden upon fixed income and retired condominium owners. Evidence of the problem is beginning to manifest itself in terms of an increasing number of foreclosures being filed against delinquent owners. In addition, abandonment of condominiums where owners cannot meet monthly expenses is not uncommon.

SOLUTIONS AND RECOMMENDATIONS

A. Education

Prospective purchasers must be better educated as to the full extent of their responsibilities and liabilities as condominium owners. They must understand that as condominium owners they will be responsible for their pro-rata share of the common expense *no matter how great that expense may be.*

B. State Regulatory Control in Lieu of Registration

The authority of State bodies overseeing condominium development must be expanded from "registration" to "regulatory controls."

C. Projected Budgets Should be Subject to Substantiation

The State of California carefully scrutinizes all projected operational budgets in order to verify their accuracy.

D. Enforcement of Criminal Codes

State Attorneys should devote more effort to white collar crimes such as consumer fraud. Cases of embezzlement of Association funds should be prosecuted.

E. Bonding of All Persons Controlling Association Funds

F. Bonding Requirements for Developers, Contractors and Subcontractors to Insure Funding to cover Warranty Programs

G. Enforcement of Building Codes

H. Elimination of Sovereign Immunity

I. Prohibit Use of Purchasers Deposits in Construction

J. Require Adequate Funds to be Placed in Escrow for Subsidizing the Cost of Maintenance and Operation of Common Facilities Which Will be Shared by Incompleted Condominiums

K. Licensing and Certification of Professional Managers

L. Prohibit Use of Recreational Leases and Long-Term Contracts

In the alternative, allow owners an opportunity to cancel all agreements and leases entered into by Developer controlled boards.

M. Provide Funds and/or Guarantee Funding for Purchase of Existing Recreational Leases

During the past year, tens of thousands of condominium owners saddled with unconscionable long-term leases were able to eliminate the leases through purchase agreements. An equal number of owners, particularly the retired individuals on fixed incomes, were unable to purchase their leases due to a lack of funds and/or willingness of traditional lending sources to provide loans for recreational purchases.

N. Compulsory Requirement of Minimal Level of Reserve Accounts

II. Coerced Ownership—Conversion From Rental to Condominium

The tenant purchaser, even under the most favorable of conditions, is still a coerced buyer. For unlike the individual who sought out condominium ownership, the tenant given the choice between ownership and renting has already elected to rent. Then suddenly, often without prior warning, the tenant receives notification that the building is being converted to a condominium. The typical "buy or get-out" letter advises the tenant that if he fails to purchase his unit within a given period of time, usually thirty days, his apartment will be sold to one of the hundreds of outside buyers who allegedly have already placed a deposit for available units.

The pressure placed on elderly tenants by the conversion process can be devastating. On occasion anxieties develop. Instances of emotional illness, strokes and heart attacks have been allegedly caused by the pressures of conversion. To understand the reason one need only examine the characteristics of the tenants and setting in which conversions often take place. To the elderly tenant who has resided in the same apartment for a number of years, the building and its occupants become the home and family. The familiar neighborhood surroundings and long term friends and acquaintances provide a feeling of security. To disrupt this setting is to create a major crisis. Thus, the decision whether to purchase or move is not solely an economic one. It is often based upon emotional considerations which distort logic. Typical of these are the following:

(1) Fear of losing monies already spent for leasehold improvements.

(2) Insecurity about moving to new setting. Justifiably fearing that the new apartment may likewise be converted to a condominium.

(3) Unwillingness to leave friends and family.

(4) Health considerations; closeness to medical facilities.

(5) Concern for spouse, ("What will my wife do without her daily activities?").

(6) Peer pressure, ("If I don't buy, they'll think it is because I don't have the money.")

Economic considerations include the following:

(1) Inability to meet downpayment requirement and/or meet monthly mortgage and maintenance expenses.

(2) Life status (e.g., retired, widowed, etc.) not conducive to long term ownership.

(3) Desire of flexibility afforded by renting as opposed to ownership.

A. TENANT DISPLACEMENT

The difficulty of the tenant in finding alternative housing comparable to that from which he was displaced. In communities with rental shortage, this problem is particularly acute. Incidents exist wherein shortly after moving into a new apartment, the tenant learns that it too is going to be converted.

B. PROVIDING TENANT SERVICES

The problem of servicing the needs of tenants with continuing leases who elect not to purchase is a double-edged sword. If the Developer-convertor continues to provide traditional tenant services using association personnel, the effect is to misappropriate association funds. On the other hand, if the tenants' unit and lease is sold to a third party purchaser, the tenant may be unable to receive the type of services provided for under the lease. This is particularly true in those incidents wherein units are sold to South American investors without forward addresses.

C. BUILDING MAINTENANCE: THE "AS-IS" PURCHASE

Almost without exception, the tenant purchaser is receiving an older building without any warranties. Experience has shown that the owner of a converted condominium unit can anticipate proportionately higher maintenance cost than those paid by the purchasers of new units. Incidents exist wherein tenants have had to spend hundreds of thousands of dollars replacing entire building plumbing and air conditioning systems within months of conversion. Although Florida Statutes now require disclosures as to building conditions, most buyers seem totally oblivious as to their meaning.

CONCLUSION

The coerced tenant purchaser, although paying a lower unit price than is available for comparable new construction, can anticipate higher maintenance costs on building component repair and replacement. The tenant electing not to purchase will experience discrimination practices from tenant-owners, as well as a diminishment of tenant services.

SOLUTIONS AND RECOMMENDATIONS

A. *Tenant Approved for Conversion:* A developer/convertor should be required to obtain the approval of at least a majority of the tenants prior to undertaking a conversion.

B. *Program for Providing Tenant Services:* A program for providing continuing services to tenants electing not to purchase should be mandatory. No sales of tenant units to out-of-state and out-of-country purchasers should be permitted unless provisions are made for local agents to provide the required services.

C. *Warranty Program:* Disclosures of existing building conditions are not enough. The unsophisticated tenant purchaser has the basis for evaluating the cost of maintaining a highrise apartment building. All building components should be warranted to be in good working condition at the time of sale, and warranted for a minimal period of one year.

III. Lack of Understanding of the Condominium Concept

In March, 1975 while testifying before the Condominium Task Force of the Department of Housing and Urban Development, investigating potential abuses in condominiums I noted that:

"Any thorough investigation into abuses and/or potential problem areas in the condominium field must evaluate what is today becoming one of the most serious problems—the operation and management of condominium complexes by unit owner controlled boards.

"Each day, as more developers relinquish control of Condominium Associations to the unit owners, a new dilemma is created. Suddenly, lay persons who had previously equated their obligations as condominium owners to that of remitting monthly maintenance payments, find themselves responsible for the operation of multi-million dollar complexes."

Many of the problems of condominium operation stem directly from a lack of understanding of the condominium concept by various co-owners and/or in-

tentional disregard for it. The Florida Fourth District Court of Appeals said it best in dicta in a recent case enforcing the covenants of a condominium:

"Every man may justly consider his home his castle and himself the king thereof; nevertheless, his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others." *Sterling Village Condominium, Inc.* v. *Breitenbach*, 251 So. 2d 685.

CONDOMINIUM OWNERSHIP IS NOT FOR EVERYONE

The entertainer who feels compelled to rehearse at all hours of the day and night, or the socialite who enjoys entertaining twenty guests around the pool on Sunday, should each seek housing alternatives other than condominium.

For the older condominium owner, disenchantment with the condominium concept is most likely to result from one of the following areas: (Excluded from this discussion are potential problem areas previously discussed)

A. Absence of Anticipated Services

(Excluded from this discussion are misrepresentations made by the developer to prospective purchasers as to promised amenities which were not delivered.)

Too many condominium owners think of themselves as tenants. As such they expect a 'landlord' to always be available to fix the plumbing or take care of problems which develop. The condominium concept will not work until such time as all condominium owners understand that:

(1) They are the owners.

(2) They are responsible for the operation and maintenance of the community.

(3) They must share in the common expense regardless of how high these expenses may be.

(4) They must abide by the covenants and restrictions of the community.

B. Children and Pets

If you want to start an argument in a condominium, it's not politics or religion you have to be concerned with—it's children and pets! Between them, no single issue is more controversial than is age restrictions. On one hand the elderly sees it as a form of discrimination when applied against them in the job market. On the other, it is a totally permissible means of maintaining a community of congenial residents! But try and deny them the right to have their below-age grandchildren stay at the condominium—that's another question.

The controversy may be resolved by the Florida Supreme Court in the case of *Franklin* v. *White Egret*, an appeal from the Florida Fourth District Court of Appeals which held age restrictions to be unconstitutional (see exhibit M). In the meantime, it is a source of constant conflict within condominiums.

C. Conflicts in Association Operation—Consumption of Condominium Leaders

Condominiums are a microcosm of our society. The general attitudes of the population are carried over to the condominium setting.

In society, individuals are paid to perform necessary governmental services. For condominium to work one must find dedicated volunteers who are willing to devote hundreds of hours of their time in the service of their fellow owners. Unfortunately, dissension among owners in a number of communities is creating a situation wherein more and more condominiums are finding it difficult to persuade owners to serve on boards. For those who accept board positions, the abuse they take from the owners they serve is incredible. Although there have been incidents of board members overstepping their authority, the evidence clearly indicates that most abuse is perpetrated by owners against their boards and not vice-versa (this also extends to professionals counseling the board).

When one speaks of 'consumption' in condominium, we are not referring to pneumonia. We are talking about the propensity of condominium owners to wear-out their officers and directors. Unless this trend is reversed, I project a serious crisis in the future in finding individuals willing to serve on the board. Without such individuals, the successful operation of the condominium communities will be in serious trouble.

The internal friction within the community has a direct affect on the health of both the board and association members. Incidents of heart attacks, strokes and

injuries sustained as a direct result of conflicts at condominium meetings are well documented. The most susceptible to illness is the older purchaser.

CONCLUSION

Dissatisfaction among condominium owners stems largely from a lack of understanding of the condominium concept. Condominium owners fail to grasp the full extent of their responsibility and liability as co-owners. Thinking of themselves on terms of tenants, they become distraught when expected services are not delivered. Their hostility is often directed at their neighbors who serve as volunteers on the association's board.

IV. ARE UNIFORM NATIONAL STANDARDS NECESSARY FOR THE BENEFIT AND PROTECTION OF CONDOMINIUM PURCHASERS?

Federal intervention in the regulation of property ownership is never a desirable alternative. However, it becomes a necessary procedure if States fail to act in a responsible fashion to curb consumer abuses. Notwithstanding the adverse publicity of the past several years, in the State of Florida Developers may still:

(1) Use purchasers deposits in the construction of condominiums.
(2) Tie compulsory recreational leases into the purchase of condominiums.
(3) Establish shell corporations to develop condominium projects; providing no security for warranty obligations.

Accordingly, in my opinion, uniform national standards are necessary. The proposed condominium Act of 1978, drafted by an inter-agency task force would curb most of the existing abuses. The guidelines established by the Veterans Administration for condominium loans are also excellent. (See Federal Register, Vol. 40, No. 97, Monday, May 19, 1975). The following V.A. regulations and/or recommendations should be part of any nominal uniform standards:

(1) Prohibit the use of deposits in construction.
(2) Require that the number of units in a condominium be adequate to reasonably support the common elements.
(3) 70% of presales be to persons who intend to occupy the property as their principal place of residence.
(4) Transition from developer to owners take place within 45 days of the conveyance of the first unit.
(5) Establishment of an adequate reserve fund for replacement of common elements.
(6) Bonding of persons handling association funds.
(7) Management agreements be terminable with cause upon 30 days notice.

An additional source of guidance is the proposed Uniform Condominium Act drafted in 1977 by the National Conference of Commissioners on Uniform State Laws. Section 3–105 of the proposed Uniform Law provides the right to terminate contracts and leases entered into by developer boards as follows:

"If entered into before the executive board elected by the unit owners pursuant to Section 3–103(e) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease to which a declarant or an affiliate of a declarant is a party, or (3) any contract or lease which is not bona fide or which was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 3–103(e) takes office upon not less than 90 days notice to the other party. This subsection does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this Section."

Senator CHILES. Thank you.

Mr. Tennyson, I understand you are responsible for drafting Florida's FTC. What do you have to say for yourself? You are in a courtroom.

STATEMENT OF ROD TENNYSON,[1] WEST PALM BEACH, FLA.

Mr. TENNYSON. As you know, I started out with the attorney general's office trying to curb some of the abuses in recreational leases, including mobile home parks and townhouses. I was somewhat amazed to find that the proposed Federal act is drafted in such a way that it is quite narrow in what kind of housing it covers. Quite frankly, under the State statutes and the proposed Federal statute, if I represented a developer, I could exclude coverage and do it without too much difficulty, and yet still retain a kind of tie-in of recreation with moderate priced housing.

As I see the problem, we are not just talking about condominiums. There is a trend in housing in Florida where it started, and it is going beyond the lines of the State, and that trend is for developers, who are no longer content to build moderate-priced housing units and sell it for a reasonable profit, to have a continuing income to flow from that development for tax purposes or for just plain moneymaking purposes. The way they do that is, they will file a deed restriction or they will have a lease arrangement. They will use any kind of legal documents in relation to the real property to which the purchaser must, as a condition of sale for the moderate-priced housing, also accept the developer's services, and I have seen various services in documents. Of course, there is recreation, which we have all seen, but I have also seen: insurance, cable TV, management services, vending machines, laundry facilities, garbage collection, and forms of maintenance.

The idea is for the developer to have a continuing business long after he has sold the housing units through a mandatory tie-in of services. It goes one step further, however, as the developer not only demands that the consumer pay x dollars a month for these services, but further says. "If you don't pay me, I will foreclose on your home like a mortgage."

"COMPANY STORE CONTRACT"

Senator, when you've got to pay a monthly payment and it is secured with a lien on your house, that is a second mortgage by any definition. A second mortgage could be the very same thing. The developer could have increased the price of the unit and financed it himself with a second mortgage, but if he does that he would be subject to the State usury laws and would have a fixed return on his investment. The use of the tie-in sale of services rather than a standard second mortgage is what I call the company store contract. All he has done is created a new company store and he is going to have an absolute monopoly over the sale of services for that community and he is going to enforce it with a lien on the homestead.

That is the problem that concerns me that I have been watching for the past 4 or 5 years, and is the major abuse in housing, not only in the State but throughout the country. The profits are tremendous, and where there are profits it is going to attract more developers to do the very same thing. I recently gave a talk at the National Association of

[1] For additional material submitted by Mr. Tennyson, see appendix 1, item 2, p. 176.

Realtors in Miami at their national convention and I have never received a worse reception by a group of people because the National Association of Realtors thought there was absolutely nothing wrong with the company store concept. That reception was not just in Florida. It is going beyond that. They want to do it. There is just too much money involved.

Well, what happens if we allow this? Well, of course, first of all you avoid the usury laws, because it doesn't look like a second mortgage. Developers have profit increases every year. Developers have a hedge on inflation because they can tie increases to the Consumer Price Index, so they don't have to worry about inflation any more and the income continues to flow. Well, of course the consumer is in a situation where the cost of that service is increasing and he has to pay for it whether he uses it or not. Consequently, there is an absolute monopoly on the sale of that service within the community and even though the Florida Supreme Court said that did not violate State law, it may violate Federal antitrust laws. So the consumer has to pay whether he uses the services or not. This is especially unconscionable with elderly citizens because many times, because of subsequent illness or accident, they can no longer use the facilities. If he does not pay for them, there is a lien foreclosure.

In this county alone developers have filed more than 300 foreclosures and, in an open court, the president of that company under oath stated they are going to file another 2,900. That is a lot of homes lost because those people for one reason or another could not afford to belong to the "country club" or company store.

That is what I call the company store. I think if we are going to attempt to resolve this problem we have got to look beyond just condominiums. If we pass a condominium act today, we are going to be sitting in this room next year talking about mobile homes and talking about townhouses the year after that and talking about single family homes the year after that. The developers will always be one step ahead of you. When they are one step ahead of you, you will run into all the retroactive application problems and we just can't keep up with it.

Banking Laws Reform Suggested

The Feds are going to get in an area which they should, because they don't have the same constitutional limitations as the State law. We ought to look beyond the condominiums. We ought to look at such things as reforming the banking laws so that any lending institution, for example, that gives a mortgage on a housing unit cannot give the mortgage unless there is no company store contract with the lien collateral on the unit or, second, eliminate the tax advantage on company store contracts.

I would also like to see the Justice Department take actions, which it has just absolutely refused to do—Schenefield is the head of that and he just flatly stated he didn't think this was a monopoly situation. I disagree with that and I think the Federal courts are going to disagree with that, too. I think the Justice Department and the Federal Trade Commission have an obligation to look at the company store contracts and to look at the monopoly. I want to see the law go beyond

the condominium, or we are going to be here next year on another problem.

Senator CHILES. We don't have enough nationwide support and, if we can pass this bill, then we might have a better chance of going back and amending the act and adding some of these other things. So, I think a pragmatic standpoint of trying to determine what is the best way of trying to get some law on the books is the way that you have to approach this. It may be that broadening it would be a way of attracting us. I know we attract a lot more opposition.

Mr. TENNYSON. Senator, my suggestion is to broaden the provision on the company store contracts to maybe a separate bill or write it to this particular bill and it could be tied to the banking or the tax concepts. I see the major problem in community housing is the company store contract.

Senator CHILES. I think that is a valid point that you make.

[The prepared statement of Mr. Tennyson follows:]

PREPARED STATEMENT OF ROD TENNYSON

My name is Rod Tennyson. I am a practicing attorney in West Palm Beach, affiliated with the law offices of Ombres, Powell, Tennyson and St. John, P.A. Prior to private practice, I was the first director of the division of consumer protection in the attorney general's office wherein I directed the attorney general's litigation involving housing problems. While with the attorney general, I directed extensive studies and litigation in reforming housing problems especially those problems relating to the elderly and condominium recreational leases. My private practice currently involves representation of approximately 200 condominium associations throughout south Florida.

It is no surprise to anyone of the soaring costs in housing today, both in construction costs and rising interest rates. Most economists would agree that the single family, detached home is beyond the economic reach of the average American family or couple. This is especially true with fixed income, retired citizens who are moving to Florida. It has been my experience that the only moderate priced housing still available to the average consumer is: condominiums, planned unit developments or townhouses, and mobile homes.

However, these forms of moderate priced housing attracted a new development scheme which has lead to enormous profits by developers at the expense of the housing consumer.

Developers who build moderate priced housing, including condominiums, PUD's, and mobile home parks, are no longer satisfied with building a product, selling it, realizing a reasonable profit, and then removing itself from the development. For tax purposes and other reasons, the trend appears to be that developers would rather keep their profit low on the initial sale of the housing unit and then condition the sale of the housing unit upon the consumer's agreement to also purchase other services offered by the developer. This so-called conditional or tie-in sale allows the developer to realize a continuing income over the sale of his tied service rather than realizing his total income at the sale of the housing unit itself. The obvious tax advantages include deferral of income over a long period of time, which means a lower tax bracket for the developer. In my practice I have seen the following services tied to the sale of housing units as a mandatory condition of sale of the housing unit: recreational services, real estate brokerage services, insurance, cable T.V., management services, vending machines, and laundry facilities.

NET PROFIT PROTECTED BY BUILT-IN CLAUSES

In each of these areas, a consumer is required to buy these services from the developer or his designee as a condition of purchasing and living in the housing unit. These services are almost invariably at a higher price than what the consumer could obtain in a free and open market for the service, and have built-in escalation clauses to assure the developer that he will be protected from inflationary increases in the cost of living. It should be noted, however, that these escala-

tion clauses are not just designed to cover any increased costs of operation incurred by the developer, but are all designed to increase the net income to the developer as inflation continues. In other words, the developer, with his built-in escalation clauses, protects his net profit from inflation at the expense of the consumer. Furthermore, the developer holds a lien on the housing unit to secure the payment for the services which are escalating with inflation. In other words, if the consumer can no longer pay for the incidental services, whether he uses them or not, he is subject to a lien foreclosure and the loss of his home.

By requiring a periodic payment secured with a lien on real property, the developers are in effect simply taking a second mortgage on the housing unit. In fact, a developer could accomplish the very same purposes of deferring income and realizing greater profits by increasing the original purchase price of the housing unit but taking back a second mortgage from the consumer, and thereby lowering the initial downpayment.

However, mortgages are controlled by the State's usury laws and thereby would only allow a fixed, net income to the developer. Furthermore, mortgages are not popular with consumers and have a bad connotation to them. In effect, all the developer did was simply call his second mortgage a recreational lease, management contract, or other kind of service agreement and accomplished the same purpose with a further guarantee against inflation on his net profit. This was possible because the usury laws on mortgages do not apply on contracts for services and leases.

In my opinion, this phenomena has resulted in the rebirth of the so-called company store. The company store developed at the turn of the century whereby employers required their employees to purchase all their consumer goods from the company store. The company would then deduct purchased items on credit from the salary of the employee. In other words, the company wound up with an absolute monopoly in terms of consumer goods sold to their employees. There is not much difference between the old company store and the present trend in moderate priced housing in Florida which will obviously spread to the rest of the Nation. The new company store concept is simply too profitable to stay within the borders of Florida. As an example, the Century Village complex in West Palm Beach includes over 7,800 housing units. The housing units are conditioned and tied to a long-term recreational lease which provides recreational and other services to the residents of the village. The costs of these recreational services is tied to the Consumer Price Index and increases every year. Unit owners must pay on the average over $50 per month for this recreation whether or not they can or wish to use the facilities. If they refuse to pay the recreational fee, then the developer reserves the right to foreclose the home through lien foreclosure proceedings. In fact, the developer has filed some 300 lien foreclosures in the circuit court in Palm Beach County over a dispute in rental payments and has threatened to file another 2,900.

CONCEPT CAUSES MANY PROBLEMS

Although the new company store concept is immensely profitable to developers and has attracted many new developers to produce moderate priced housing, it has created numerous problems with the housing consumer. Most consumers are not assured that their income will increase every year at the same rate as the rise in the Consumer Price Index. Consequently, increases, payable to the developer under the company store concept, are increasing at a greater rate than the consumer's income. Furthermore, many consumers, especially senior citizens, are physically unable to use the services because of illness or accident. However, even though they cannot use the facilities, they are still required to pay for them and that payment is enforced with a lien on the home. Also, because the housing consumer is required to pay for these services, whether he uses them or not, he is effectively precluded from seeking similar services at a lower price in an open and competitive market. The developer literally has a monopoly over the sale of those services within the housing community. Also, because of this monopoly, the housing consumer has very little control over the quality of services being offered by the developer, and has very little say in how these services are to be distributed.

I am sorry to say that the State of Florida has had very little success in curbing the abuses of the new company store. The most active fight has come from the attorney general of Florida which started with several legal actions

in 1974 challenging the legality of the so-called tie-in of services under the State antitrust laws. The Florida Supreme Court rejected the attorney general's contention that the so-called company store or tie-in sale violated the State antitrust laws. The supreme court ruled that the Florida Legislature had specifically allowed such tie-ins, at least in regards to recreational services for condominiums. However, the Florida Supreme Court did state that these leases or other tie-in sale agreements might be challenged based on the theory of unconscionability. Pursuant to that decision, the attorney general has proposed rules defining unconscionability for company store contracts in the sale of all forms of housing. (See attached.)[1] A challenge has been filed to these rules with an initial determination that the rules cannot apply retroactively. The attorney general has also filed actions in Broward and Pinellas Counties, Fla. challenging the long-term recreational lease as being unconscionable. Both of these cases have been settled with the agreement that the association be allowed to purchase the recreational lease from the developer.

The Florida State Legislature, when it finally decided to cure the abuses in the housing market, always seemed to come up with too little, too late. The State and Federal constitutions prohibit a State from impairing the obligations of contract and, therefore, all legislation could only apply to future housing developments but could not cure the abuses of past housing developments. To date, State law only prohibits escalation clauses in recreational leases for condominiums when such leases where entered into after June 5, 1975. State laws still do not prohibit company store type contracts and escalation clauses are still used in noncondominium housing. Perhaps the best explanation of this inability of the legislature to act is the strong developer lobby in the State capitol.

The Federal agencies have had less success than even State government. Although President Carter in his campaign in Florida promised that he would ask the Justice Department to challenge the company store contracts based on violations of the antitrust laws, the Justice Department has issued a formal memorandum rejecting the so-called antitrust or tie-in sale theory as a violation of the antitrust laws. The Federal Trade Commission has initiated one action to challenge the legality of a long-term recreational lease based on unfair trade practice theory or unconscionability, but that case is still pending and is moving at a snail's pace. The Federal Trade Commission's staff seems underfunded and is simply not given the priority needed to successfully attack the leases.

OWNERS TURN TO LITIGATION

Without extensive help from State and Federal Governments, the condominium and other housing unit owners have resorted to private litigation in the State and Federal courts in an attempt to overturn the company store contracts. The various legal theories are more fully explained in the attached chapter from a recent book I have published with D & S Publishing Co. A good portion of the private litigation has resulted in settlements wherein the developer has agreed to sell the recreational lease and facilities to the Homeowners Association. The price for many of these buy-outs has been equal to approximately 10 times the yearly rental under the company store contract. Unfortunately, private litigation is very costly and many of the smaller developments simply cannot afford expensive and lengthy litigation to overturn their company store.

In times of deregulation, proposition 13, and anti-government feelings, it is not popular to propose Federal intervention. However, because of the State's constitutional roadblock that it cannot impare the obligations of contract, we can only turn to Federal legislation to reform the past sins of the company store and to prevent future problems on a nationwide basis. This can be accomplished without creating a vast Federal Government intervention, new bureaucracy, or increased taxes. The present bill pending before the Congress which would set minimum standards for condominium housing in the United States is too narrow and is full of loopholes. First of all, the act only applies to condominium housing when the problems we have previously discussed cover the full range of moderate priced housing beyond just condominiums. However, the bill could be amended to set minimum standards for all forms of housing

[1] See appendix 1, item 2, p. 176.

to prohibit the company store concept. The developers will argue that the company store concept helps keep down the costs of housing and prevents further inflation in the costs of housing. But it does no good to the consumer to control inflation in housing while we increase inflation in the company store services tied to the sale of housing. The Federal Government has long had a national interest in the costs of housing and the regulation of housing. In fact, the Federal Government is really the only government that has the capability of assuring fair, adequate, and affordable housing to the consumer. Whether or not the present bill is the proper approach, is a debatable question. However, the following are some examples of what the Federal Government could do to eliminate the company store in America:

(1) Eliminate the tax advantages of deferral of income when developers use the company store.

(2) Retroactively eliminate or reform company store contracts in all forms of housing with private remedies in the Federal court.

(3) Prohibit the use of federally insured lending institution funds for mortgages on housing units when that housing unit is also encumbered by a lien tied to a company store contract.

(4) Properly fund the Justice Department and/or Federal Trade Commission to take a more active role in eliminating company stores.

These reforms can be accomplished at the Federal level without extensive bureaucracy or costs. Without these Federal reforms, I am afraid all of America will soon see the new company store.

Mr. POLIAKOFF. Senator, may I add a comment? Do you have time for just one comment?

Senator CHILES. Yes.

NEEDS UNCLEAR FOR RECREATIONAL LEASES

Mr. POLIAKOFF. I think there is a gross misconception by the bill itself and the Congress as to what the ultimate needs are for recreational leases. Even if the courts can ultimately declare the lease to be unconstitutional, that does not necessarily resolve the problem. Despite what may be said, condominium owners do not desire in all instances to be rid of the recreational facilities. If the court were to come back and say that this lease is no longer valid or you no longer have the lease, you also no longer have the facilities. What we need is some type of Federal guarantees to loans to allow condominium owners to buy out the existing leases or the subsidy of the payment obligation and in purchasing those leases to enable the low income or fixed income retiree to purchase a lease. If we buy the leases, we eliminate permanently the problem. Declaring a lease to be void is not going to do it.

Senator CHILES. Tom, in your statement you allude to a situation in which a developer with no maintenance obligations collected a third of a million dollars for the recreational facility that cost $50,000. In this case or any other that you are familiar with, have you seen any validity for the claim that the developer sold the units at cost or at a loss in the recreational lease?

Mr. PFLAUM. I have never seen any evidence supporting that claim from developers, though I must add that we have never reached that factual issue in litigation.

Senator CHILES. I think Gary has already commented on it.

Mr. PFLAUM. I have heard this allegation from developers, but it has never been really verified one way or the other.

Senator CHILES. Rod, in your practice you have many disputes growing out of condominiums besides the unit owner versus developer.

Which type do you view as the greatest long-term threat? Is that the problem, or is inadequate education the real problem?

Mr. TENNYSON. Well, obviously I don't think condominiums are destined for abandonment. I live in a condominium myself. I particularly like that concept of living. Obviously I knew what I was getting into and that made it a whole lot easier to adjust to that, but you do have to give up some of your individual rights. I think that the major problem obviously was developer versus owner relationship; it is now shifting to unit owner versus his association. Then the fights start because of children, dogs, assessments, you name it.

I don't think those problems are insolvable and I am not so sure that the Federal Government wants to get involved in those individual disputes. I think that more and more local and State governments are trying to arbitrate the disputes and I think we will solve that problem. I think the problem lies between the developer and the owner, and I think that is where the Federal Government needs to take some action.

Senator CHILES. Gary.

TENANTS MUST ACCEPT RESPONSIBILITY

Mr. POLIAKOFF. Could I respond quickly to that question? Too many condominium owners think of themselves as tenants and they expect the landlord to fix the plumbing or take care of the problem. The condominium living concept will not work until you go through the educational process on four basic things:

First, that they are owners and not tenants.

Second, that they are responsible for the operation and maintenance of their community.

Third, they must share in the common expenses of that community, regardless of how high those expenses may be.

Fourth, that they must abide by the covenants and restrictions of the community.

Senator CHILES. How are you going to educate them?

Mr. POLIAKOFF. It is a serious problem. I think personally I would recommend it to Mr. Andrews, bureau of condominiums. A number of the States are putting out more publications and films on exactly what condominium ownership is all about. Some of the Federal agencies have some publications out but they are apparently not being disseminated down to the grassroot purchasers because there is still a large misunderstanding among individuals as to exactly what they are buying or what their responsibilities are.

Senator CHILES. Jeff, you were talking about the need for some Federal dollars in this regard. My understanding is that your agency does not get the fees right now which the State charges to developers and unit owners.

Mr. ANDREWS. We have to go through the budgetary process just as if we were funded by general revenue funds, although we have a large surplus in the trust fund. We have not been able to break it loose to this point. Underlining what Gary is saying—Gary and I have talked extensively about it.

Senator CHILES. Why should the Federal Government be giving dollars in this regard if we are charging fees on the State level, with

regard to filing fees and unit owners, if that money is not being used?

Mr. ANDREWS. Well, the point is well taken and I am certainly in favor of trying to get that broken loose if you can assist with that. Having the association fees cut in half at the last session will deplete the trust fund money over the next several years. It is only a surplus at this point. I don't know that it will remain a surplus in the next 2 to 3 years. Yes, in answer to your question, we do have a large sum of money that could be used for educational purposes if the legislature will make it available to the agency.

Senator CHILES. Thank you.

I want to thank all of you for your discussion, I think it has been very helpful to our record. We will be looking at the act as we get ready to reintroduce it and try to determine what changes you want to make.

Thank you very much.

I want to take about a 5-minute break now and then we are going to start our town hall meeting portion. We will have about 45 minutes for that portion of our town hall meeting and we will get that started in just a couple of minutes.

[Whereupon, the committee took a short recess.]

Senator CHILES. We are going to start our town hall portion now. We are going to have about 40 minutes to try to finish. I will just ask you to please keep your statements brief, if you can, so that we will give everybody an opportunity to be heard. If our time does run out, we have some slips that I will ask you, if you would, to fill out, and give us your comments on these slips on the table over there. I will also tell you that we will keep our record open for a period of at least 2 weeks, so if you have any statement that you would like to make for our record we would be delighted to receive that.

All right. Pat Cahill was originally invited as a witness, so we will start off with Pat and we will go from there.

STATEMENT OF PATRICK C. CAHILL, PALM SPRINGS, FLA.

Mr. CAHILL. Good afternoon.

My name is Pat Cahill. I am former president of the Village Mutual Association of Century Village. I have been a member of the condominium advisory board of the State of Florida and cofounder of the Nonpartisan Political Action Committee of Palm Beach County. I am also a past president of a condominium association in Century Village.

If I were to read what I have written on here, I would probably speak for 40 minutes or longer.

Senator CHILES. We will take your statement in full and put in the record.[1]

Mr. CAHILL. I will give you the whole thing, but I would like to make some comments if I may. I have a letter which is in here and it is from Century Village, written in 1968 when Century Village was first started and when the original recreational facilities were in existence. Mr. Jack Snyder wrote to Century Village and said that, with all the land room there, he didn't know how many units they were going to

[1] See p. 143.

develop within the community and wondered if there would be enough room in the clubhouse to take care of the people. This letter is signed by Century Village and it says they figure it will be somewhere around 1,500 units.

Today in Century Village there are 7,853 units with the same facilities and, with the added income, he is making a yearly profit of over $3 million. He overdeveloped. This piece of paper, by the way, is the Century Village lease that you did not get when you went to buy. I said, "Can I see the paper so I can get my attorney to check it?"

Their reply was: "We don't give you the papers. If you want to buy, we will give you the papers at the closing; otherwise, move on. There are other customers waiting to buy."

Buying in the Dark

They will give you no papers. You had no chance to find out what you were buying. You were buying a pig in a poke, if you want to call it that, and no chance to do anything about it. Most people bought because they didn't know what a long-term lease was. There was mention of a long-term lease.

Now a long-term lease to somebody who is 65 years old is probably about 10 years. That is the way I figure it would be, but it turned out to be 99 years. Here is the set of figures here which says that. You started in 1968. In that 99 years you will be paying $4,549.50 per month for your recreational lease. Here are the figures projected on a 5-percent cost-of-living increase and at 7.5-percent cost-of-living increase.

Now the first increase that I got at the time was on December 26, 1974, and this is in the folder I am going to give you. The increase at that time was 45 percent on one shot. That was only on the rent. The maintenance in some areas went up as high as 117 percent without any reason, it just went up from nothing to 117 percent overnight.

Now those things are important to the people on fixed income for the simple reason that today in Century Village most of the people are on fixed incomes. Most of them also are either on welfare or on food stamps—not most of them, but quite a few. I would say, at least the last figure I got over a year ago, there were over 600, and those figures can be verified.

The first notice we got regarding the trams and buses was in November 1971, and this was the new wrinkle at the time. The trams and buses were originally promised in a brochure which is right in this pamphlet I am going to give you. There were trams as part of the recreation lease; you are entitled to trams and buses. In November 1971 I got a letter asking for $1 per month per one-bedroom apartment and $1.50 for a two-bedroom apartment for transportation. It said nothing about community services, it was transportation.

I wrote back through our attorney saying that the transportation was promised to us in the brochure and, therefore, we are entitled to that under the 99-year lease. We never heard a thing about it for 5 years; it laid dormant. All of a sudden in 5 years we are hit with a request for $7.50 and $8 per month for community services which we also refused to pay. As of right now, that date was May 1975.

Senator CHILES. Is that in litigation?

Mr. CAHILL. Yes. May 27, 1975, was the first request after 1971, and we refused that also.

We feel that a $3 million profit not only is too much, but on top of that it is putting people in the position where they are going to lose their homes. Now I am going to give you all those papers, but there were a couple of items I would like to bring to your attention.

In the State of Michigan all sales of recreational facilities in condominiums is prohibited. In Virginia the management contract and the recreational lease after the takeover must be ratified by the unit owners—not after 5 years. The unit owners can say: "We don't want the recreational facilities any more. We will buy them from you or whatever you want to do with them, it is up to you." In those States they have some controls that I think we could use in this State. I will also include that in my letter.

There were a couple of things that were said that I would like to bring to your attention. One of them is, "A contract is a contract is a contract," but nobody ever said anything about a contract being fair and reasonable, and that is the law, too. Also, the laws of the United States—the Patman Act, the Sherman Antitrust Act.

TIED TO CONTRACT

There are violations in this piece of paper here where you are tied to buy something like Century Village. You are first tied to buy a recreational lease. You are also tied to buy insurance from a subsidiary of Century Village. You are also tied to buy a management agreement. You are also tied to buy your sewage and garbage disposal or water and sewer, whatever you want to call it. That is also another subsidiary.

In other words, when you sign that contract, you are tied to five different subsidiaries of that company and you have to pay all of them or you don't get an apartment. Now that is a violation of Federal law. In your opening statement you made some statement about the things that are in a contract that should be there if they should cancel the contract. I agree with you because that is part of the discussion I had with Senator Stone, you, Congressman Rogers, and the President of the United States, Jimmy Carter. I have been working with the FTC since 1973 and I have written continuously to them.

I appeared in Washington before the Federal Trade Commission for 5 hours at one session to try to show them what had to be done to eliminate the problems that we have here in the State of Florida. This happened not only in Florida but in other States that don't have adequate controls. I feel that adequate controls must be by the Federal Government where there is violation of the Federal laws. The "little FTC" act here was not retroactive because of this "a contract is a contract is a contract." They didn't think about any contract being fair and reasonable.

Now you also made a statement about the net-net and gross leases. You know the gross leases are more unconscionable than the net-net leases because when an increase of 10 percent is put on, we will say $50, it is then added to that. If it is put on to a net-net lease—the lease is, we will say, $30—the rest of it is for insurance, maintenance, and taxes.

Now if the taxes don't go up and the insurance does not go up, they are not entitled to the 10 percent. They are only entitled to the 10 percent on the $30, the base. So the gross lease is absolutely the most unconscionable lease of the two and should be attached. That is why Kelly Mann said it should include all leases. I have a set of figures which unfortunately I didn't bring with me. I will send them to you. The figures show you the difference between the gross and the net lease. I have them at home because when I was up in Tallahassee before the cabinet, I presented them at that time.

"Present Laws Are Legal Documents"

The other thing is that I have a written statement from Attorney General Griffin Bell saying that the present laws that you have now coming through the U.S. Congress, one going through the House of Representatives and one going through the Senate, are legal documents and he feels—and this is his written opinion—that they cannot be attacked in court.

Senator Chiles. I don't think he says they can't be attacked in court. He says "successfully."

Mr. Cahill. He says they can be attacked, but when you can't prove a violation of a Federal law you have a very, very poor chance of winning. And that is what you say in this law, that if those violations exist, the contract is null and void.

I would like to say that I have also been instrumental in trying to get the divisional land sales and condominiums to expand their facilities to help the people more. Last year, through the efforts of Senator Phil Lewis, the divisional land sales and condominiums got a substantial increase in their funding. I have been in touch with them this year. We are going to work again to see if we can get more money.

There is over $1 million in the fund and we want that money used to benefit the condominiums and, if necessary, go around to the different condominiums and advise them of meetings through different areas in the State of Florida. If we can do that, then I think we will accomplish something with the people who are running the condominiums. A lot of people are afraid to take an office in a condominium association because they could be sued, or something else could happen to them, so this kind of puts a damper on the whole thing.

We need help and we need help badly from Washington. Very seldom, as a stubborn Irishman, do I ever beg for anything, but I am begging you right now; please help us. We need your help.

Thank you very much.

Senator Chiles. Thank you.

[The prepared statement of Mr. Cahill follows:]

Prepared Statement of Patrick C. Cahill

My name is Pat Cahill, past president of the Village Mutual Association, Inc., a member of the Condominium Advisory Board of the State of Florida, and co-founder of the Non-Partisan Political Action Committee of Palm Beach County.

The long-term recreation lease was signed between the developer and the association board of directors who were one in the same (Century Village, Inc.). Each unit owner was required at purchase closing time, not only to sign the long-term recreation lease, but also had to sign a maintenance agreement with Village management, a wholly owned subsidiary of the developer which included

insurance, which was purchased without other bids, from Bencart Insurance Agency, another wholly owned subsidiary, and were required to contract with Century Utilities, another wholly owned subsidiary for water and sewerage, plus a 3 percent management fee to Village management. This self-dealing by the developer by which the profit from each of the subsidiaries was paid by the unit owners violated the fiduciary duty to the unit owner as the higher the costs were the higher the management fee would be in dollars. The unit owners were not told of these entwining contracts and was not allowed to read the agreements prior to closing and had no knowledge that in signing these papers they not only obligated themselves but also made the association liable for the payment of rent on the long-term recreation lease. Prospective purchasers when they asked to read the papers prior to signing were told they would get the papers after they signed and if they did not want to buy under these conditions, move on as there are others that want to buy. The long-term recreation lease and the maintenance contract were tie-in sales which is a violation of Federal law forbidding tie-in sales. Senior citizens signing the long-term lease at closing did not know they were signing a 99-year lease, as a long-term lease to most of these people is 10 years or less and most of them had no knowledge of the inclusion of the escalation clause in the contract.

The developer set up rules and regulations which were not given to the owners until 1972, or 2 years after over 3,500 sales were consummated, giving him full control of the facilities without the owner's consent. Prior to 1972 we were allowed to use the club house for association meetings for which the unit owner pays $4,334,000 per year in lease payments and we have no say in any of the operations or use of our rented facilities. This is a violation of our civil rights as our lives are controlled by the "benevolent dictator," as he calls himself. The lessee pays for all the operating costs, all maintenance, taxes, insurance, security, replacement of facilities, but the developer who invested less than $1,500,000 now makes a profit of over $3 million per year on this investment.

This unconscionable profit keeps increasing yearly due to the escalation clause based on the Consumer Price Index—the U.S. city average all items and commodity groups issued by the Bureau of Labor Statistics of the U.S. Department of Labor, and the denominator of which shall be the basic standard index figure of such price index for the month of October 1969. The assessed value on the Palm Beach County appraisers' records is less than $1 million for all of the recreation facilities which again shows the unconscionable profits made from the long-term recreation lease.

RECREATION LEASES PROHIBITED IN SOME STATES

The cost-of-living index outlined above includes food, clothing, gasoline, oil, and many other items which has no connection to a recreation lease. Some States, such as Michigan, prohibit sales of condominiums with recreation leases, and in Virginia, any management contract, recreation lease, or other contract is binding only if renewed or ratified by the majority of the unit owners after they take over control of the association. Florida has no law to protect innocent purchasers of condominiums from being defrauded by false promises, misrepresentation, or violations of the Patman Act or the Sherman antitrust laws. In 1974 none of the people of Century Village, West Palm Beach, were on welfare or food stamps, now due to the escalation clause in the recreation leases, there are over 70 unit owners on welfare and over 600 unit owners on food stamps, and this will increase yearly as the recreation rent increases. For example; since January 1973, the recreation rent on a one-bedroom apartment increased from $25.50 per month to $41.81 per month on January 1, 1977, and the recreation rent on a two-bedroom apartment increased from $31.75 to $52.05 per month on January 1, 1977, or an increase of 64 percent in both cases for only a 4-year period. From these figures it is easy to see that most of the unit owners will not be able to meet the rental payments by January 1983, or 10 years from the first increase under the long-term lease.

In the Cenvill Communities, Inc., prospectus dated November 15, 1972, it stated the company furnishes free transportation to and from West Palm Beach on four buses and within the community on six trams. Despite this, letters were sent out to some associations on November 17, 1971, demanding $1 per month for one-bedroom apartments and $1.50 per month for two-bedroom apartments for transportation. The associations not under a management agreement refused to pay

as this service was free under the long-term lease. Again on May 27, 1975, the associations who refused to pay were again sent a demand letter asking for $7.50 for one-bedroom apartments and $8 for two-bedroom apartments for so-called community services. Again the associations refused to pay for the reasons stated in the 1971 letter. For example, Golf's Edge Condominium Association, Inc., pays Century Village, Inc., and Century Utilities 60.7 percent of their entire budget for rent, water, and sewerage only.

[Attachment]

INCREDIBLE RECREATION LEASE PAYMENTS

	Cost-of-living increase per year	
	At 5 percent	At 7½ percent
Original base rent as of 1968, 1-bedroom, $25.50 per month:		
After 20 yr (per month)	$64.413	$83.869
After 30 yr (per month)	104.958	144.687
After 50 yr (per month)	278.485	404.695
After 99 yr (per month)	3,141.512	4,549.506
Original base rent as of 1968, 2-bedroom, $37.75 per month:		
After 20 yr (per month)	80.100	104.425
After 30 yr (per month)	130.683	180.149
After 50 yr (per month)	346.742	504.221
After 99 yr (per month)	3,786.981	5,664.581

You think you own your condominium now, but can you, your children, or your grandchildren afford to live under these rent costs or will Century Village own all apartments when 1988 or 1998 costs are applied.

Village Management, Inc., and Century Village, Inc., sued Waltham, et al., to cancel maintenance and management contracts of 283 associations because they were losing $600,000 annually. Why is Village Management now fighting to keep the contracts they have and asking the associations who are with Personalized to drop their contracts? Could it be that the $600,000 loss is not factual or is it because trams, buses and security, which is now paid under Community Services could be in jeopardy? Is it good business to keep a losing contract?

Century Village, Inc., who is the landlord, should agree in writing to the verbal promises now being made by Village Management, Inc. regarding no increase in rent if you sign with Village Management, Inc. and withdraw from all legal actions. The 99 year lease specifies that increases in rent can be made on January 1 of each year and that all associations must be increased if one is increased. If you sign this agreement will you forfeit all money in the escrow account and forfeit the right to sue again and what will the new rental cost be per month? Will it be at the original base or do you have to agree to accept the illegal cost-of-living increases?

Why is Century Village so anxious to have all suits dropped. Do they know something we only suspect regarding the Supreme Court decisions?

Judge Mehrtens, Senior U.S. District Judge, ruled in the case on Chatham Condominium Association et al. vs. Century Village, Inc. that both sides pay their own legal costs. The action by Century Village to ask for $40,000 in legal fees from the associations is another method of upsetting the people of Century Village who by now should be aware of these scare tactics to keep the people divided. They make lots of claims about winning decisions but what decisions have they won—none, as no final decisions have been handed down to date and the people of Century Village have not paid any legal fees during 1974, 1975 and 1976.

The above figures do not include cost of maintenance payments to Village Management or Personalized Management.

STATEMENT OF WILLIAM L. SCHOLZ, BOYNTON BEACH, FLA.

Mr. SCHOLZ. Senator, I am Bill Scholz, president of the Leisureville Condominium Apartment Association. We have a 99-year lease which I believe meets all the qualifications of making it unconscionable. However, we have developers forming a ploy now by offering the

unit owners throughout Leisureville the opportunity, as they so state, of purchasing this lease—not selling them the land, mind you, just purchasing the lease. He is contacting every owner individually and offering them roughly what I think is the equivalent to 12 times the rent of the annual rental that they can purchase the lease.

Now he does not tell them, to the best of my knowledge, that there are encumbrances against all the recreational facilities. We have three recreational facilities and a golf course. I understand there is quite an amount of encumbrances of mortgages against these properties. They are not being amortized, to the best of my knowledge, and remain set. What is to prevent this developer, after selling these leases—he sells enough leases where there is not enough income coming in to pay the interest on these mortgages—of discontinuing interest payments? What is to prevent him from going into bankruptcy?

Senator CHILES. Is he talking about selling individually to the people? If the whole group gets together to buy, he is going to sell each person the right to buy up their share of the lease?

Mr. SCHOLZ. He is approaching each individual on an individual basis, and unfortunately the community association has not taken any action to direct or to look into the possible pitfalls, and I am questioning this. If foreclosures start on these mortgages——

Senator CHILES. Do you know whether he is selling those subject to encumbrances, or is he assuming encumbrances? Do you know?

Mr. SCHOLZ. Senator, I have a background in real estate and I know if I sell you a lease, I am selling you a lease. If I guarantee it, it is only as good as my corporation is at that time; I might go bankrupt.

Senator CHILES. Yes, but I just wonder about the terms.

Mr. SCHOLZ. It would not make much difference because it is a corporation you are dealing with, not individuals. I think it is a ploy to actually detract money without the people getting their value. If they were buying the land, I would be all for it, but they are buying nothing but a piece of paper. This is in Leisureville.

Senator CHILES. We thank you for giving us that information. I would agree with you that is something that the association ought to take up and ought to look into so they could make information available to the respective members.

Mr. SCHOLZ. Unfortunately, Senator, I read some of the comments in some of this literature you have here and it amply puts it that the board of directors, in most of these condominiums, are taken from different walks of life. Some have not had the experience and maybe don't seek the experience. I believe it has been said that most of the board has purchased their leases.

Thank you.

Senator CHILES. Yes, ma'am.

STATEMENT OF DORA PORTE, WEST PALM BEACH, FLA.

Mrs. PORTE. Senator Chiles, I am Dora Porte. I am a unit owner at Golden Lakes Village a planned unit development, the first phase of which is just being completed now. We, too, have a 99-year recreation lease, a net-net lease; it was a tie-in with the sale. At the present

moment, with the preparation of the budget for January 1979, we find ourselves with a 56-percent increase in the recreation rental. The lease calls for 5-year increases, or increases every 5 years, based upon the cost-of-living index.

The cost of maintaining the recreation area will be in excess of the cost of maintaining our own apartments because the rental has been increased by that much. We have had many problems in our place with reference to construction, with reference to violations of the building codes, et cetera, and we are suing the developer. In many ways our problems parallel those problems of Century Village.

We had been promised, through the brochures that were submitted to prospective purchasers, bus service, TV, master antenna service, and many other items at no extra cost. What we have found, however, is that we are paying for each and every one of these services.

At the present time we are negotiating for the purchase of the rec area. We understand that it cost the developer somewhere in the vicinity of $750,000 to construct this recreation area. He is now requesting 10 times the increased rental of the recreation area, which price would total approximately $5,350,000. Mind you, this recreation area was built in 1974, at a cost of about $750,000.

My own apartment maintenance cost was $68 when I purchased it in 1974. Under the budget that is being proposed for 1979, that apartment will be costing me $115 per month.

As far as our laundries are concerned, our developer entered into an agreement with the laundry company, of which he is owner, at the time he and his fellow cohorts were members of the board of directors of the association. We maintain the laundry buildings. We clean those laundry buildings. Nevertheless, we do not receive one dime from the developer. In the interim, he has increased the cost of the washing machines and the dryers by doubling the amount that they were set for originally.

Now this puts us in a position where the apartments become prohibitive. We have heard this said time and again by many of the speakers, that before you know it, we will all be out of our apartments. Some relief must be forthcoming so that it will be possible for us to remain in our apartments. We don't wish to have to go into public housing. That would be a far more costly project for the Committee on Aging than what we have at the moment. We find that every phase of our contract falls completely within the items set forth by Attorney General Robert Shevin as rendering them unconscionable. I think that the legislature should give us some consideration at this point.

While I do not advocate abrogating contracts because of hardship, I do believe that the rules of law setting forth unconscionability of contracts should be clearly defined by the legislators. Senator Stone's bill, S. 2919, does define unconscionability. The passage of S. 2919 would give condominium owners the relief needed to void the 99-year recreation leases containing escalation clauses and which were tied into the sale of condominiums.

Thank you.

Senator CHILES. Thank you. Yes, sir.

STATEMENT OF IRVING GOLDBERG, DELRAY BEACH, FLA.

Mr. GOLDBERG. Thank you, Senator Chiles.

My name is Irving Goldberg. I am here representing the 3,000 members of the Atlantic Democratic Club of Delray Beach, and numerous condominium unit owners of King's Point, in particular.

We are in the position, as indicated more or less by my good Irish brother, Pat Cahill, as those in Century Village. We also are subject to the 99-year recreation lease. We hope the legislation which you are proposing and hoping to get through, that the Congress will take into consideration the problems of people under the 99-year lease, retroactively. The Florida judiciary said they are not concerned with us, retroactively, especially since the Florida "little antitrust act" has not been put into effect, although Attorney General Robert L. Shevin did try to have it apply to the leases. The Federal antitrust law must come into play because of the fact that there were tie-in sales, et cetera. We were not told that we could take the recreation lease or not take the recreation lease. We were compelled to take it. The lease is definitely in violation of the Federal Antitrust Act, and I feel that in the bill that you the proposing, Senator, this will be taken care of through the Justice Department.

I might say in passing that when President Carter was here during the election campaign, he more or less told us that he would see what he could do about it at that time and we expect that something will be done. We are dealing here, especially in King's Point, with 98 percent of the people who are on fixed incomes. I am a retired civil service worker on a fixed income. Our unit owners cannot afford to keep on paying escalating rates on this recreation lease and something must be done about it.

As I said before, there were tie-in sales in violation of the FTC. Further, the Florida Condominium Act has a clause where the developer and/or the board of directors can take liens against the unit owners on many things which are not legal. As a matter of fact, in our own King's Point, liens have been taken already. They don't have to go to trial to take these liens; they just get them automatically on the basis of an illegal lease, and they are in the courts today attempting to foreclose on the unit owners for not paying these liens, the same as reported by Pat Cahill of Century Village.

I say to you that all the other things that the people spoke about in the earlier session definitely are things that our people in the condominiums need. The elderly ill need transportation to doctors, hospitals, shopping, and meals. They can't go out on their own. We ask that you do what you can to have Congress enact legislation in the interests and needs of the condominium unit owners.

Thank you.

[A supplemental statement by Mr. Goldberg follows:]

SUPPLEMENTAL STATEMENT OF IRVING GOLDBERG

In the name of the over 3,000 members of our Atlantic Democratic Club, residing mainly in condominiums in the Delray Beach area of West Palm Beach, I make a further statement.

Our area consists of approximately 50,000 condominium unit owners. We are all subject to the 99-year recreation lease with no retroactivity for those who pur-

chased prior to July 1974. The Florida costs have not been decided up to this writing, even though our Attorney General Shevin has stated the lease is subject to the Florida FTC act and is unconscionable. It therefore must have Federal action under the Federal rate antitrust law and tieing of sales.

Further section 718 of the Florida condo statute allows the developer or board of directors to obtain a lien on our homes withut any due process court action, in violation of the sixth amendment to our U.S. Constitution, and the Justice Department and/or the U.S. Attorney General should prosecute this violation.

Senator CHILES. Thank you very much.

Yes, sir.

STATEMENT OF ABE BENZMAN,[1] WEST PALM BEACH, FLA.

Mr. BENZMAN. My name is Abe Benzman. I was raised in the United States and I never thought I would be the object of charity in my twilight years, but at 68 I find all this consideration—this very charitable effort made by the Government, which really hurts me.

I am one of the people who did my business with Century Developers completely through the mail, interstate law. I left a deposit in June 1971 and was notified to come down and take possession in February 1972. They threw a contract in front of me, and in this 99-year lease, the smartest Philadelphia lawyer could not understand if he read it for 60 days. I demanded my money back. These swindlers refused to give me my money back. They called out a Mrs. McLean and she told me they had my money, and they were going to keep it, and I had to pay the rest. If this tie-in sale does not come under the Sherman Antitrust Act, I don't know what does.

Recently, you have been informed that liens have been projected for 3,300 apartments in Century Village. As an answer to this harassment through the courts—now these courts operate on the taxes we are paying, including the judges' salaries. We are paying your salaries; you are our representatives. Mr. Levy is now using the courts to make us pay excessive legal charges by bringing in harassing cases. He has continued to do this. The circuit court here in Palm Beach is absolutely flooded with cases. If the rest of the country is 3 years behind, we are 5 years behind. Under the sixth amendment we are entitled to due process for speedy and fair trial.

The most reprehensive situation takes place in this State right now and you will now have to come forward with the Federal Government to try to help us. Well, like West Point says, the best defense is a good attack—a good offense. We have, before Judge Poulton in the circuit court here in West Palm Beach, the *Waltham* case. In this case the fiduciary relationship was brought up involving the building management, one of the store companies that Mr. Tennyson spoke about.

TESTIMONY PRODUCED

The three board members—Landino, Jacobson, and Mills—were put under oath. Testimony was produced by Mr. Bailey, the attorney for Levy, to the effect that he had given us notice of payments due for years prior for community services. Fourteen witnesses repudiated it.

[1] For newspaper articles submitted by Mr. Benzman, see appendix 1, item 3, p. 204.

A deposition of the stipulation was demanded by Judge Poulton that all the other 153 associations were to attest to the same thing. Mr. Bailey refused to sign the stipulation, but on the record adverse testimony exists which shows probable cause for an investigation of perjury.

Miss Mills said that she personally typed and sent out all these budgets and informed the people on a regular basis. Mrs. Landino denied it; Mr. Jacobson denied it. The fiduciary relationship existing in this act was absolutely now a fraudulent act—it is under oath, it is on the record in Judge Poulton's court.

Is an individual who has purchased this property through the mail governed by Federal law and not State law? I say that your committee now has on record an indelible regular fraud and we should proceed to break this contract right from its inception. Judge Poulton's own words to the two opposing attorneys were on Thursday approximately 6 weeks ago:

> Gentlemen, you leave me only two alternatives: to invalidate this contract from its inception because there was no meeting of the minds, or to seek an equitable settlement.

I cannot see making an equitable settlement with fraudulent people, with fraudulent contracts, and I say that you owe to us an invalidation of every one of these contracts in existence on this basis. I say the investigation should pursue in charging these people with criminal fraud and put them in jail, and maybe we will get rid of all these contracts at the right time.

In a newspaper article, Mr. Levy makes a statement to the effect that in 1978 he expects to make $90 million. Those are Mr. Levy's words.

May I also bring to your attention the fact that on September 8 in Tallahassee, the Florida Supreme Court invalidated——

Senator CHILES. Yes, sir, I know about that case.

Mr. BENZMAN. All right. Then I will refrain from saying anything further. You have now created a caveat emptor to the greatest degree—go after the old folks, kill them, get what you can. That is the way the Florida court is trying to protect the consumer.

Senator CHILES. Try to keep your statements to several minutes because we would like to give everybody a chance and we are getting close to 1 o'clock.

STATEMENT OF JEANNE SKLAR, DELRAY BEACH, FLA.

Mrs. SKLAR. I am Jeanne Sklar, Kings Point.

Our first relationship with the developer was a completely negative situation. All of us have bought our homes in good faith, and we anticipated that our good faith would be reciprocated. We found many things which were contrary to our rightful expectations. We found slipshod work, many changes in the construction plans submitted to us. We have found them to withhold information from us which should have been told to us. As a result, many condominium associations have taxed their means to institute costly litigation, some of which in many quarters has been declared suspect. We feel that this kind of relief is costly, time consuming, and leaves the results up in the air.

It has also been very frustrating to be given a management company which is just another hat worn by the developer whose purpose ostensibly is to handle our complaints and resolve them. We find that complaints are presented repeatedly to the management company and either the work is never done, or if it is done, in many instances it is slipshod and not corrected.

We have heard much about recreation leases and sales. We have been told that "the fortunate ones" who are purchasing the recreation areas, actually it is an agreement for a deed. It is our understanding that we pay for 30 years and then acquire minority title contrary to what we believed at the time of purchase. We have absolutely no voice in the running of the recreation facilities. We get no certified accounting for our monthly maintenance costs for other than recreation. We have been told that whatever the costs are, we have no input.

In view of all this we feel that certain remedies are mandatory. Management companies, particularly those controlled by the developer, should be required to submit a certified audit turning over the corporation to each condominium association followed by an annual certified audit report. In the experience of many of us who have owned our home prior to the purchase of condominiums, our experience is that there are many unfinished items when buying a new home.

At the closing, arrangements are made with the developer to hold funds in escrow guaranteeing the delivery of service and repairs within an agreed period of time. We feel that it would be appropriate for every developer to be required to place 10 percent of the purchase price in escrow to complete the repairs in the stipulated period of time. Should the developer fail to make the necessary repairs or deliver them at the end of the stipulated period of time, the purchaser should then have the authority to have the work done. Should the repairs require more than the money held in escrow, then all costs above that should be a lien against the developer.

In the interest of brevity and realizing that many of us have something to offer, we did not substantiate our statements by documentation. We have them available any time you wish to avail yourselves of them.

Thank you.

Senator CHILES. Thank you very much.

Yes, ma'am.

STATEMENT OF MRS. IRWIN DAVIS, BOCA RATON, FLA.

Mrs. DAVIS. Thank you, Senator Chiles. I do not wish to take up much of your time.

I am Mrs. Irwin Davis. I have prepared a brief outline of what is happening and I have copies which I have given to your staff.

Senator CHILES. Thank you, ma'am.

Mrs. DAVIS. We bought a condominium apartment in December 1976. When my husband and I purchased this apartment there was nothing mentioned about the owners having to take cable TV and exterminating service; neither was it mentioned in the condominium declaration of bylaws.

On June 14, 1977, we received a letter telling us about cable TV on a voluntary subscription basis. We did not wish to subscribe to this service so did not sign the attached form.

On September 22, 1977, we received a letter telling us cable TV and exterminators service would be completed in all apartments and it would be $9.50 a month starting the first of the year 1978. Our apartment is not common area and we do not want this service, but we are being forced to pay for these services whether we want them or not.

There has been much communication from the developers about not accepting these services and after paying for a few quarters to give us time to investigate. We decided in May 1978 to stop the exterminator service, and in October 1978 stopped paying for the cable TV. My husband and I received three notices of being in arrears for the exterminator services and on October 10, 1978, we received a letter from their attorney threatening us with a lien on our apartment.

Some people, upon receiving notices from the office, paid up. We did not panic when we got the attorney's threat. We gave it to our lawyer and he checked our documents. There was nothing which stated we had to take cable TV or exterminator service. Our apartment is not common area.

Our attorneys sent a letter to the developer's attorney on October 16, 1978, and up to the present time they have not answered him. It is a shame that senior citizens have to go to the expense of hiring an attorney to fight these conditions in condominiums.

Thank you for listening.

Senator CHILES. Thank you.

Yes, sir.

STATEMENT OF HAROLD R. BLACK, WEST PALM BEACH, FLA.

Mr. BLACK. Senator Chiles, you have heard from all the big complexes. I happen to be from one of the smaller ones; we have only 518 units in our place.

My name is Harold R. Black and I live in Linksworth.

I heard you ask the lawyers if they knew of anyone who had sold below cost. Apparently the developer at our place did sell below cost because he went broke. The savings and loan took over leaving 140 people without deeds. The savings and loan asked them to contribute $700 additional, and the ones who had not moved in their apartments had to pay $2,000 additional and were assured that the apartments were completed.

I found that the savings and loan in question also received half of the income from another development, the same builder that built previously, and all of the income from a third development that he put up. We have been through about 3 years of court litigation. After the 3 years of litigation and somewhere between $10,000 and $20,000 of legal costs, we had the courts decide that the management agreement was null and void. The judge referred to the Boston Tea Party where it had taken away all of our rights under any law that had been promulgated.

The end result is that we now are trying to get a special taxing district, which is apparently a new thing that has come up in the State. They are talking about the possibility, over a 30-year period,

of our buying out our land lease. The first year the land lease income was about $90,000. At the end of 5 years, the escalation clause had jumped to $125,000. The second 5 years—it comes up next year, and with the cost-of-living tie-in I can see very plainly that it will be anywhere from $160,000 to $190,000.

I have certainly wondered right along why there are not some laws. Some of the attorneys who brought this up said that there is not some law in the past that has been violated, and I am sure that several people have mentioned it. I would like to think that the legal department—the Federal Government—would look into the laws already on the books and see if it isn't possible to break these things high, wide, and handsome.

Getting back to the possible purchase, the savings and loan discussed with the owners—I tried to start it on my own and started to buy my own. I made an offer and they said, no; they didn't want to do it individually. To buy out is going to cost me some $3,600, and when I first started there it was $20 a month. I offered them $500 and told them I thought I was being very magnanimous in offering the $500.

I don't know what the answer is. I know we all need help. It frightens me to think that even with 30 years to pay off, with the escalation clauses in there, what it can amount to. I am on a fixed income, very fixed, and I would hate to be in the position of having to go on welfare or food stamps or anything else. I have always wanted to pay my way and I hope I can continue to, and I am sure that most of the people in my complex do. I am not speaking for others in the complex; I am speaking just as an individual. Certainly 99-year leases—every phase of unconscionability is covered with our lease.

We pay all the expenses and maintenance. We pay all the taxes. The money income was greater than the place was assessed for. I have not bothered to get into the actual figures as to what kind of money the savings and loans are going to get out of it, but I also wonder as to the savings and loans being within the bounds of propriety and legality in being in a unit like this. After the money is returned, why should they have an escalation clause in there, any more than they have in any mortgage contract? I don't understand. When they moved in on this—sure; it is a sweetheart deal for them, but to me, where they are federally regulated, it seems as though something could be done on that score to stop the escalation.

Thank you very much.

Senator CHILES. Thank you, sir.

Yes, ma'am.

STATEMENT OF ANNE RUDOLF, WEST PALM BEACH, FLA.

Mrs. RUDOLF. My name is Anne Rudolf. I am chairman of the legal study committee for a small condominium, probably smaller than any mentioned. However, we, too, have our problems.

Senator CHILES. How many units are in the condominium?

Mrs. RUDOLF. 145.

We have been studying our documents very quickly after it became apparent that they were written in favor of the developer. We have acute structural problems and no warranties. If we go to litigation, it will be costly, long, and drawn out, and no guarantee of any results.

I feel that there should be some form of insurance the way they have for single-family homes whereby if there is any faulty construction, you could relate it right to an insurance company rather than engage in very expensive litigation.

I also believe that our land sales division might be more helpful if they could give small condominiums guidance rather than just shuffle off to the courts. The courts are overloaded now and we do need some sort of help. Every question does not necessarily have to be brought before the court; however, the land sales division states that they will not come to a condominium unless there is a violation of a law.

Sometimes you just want interpretation of a law rather than costly litigation, especially when you can't decide whether the law has been violated. You would like to say, "Well, now, how does this affect us?"

The other thing I would like to say is that in any law that is passed in condominiums, I think that some attention should be given to owners' rights. This is a very vague subject in all condominium documents, and I think it is the cause of a lot of controversy. If a law could be spelled out where the owners have certain rights and they are clear. This would be very helpful. Thank you.

Senator CHILES. Thank you.

I said that we were going to have to close this at 1 o'clock and it is now 5 minutes after. I will go until 1:15 and then that is my maximum deadline when, I am afraid, I have to leave. I want to hear from everybody that we possibly can.

STATEMENT OF JAMES H. NIMMO, WEST PALM BEACH, FLA.

Mr. NIMMO. I will be very brief.

My name is James Nimmo and I represent Crest Haven in West Palm Beach.

I hear so much talk about recreation leases these days. Unfortunately, we have a real Mickey Mouse contract with the developer, and it does not include the recreation lease. Of course, the developer is also management and he controls everything; we have no input there whatsoever.

One of the things that alarms most of us as members of this homeowners association is the possibility of assessments. Last year we were assessed $25, very arbitrarily. The books were never shown to us; these increases were not justified. You have to take this man's word for it, which on its face seems a little absurd.

The reason I speak now is since the recreation lease does not apply to us, we are there as his guests. Even though we represent a large group of homeowners, we are barred from using the clubhouse for meetings. We have to rent assembly rooms in the public schools whenever we want to have our meetings. It is quite unbelievable.

Over and above that, it would seem to me our only hope is to get a freeze put on this cost-of-living index that is really getting into everybody's hair. Most of us are paying more for maintenance than we are for mortgages.

Thank you for your consideration.

Senator CHILES. Thank you.

Yes, sir.

STATEMENT OF WILLIAM LAMINSKY, WEST PALM BEACH, FLA.

Mr. LAMINSKY. My name is William Laminsky. I live at Century Village. I am one of the 320 people who received notices—summonses—that my apartment has a lien against it.

Senator CHILES. What is that lien for?

Mr. LAMINSKY. I will explain it, sir.

Senator CHILES. Yes, sir.

Mr. LAMINSKY. In 1975, we had a court action. I was one of the presidents who was supposed to go to jail. At that time I would have gone to jail, if necessary. At that time certain moneys were due to Century Village, but the court said inasmuch as Century Village did not have too much money in its treasury, that the increases we were assessed should be put into a savings account. In other words, this money by court order was put into the Century Village lease and trust account, this money having been deposited there from 1975 up until 2 months ago.

Now in the meantime CV felt inasmuch as the court ruled against us in reference to CV lease money, he was supposed to get this money directly from the associations, and according to the lease we signed, he also was entitled to a full year's rent in advance. In other words, for my apartment he charged me for a total of approximately $1,700.

However, we were in no way in default because we went according to the court ruling. The court ruling said that we should put this money into escrow, which we did. He claimed that we were in default and he put a lien against my apartment and 300 other apartments at the same time. He said approximately 3,000 more will get the liens.

Now I think it is absolutely imperative that the Federal Government has to step in; that means the Congress—the House and the Senate. They must enact a law which will force developers to stop harassing the senior citizens. I think it is abominable. I don't think, Senator, that when you say we've got to try—it is more than trying, you must do something. After all, our lives are at stake. There are people I know who are on food stamps and they cannot take these to be harassments. Unless some action is taken, we will be priced out of our apartments and I don't think it is very fair for us after working all our lives and paying taxes, that we have to end up with things like this.

Senator CHILES. I thank you for your statement.

HELP PROMISED

I just want to say that when I say that I am going to try, I am going to give that every effort that I possibly can. The only thing worse than not being able to help is to promise you something that can't be delivered. I think that I want to be credible as much as anybody. We are dealing with this matter which is a very, very serious question. If you had the Florida delegation to pass the law, we could pass it today. But we are dealing with 50 States, many of which don't have the kinds of situations we have. Yet we think they are going to have them, and we would like to prevent them from happening in those States, but it is very hard to try to get that understanding out.

For example, the bill does not reside in my committee. I am not on the committee that has the bill; it is in the Banking and Housing Com-

mittee. We are meeting here under the Special Committee on Aging which does not have the authority to act on legislation. We cannot offer legislation in that committee. What we can do is hold hearings like we are doing now to build a record, and use that record as a means of getting some leverage on other people to show what kind of a plight we have, and we intend to do that.

I do want to tell you that we are going to see that we get hearings in the Congress this year and I think on the basis of those hearings we can achieve more understanding of the problem, if only I could get all the other Members of the Congress to hear what I am hearing today. Of course, I didn't even need to hear it to start with. I walked through here in 1970 when it was just beginning to start. I came back in 1976 and of course many weekends in between, and I have been listening to your plights on this for the 8 years. If I could get everybody else to hear them, it would not be any problem to pass the law.

So I don't want you to think that you don't have my support, and my enthusiastic support, to try to do something about it. But at the same time I want to be very careful and not walk out of here having you say, "Well, he said he was going to take care of that and he didn't do it." It is still a heck of a problem to try to get the other Members, and the other States that don't face this condominium problem right now, to see the importance of the legislation so that we can get it passed.

I want to thank you all for your appearance here today. It has been very helpful; I think it will help us in building the kind of record we want and we are going to try to take that record and do exactly what we can.

Pat, do you have anything further?

Mr. CAHILL. I would like to thank you very much. If I can help you in any way in Washington, all you have to do is make a telephone call and I will be there.

Senator CHILES. I thank you. I appreciate that.

We will recess our hearings. The record will remain open for several weeks. If you have additional material that you would like to send us, we would be delighted to have that material.

Thank you very much for your attendance.

[Whereupon, at 1:13 p.m., the committee adjourned.]

APPENDIXES

Appendix 1

MATERIAL SUBMITTED BY WITNESSES

ITEM 1. NEWSPAPER ARTICLES AND LEGAL DOCUMENTS SUBMITTED BY GARY A. POLIAKOFF,[1] OF BECKER, POLIAKOFF & SACHS, P.A., MIAMI BEACH, FLA.

EXHIBIT C

[From the Miami Herald, Jan. 11, 1976]

FORECLOSURES MOUNT; LATEST FILINGS HIT NEAR RECORD LEVEL

(By Charles Kimball)

Another onrush of foreclosure suits and conveyances of properties in lieu of litigation resulted in 74 more major real estate failures in South Florida in November. The month's accumulation of new distressed properties of record was one of the heaviest seen since the shakeout began in September, 1974. There are now a combined total of 775 financially pressed real estate holdings each worth $250,000 or more in Dade and Broward counties. The dollar valuation of these properties now totals $1.981 billion. The largest single category of projects in trouble continues to be apartments.

In Broward 17 more developments went under worth $59.3 million. The parallel November total for Dade County was 16 failures worth $69.2 million. In Broward two major developments were conveyed to lenders. They were Point View Towers and Plantation Villas. Foreclosure proceedings were started against a high-rise rental project, the Seasons of Fort Lauderdale.

In Dade two builders deeded seven projects to two trusts in lieu of foreclosure. Bankruptcy proceedings revealed over $16 million in defaulted mortgages alone at a large condominium promotion in northwest Dade County. Foreclosure proceedings hit a major conversion, the Island Terrace in Miami Beach. Trusts with loans of over $7 million on land alone in southwest Dade also found themselves in bankruptcy proceedings because of an insolvent builder.

There are now 364 apartment buildings in distress in the two counties combined. A total of 210 holdings of land are the next largest category of financially distressed properties.

[From the Wall Street Journal]

CONDO FAILURE CAUSES WIDESPREAD PROBLEMS

(By Jim Montgomery)

SANDESTIN, FLA.—When a big real-estate project goes under, it spreads ruinous ripples.

Bill and Tina Davis are strolling past their $51,900 condominium villa. Though it's "about 96 per cent completed," it has been that way for 15 months. The Davises, from Atlanta, spend their Florida vacations in another villa that costs them $40 a day. "It's kind of galling," says Mr. Davis, a Ford Motor Credit Co. manager.

The Davises' unfinished villa is in Sandestin, a posh resort in the making that folded last year. Its plumbing was being installed by Fred Morris, who was earning more than $25,000 a year on the job. When Sandestin ran out of money,

[1] See statement, p. 113.

Mr. Morris was out of work for 10 months. Now he is making $6.50 an hour as a construction worker in nearby Panama City. He says he has lost his boat, an airplane, a car and "everything I'd worked for." Because he can't collect $112,000 due him for plumbing work at Sandestin, he can't pay $65,000 in business debts he owes.

And then there is Chase Manhattan Mortgage & Realty Trust, named after the bank, because the bank was its real-estate advisor. Chase Trust has $14.2 million in unpaid loans and interest at stake in the Sandestin resort. To salvage its investment, real-estate professionals say, Chase Trust will have to risk at least another $4 million. Ironically, the project went under in the first place when Chase Trust abruptly cut off its financing, precipitating the bankruptcy of Sandestin's developer, Evans & Mitchell Industries of Atlanta.

(Recently, Chase Trust sold 16 loans totaling nearly $160 million to Chase Manhattan Bank; that left the trust with $589.5 million in loans, including the Sandestin loan, that weren't accruing interest—70 per cent of its loan portfolio.)

Sandestin, like many another ambitious REIT project, was conceived more than four years ago. At the time, REITs like Chase Trust were financing extravagant development plans, and that was when Evans & Mitchell acquired this 1,700-acre piney woods site straddling U.S. Highway 98 midway between Pensacola and Panama City on a peninsula lapped by the Gulf of Mexico on one side and Choctawhatchee Bay on the other.

Evans & Mitchell, not too hyperbolically, touted Sandestin as "a residential and vacation resort where man can live in harmony with nature while savoring the choicest fruits of civilization."

By August of 1974, the developers had completed an 18-hole golf course, tennis courts, a clubhouse and 43 of 215 planned condominium villas. Then Chase Trust cut off the money. Today, another 73 villas, a 96-room motel, a restaurant and related facilities remain just over 90 per cent completed and 100 per cent unusable. Of 99 other villas on which work was started, experts figure only 36 are "finishable." Weather, including Hurricane Eloise, ruined the rest.

Halting the project wiped out the jobs of some 500 construction workers and left more than 250 contractors, suppliers and other creditors holding the bag for at least $24 million.

Theodore P. Booras, vice president of First National Bank of Fort Walton Beach, says some construction workers "just disappeared into the woods," abandoning cars and mobile homes they were buying on the installment plan. He says the bank repossessed and took losses on "two big dump trucks, a boat and a half-dozen automobiles" and still holds four foreclosed homes.

Ordinary construction workers, says Fred Morris, the plumbing contractor, "were really hurt" because they needed all their pay to live on, and they couldn't find new jobs. To keep afloat himself, Mr. Morris used his life savings of $15,000 and sold possessions at a $16,400 loss. He kept a pickup truck. His wife has just taken a $100-a-week clerical job to help avert the foreclosure threatening the Morrises' $55,000 home in Panama City.

Another Sandestin contractor, Jack Adair, is "hanging on by the skin of his teeth," according to his lawyer, thanks mainly to his wife's income as a school teacher in DeFuniak Springs. Mr. Adair did pick up $4,000 for clean-up work around Sandestin after Hurricane Eloise. But Sandestin owes Mr. Adair $51,515 for earth-moving work. Bulldozers and other equipment on which he had paid $70,000 have been repossessed.

"That place cost me about $110,000." Aubrey Johnson, an electrical contractor in Milton, near Pensacola, says of Sandestin. "My backlog's down to $150,000 from over $1 million and I've had to lay off five people . . . and I'm stuck with $30,000 worth of light fixtures. You wanna buy 2,200 fixtures?"

Gale Smith's farm in Indiana recently went on the market, a casualty of the Sandestin collapse. Mr. Smith had installed water and sewer lines for the project and never got $138,256 due him. Another failed project in the Sandestin area cost him $117,000. To pay his debts and replenish his capital, Mr. Smith sold his farm for $120,000. He hopes that the sale of a home he owns in Warsaw, Ind., will bring him another $63,500. He was forced to sell some machinery, at distress prices, at a $300,000 loss. He says he may recover financially in "10 to 15 years, if I live that long."

Many people hereabouts blame the Chase Trust for their trouble. A big sign at the project still proclaims "Financing by Chase Manhattan Mortgage & Realty Trust," but one victim says, "Now we call it the Chase Distrust!"

They complain that the Chase Trust stopped financing the project after repeatedly assuring everyone concerned that all was well. Charlie A. Evans, II, former chairman of Evans & Mitchell, the developer, asserts that "Chase made a basically open-ended commitment to continue financing to completion, but he ran out of money and refused." The Sandestin Motel, he says, needed only 45 days of work to complete, and it would then have produced cash revenue to support the project.

"Stupidity of the Chase Trust wasted a cash flow (from the motel) of a half-million dollars," says C. M. (Push) La Grone, an Atlanta building-materials supplier and member of a Sandestin creditors' committee. But he also says there was a "a lot of stupidity, including mine, on the whole thing!" He says he permitted Sandestin to run up a $112,626 bill at his firm; by way of atonement, he has reduced his salary, he says, "about 30 percent."

Other businessmen also suggest that a lack of fiscal restraint hastened Sandestin's collapse. "They spent grandiosely," says banker Booras of Fort Walton Beach. "Funds poured out like there was an endless supply."

"It was the loosiest-goosiest operation I ever saw," a veteran real estate broker says. And another businessman says that, when the Chase Trust finally realized it was riding "a runaway horse, it jerked the rein too quickly and everyone took a spill."

Evans & Mitchell, the developer, tried to recoup by filing a bankruptcy petition on Aug. 15, 1974, under Chapter 11 of the Bankruptcy Act. This would have allowed the developer to continue work on Sandestin under court supervision without being sued by creditors. But last March, Sandestin simply ran out of cash, and the court appointed a trustee to liquidate the project to raise cash for creditors.

Now awaiting court approval is a settlement agreement just executed by Chase Trust under which Chase would pay $1.9 million and take title to the 350-acre developed part of the project. Most of the undeveloped part would go to Cabot, Cabot & Forbes Land Trust to satisfy a $7 million claim it has on the project.

The Chase settlement would yield suppliers and other unsecured creditors about "63 cents on the dollar" of an estimated $3 million in claims, says Edward L. Greenblatt, attorney for the bankruptcy trustee. "In the context of a bankruptcy," Mr. Greenblatt says, "that's close to a bonanza."

Some creditors are less enthusiastic. "I didn't work on a 37 percent profit margin," says Fred Morris, the plumbing contractor. "Do you really think the Internal Revenue Service and my other creditors will let me settle for 63 cents on the dollar?"

Chase Trust chairman Joshua Muss won't disclose how much Chase has set aside as a loss reserve on Sandestin. He does say the trust plans "to revitalize the project" at an additional cost of no more than $2.5 million.

If Chase Trust takes over Sandestin and completes construction, it can count on closing one sale right away. Bill and Tina Davis, the Atlanta couple, paid $5,190 down on their villa two years ago. "We'll complete our purchase, definitely," Mrs. Davis says.

Some others want their money back. Jack Adair, the earth-moving contractor, had put up an earnest-money deposit of $500 toward the purchase of a villa in the project he helped build. "Now I can't afford it," he says. L. Andrew Hollis Jr., a lawyer from Enterprise, Ala., demanded and got back his $5,000 down payment about a year ago.

Owners of finished villas, who come from as far away as Calgary, Alberta, seem happy with their purchases, though the project's financial troubles have cast a cloud over at least one title. Mrs. Ann J. Jones, a Memphis real-estate woman, bought her $56,626 villa for cash on June 25, 1974. But her deed to the property wasn't recorded until July 1, three days after a mechanic's lien of an unpaid Sandestin contractor was filed against it.

At least one man thinks Sandestin's failure has helped improve his life. Burton Ward, a 54-year-old construction supervisor, left a job in Fort Wayne, Ind., to work at Sandestin. The work ran out in less than six months, and Mr. Ward lost about $10,000 in pay and bonuses. But now he's happily running a marina that he leases in nearby Destin. Finding a marina to run, he says, "was really why I came down here. The job at Sandestin was only an excuse."

EXHIBIT D

[From the Miami Herald, May 28, 1978]

DREAM CONDOS AT EMERALD ISLES ARE NIGHTMARE

(By Darrell Eiland)

"There are several good reasons why Emerald Isles West is located in Davie. First of all, there are many people who prefer a different lifestyle from the overcrowded 'beach' environment. People who yearn for the wholesome atmosphere many of us remember from childhood, but with comforts and modern conveniences that were lacking in 'the good old days.' Davie, Florida, offers such a setting."

In the summer of 1974, there were condominiums rising all over Dade and Broward Counties. Aunt Jemima could have wished her pancakes were selling that well.

". . . Yet, Emerald Isle West is within minutes of the other Gold Coast communities and their attractions. Ideal commuting distance for business or pleasure."

Some people bought condominium units for a retirement home, for a place to live their last years in sunshine and quiet. Some bought them as an investment, a place to put their money to work.

"There is financial advantage of buying here. Building moratoriums have curtailed condominium and high-rise construction in many parts of Broward and Dade counties, which has forced prices higher than they should be for existing condominiums in those areas. Just compare their prices and ours and you'll see. You get so much more for your money at Emerald Isles West."

Ed Begbie: "I figured it was a good price, both from a buyers' standpoint and a sellers' standpoint. I wasn't stealing it and I wasn't being robbed. I paid $28,500 before construction started for a two-bedroom, two-bath unit."

Begbie is one of the "lucky" ones. He and his wife got an apartment out of the deal. They also got some problems.

"Condominium prices will continue to rise. Some will eventually price themselves out of the market, but our low pricing structure will allow for substantial appreciation and marketability. Your Emerald Isles West condominium offers you a pleasant way of life now and security as well for the future."

But Begbie and the 44 families who did receive apartments can't sell them, however much the price of condominiums have risen. And, they say, their life at Emerald Isles West has been anything but pleasant.

"Now, read on. You'll be pleased with the features of Emerald Isles West. 'A Bit of the Irish Woods in Davie'."

There's what the lawyers call "a cloud on the title." Since 1974, construction has halted at the project with only the first phase semi-finished.

The 44 families have had to improve, maintain and take care of property they don't really own.

Sol Diamond is one of the "fortunate" 44. It's the waiting that has gotten to him.

"I know of at least a half dozen people who have died while they were waiting for the courts to reach some sort of a decision on this. The courts should take into consideration that some of us in here don't have that many years left to us to wait around for our Garden of Eden in the Promised Land."

"Yeah," said Begbie. "If criminals are entitled to speedy justice, why aren't we?"

"Enjoy a carefree adult lifestyle on your own little 'isle' of fun and relaxation. You won't have to go anywhere to have a good time. In the middle of our well-guarded, tree-studded estate is a tremendous swimming pool surrounded by plenty of sundecking. The ideal spot to spend a lazy afternoon, getting into the swim of things or lounging in the shade chatting with friends."

Ed Begbie has never so much as wet a toe in the swimming pool. The reason: weeds still grow high on the vacant space where the swimming pool was supposed to be.

"If you care for more activity, there's plenty available in our handsome recreation building. Get in shape with a workout in the gymnasium, followed by a soothing sauna bath (separate saunas for men and women.) There's a party room with kitchen for friendly get-togethers. The building also contains a billiard room and shower-rest room facilities.

The ugly grey skeleton of what was to be the recreation room stands gauntly beside the spot where the swimming pool was to be. Residents of Emerald Isles

West can't even roam inside the structure. A hurricane fence blocks off all access to the area.

Howard Duncan, who heads Davie's Building Department, said he has frequently examined the project's uncompleted portion.

"I would be greatly surprised if the basic framework of the building has not suffered terrific damage," Duncan said.

"When you leave ends of steel reinforcing projecting out into the weather, as they have been on that project, the erosion follows the steel down inside the concrete," he said.

"If tennis is your game, grab your racket and head for one of our tennis courts located just outside the recreation center. The courts are lighted so you can play them day or night. As you can see, there is ample opportunity to enjoy yourself at Emerald Isles West."

The land has not yet been leveled for the tennis courts. Some of the residents, seeking recreation, joined a nearby country club. The country club closed.

What happened at Emerald Isles West?

At the same time Begbie and other residents were moving into the completed first phase of the structure, dozens of other people were waiting for their units to be built.

Waiting. And waiting. And waiting.

"My place couldn't have been more than a couple of months from completion," said Theodore Kanov.

"And yet, they kept putting me off and putting me off on the completion date. First, there was this that still had to be done, and then there was something else and then something else," Kanov said.

"I began to really smell a rat when several of the other potential tenants said they had received letters from the developer, the Barth company, asking that husbands and wives come in for a talk. The letter said there wasn't any need for the tenants to bring a lawyer as the meeting would be time consuming and a lawyer would be an unnecessary expense," Kanov said.

"They didn't send me one, probably because they were aware that I have had some experience in real estate," he said.

But, Kanov told a friend, "George, I'm going in with you," and at the day and hour when George was scheduled to go in, Kanov went in too, over the objections of the receptionist.

"They said the company needed some construction money. They were offering a deal: If you increased your downpayment to 25 per cent or more of the total cost of the unit, they would give you a 10 per cent discount on the total cost at closing.

"It sounded like a reasonable deal. They said it would cost them 13 per cent interest and a lot of paperwork to borrow the money from a lending institution and they would rather give the purchasers 10 per cent deduction in the price."

But Kanov, who owns the Beach Motel in North Dade and has sold real estate for a number of years in South Florida, sensed the company might be in deep financial trouble.

He placed an ad in the Herald for all potential Emerald Isles West purchasers to contact him.

More than 100 did, and they formed a corporation and hired the law firm of Poliakoff, Becker and Sachs to represent them.

Attorney Peter Sachs, who has been representing the group in court, said as much as $1.5 million in deposits had been received by Barth Construction.

In late 1974, Clevetrust, an Ohio real-estate investment trust, filed a foreclosure suit against Barth, alleging that a $3.5 million loan had not been repaid in a timely fashion.

Sachs attempted to intervene in the suit, asking the court to halt the foreclosure proceedings to protect the rights of the people who had put down deposits on the uncompleted property.

A Broward court ruled against Sach's motions on every issue except one and Sachs took an appeal.

The appeal has not been acted on by the court since 1975.

"What Barth was doing was perfectly legal at the time," Sachs said. "He was using the deposit money to construct new units with. The Florida Legislature recently passed a law which partially protects the buyer. It limits the amount of the deposit which may be used for construction, but it's not enough.

"The sad part about it is that this tragedy could be repeated unless the state Legislature does something about it," he said. In every other state, he said, the use of deposit funds for construction is illegal.

Clevetrust has demonstrated no great enthusiasm for an out-of-court settlement with the unit purchasers, Sachs said.

"They're afraid of setting a precedent."

What happened to the people who put the money down?

"I know at least one man who worried about getting his money back night and day. His family said it bothered him constantly. He finally developed a heart condition and died. You can't say this situation was the cause, but it certainly didn't help," Kanov said.

The failure of the condo also split up one couple, Kanov said.

"They argued so much and so long about who had talked the other into investing in the place that they finally got a divorce," Kanov said.

Vincenzo Armetta was one of those whose apartments hadn't even begun. He now lives in Margate.

"What bothers me about it is that they took a $10,000 check from me just two weeks before the whole thing folded," Armetta said.

In all, he had invested some $18,775, he said, counting his down payment on the apartment he never received, plus the additional "investment money" he had put down in an effort to get his apartment at a cheaper price.

"I wasn't hurt as badly as some, but I felt it," Armetta said.

There were others, not just Floridians, who were drawn into the deal.

Frank Di Giovanni of 1357 83rd St., Brooklyn, had paid $11,550.

Milton Fishman of 671 NE 195th St., North Miami, paid the developer $10,128.56.

Carol Weiss of 17120 NW 45th Ct., Opa-locka, a legal secretary, had paid $9,950.

Eugene Zalewski of 3253 Foxcroft Rd., Miramar, had paid $9,447.16.

For some, these sums represented their life savings. For others, it was borrowed money, which meant it had to be paid back, with interest.

And what of the developer?

"Out of the blue, Jerry Barth called me one day," Sachs said. "He said he is living in California now and that he has 'got religion.' He said he sincerely hopes all the people involved get their money back."

Barth's religious inclinations did not blossom with his financial difficulties, unit owners said. During the heyday of condo sales, Barth halted work in his office every Wednesday while an itinerant preacher whom Barth kept on the payroll preached a church service from 1 to 4 p.m.

Some people just put the minimum amount of money on one apartment. Some of them could afford it. For others, it was their life savings and the loss of the apartments meant they had to move in with children or with relatives.

For others, it was an investment loss.

One doctor bought three of the apartments for cash, Kanov said. He still has $91,000 tied up in the transaction.

Begbie and his fellow tenants of the still-uncompleted livable section of the development have had to provide their own funds for maintenance of the property and to settle utility bills and such.

EXHIBIT E

FINAL REPORT OF THE GRAND JURY

In the circuit court of the eleventh judicial circuit of Florida in and for the county of Dade, fall term 1975, circuit judge Harold R. Vann, presiding.

MARTIN LUTHER KING JR. BOULEVARD DEVELOPMENT CORP.

We received reports of misuse of federal funds channeled to the Martin Luther King Jr. Boulevard Development Corporation. We refer this matter to the Federal Grand Jury and urge them to investigate.

CONTROL OF BUILDING INSPECTIONS

The Grand Jury heard testimony concerning building inspection practices in Dade County and the City of Miami. One former inspector told us that inspection practices of the last several years have resulted in the construction of buildings

which could be blown away in another "1926 Hurricane." The evidence we heard supports this statement.

County officials themselves condemned inspection practices during the period of increased construction in Dade County. A Building Department official said that to keep construction going an inspector had to inspect 30–36 sites a day. No inspector could properly and adequately inspect that many sites in one day. In other areas we heard that Dade County Building Inspectors failed even to perform inspections. No excuse, whatsoever, can exist for the County to permit such inaction.

Instead of requiring thorough, proper inspections, the County gave into the pressure of the building industry. The County should have been prepared to adequately staff the Department during peak periods of construction with trained personnel. It was not prepared.

As a result, boondoggles such as the El Conquistador Condominiums were built. Last year a Dade Circuit Judge awarded unit owners in this complex a $1,174,869 judgment for defects including code violations in the construction of the buildings.

Proper inspections would have revealed these defects and proper enforcement would have resulted in these defects being corrected before the Final Certificate of Occupancy was issued. Lack of manpower is no excuse. The County should have provided manpower for the Building Department.

Building Department officials told us that often inspectors rely simply on contractors whom they feel they could trust. The sad fact is, however, that the Building Department cannot be sure that the contractor who secures the building permit will actually supervise the construction. Neither the City of Miami nor Dade County Building Departments have been able to insure that licensed contractors are supervising a particular job. This is a sad commentary on inspection practices.

Building officials told us that many of the problems that have arisen involve only workmanship and not human safety. Officials claim that the South Florida Building Code does not address itself to workmanship standards. Shabby workmanship should not be tolerated. Proper standards for workmanship should be included in the Building Code.

In the meantime, officials of both the City of Miami and Dade County Building Department should do everything within their power to make sure all structural defects in a building are corrected before issuing a Certificate of Occupancy.

We were disturbed at statements from a City of Miami Building Official that the City accepts less than the South Florida Building Code requires. For example, stair heights of 6'10" are accepted when the Code requires 7 feet; block wall widths of 7⅝ inches are accepted when the Code requires 8 inches. If the Code specifies a standard that standard should be met. Statements that individual inspectors must make judgments in these situations are absurd.

We were concerned at the lack of training on the part of building inspectors in either the City of Miami or Dade County Departments. Inspectors come from the trades and are oriented toward the private contractors. The job of inspector must be professionalized, formal training must be provided and salary scales should be set in a flexible fashion capable of attracting competent persons even in boom times.

Dade County Building officials themselves described their bookkeeping and record keeping as sloppy. They described files, too often as lost. We are concerned about such a situation.

We believe any Building Department should serve the public and the construction industry in a fair, impartial and efficient manner. We heard some complaints that inspections are not promptly made even in less hectic times of construction. We heard Building Officials themselves express concern at the length of time required to process plans.

To remedy the problems we have described, we recommend the following:

1. Building inspectors should receive formal training as inspectors before assuming their duties. They should be examined and certified as competent to perform the work of inspectors before undertaking their duties.

2. Salary scales should be established which make the position of inspector competitive with that of jobs in the trades no matter what the economic conditions are at the time.

3. All Building Departments should be able to expand to meet rising construction demands for inspection promptly, efficiently and thoroughly. Quality should never be sacrificed for quantity.

4. Sufficient staff in decision making positions should be available to efficiently expedite the processing of plans.

5. Uniform standards for workmanship should be immediately incorporated into the South Florida Building Code.

6. Fire inspectors should be required to regularly inspect all new construction from the moment construction commences.

7. All Building Departments should institute procedures to insure that the contractor who obtains the permit actually supervises the job. Failure to do so should result in the imposition of severe penalties.

8. Immediate steps should be taken by the Dade County Building and Zoning Department to develop proper bookkeeping and record-keeping procedures.

9. No temporary Certificate of Occupancy should be issued so long as there is any violation of the South Florida Building Code in existence.

EXHIBIT F

[From the Miami Herald, Nov. 26, 1975]

BUILDING CODE NOT ENFORCED

(By Steve Parker)

Many municipal building departments in Broward County are not properly enforcing provisions of the South Florida Building Code, A. J. Collins, chairman of the Broward County Board of Rules and Appeals said Thursday.

Collins made that statement after a two-hour board of rules and appeals sponsored seminar held to explain the duties of inspection personnel as outlined in the building code.

"I'd say many weren't enforcing it," Collins said. "It's been bad enough that it requires what we've had today."

Collins would not name the delinquent departments.

He stressed to a crowd of more than 160 persons, comprised mostly of county and municipal inspection officials, the importance of obeying the code.

"It is the primary duty of every man who owns an inspection position in a municipality to enforce the provisions of the South Florida Building Code. In no way are you to violate the law no matter what city official tells you to do so, whether it be the mayor or whoever," Collins said.

"If you've committed a code violation, somewhere along the line the fur is going to fly," he added. "We don't want problems such as we've had recently."

Collins later said he was referring to problems in Lauderdale Lakes, where three inspection officials were suspended for not doing required inspections and not properly issuing building permits. While Lauderdale Lakes' former chief building official's license was revoked, the board of rules and appeals later lifted the other two officials suspensions.

TAMARAC OFFICIAL FAILED COUNTY BUILDING TEST

(By Ted Stanger)

Tamarac's suspended chief building official failed a countywide building examination last year, just one month before he took over the city position, county records show.

Daniel Salvucci, who was temporarily suspended this week because he hadn't lived within Tamarac city limits as required by the city charter, scored 30.5 points of a possible 100 on the county building exam required of all general contractors who build in county areas. Passing is 75.

Salvucci failed the exam June 8, 1974, three weeks before a new county law required all new chief building officials to pass the county exam.

City manager Gross said he was not aware of Salvucci's test result and would bring it to the attention of the city council.

Gross recently disqualified Tamarac's chief electrical inspector, John Smith, after learning that Smith had twice failed the county-sanctioned electricity test.

Salvucci obtained county certification for his position by passing an exam given at Deerfield Beach in May, 1974, with a 77. Many municipal exams were criticized that year by a grand jury report that said certification was being issued by cities "in a careless, reckless and completely unprofessional manner."

Salvucci said he took the county exam because he had not yet received the results of his Deerfield Beach testing.

Salvucci attributed his falling score on the county test to his lack of experience as an inspector at that time. He started working for Tamarac in March, 1974, and was made chief inspector in July, 1974.

"I was new to the business then," he said, "but just try me now." He said he planned to take another exam, administered by the state.

EDITORIAL: THOSE INSPECTIONS ARE SIGNIFICANT

You wouldn't think an inch of pipe would make much difference, but just ask the residents of Hollywood's Townhouse Villas what it has cost them.

Because the plumbing subcontractor installed a four-inch rather than the specified five-inch sewer pipe, residents in the last two years have spent $4,000 for unclogging with another $8,000 in repair expenses possibly to follow.

Why did it happen? The builder, who got the city building department's approval to depart from the blueprints, says he isn't liable. The plumber who installed the pipe, says he isn't responsible either.

The building department chief, Dave Murchison, said the inspector on the job in 1973 determined that the four-inch pipe would be adequate and that the South Florida building code, allows "alternate methods."

Yet once the residents moved in, their sewer pipes began to clog up. Engineers point out that the extra one inch of pipe is significant because a five-inch pipe has 56 per cent more capacity than a four-inch pipe.

And last year Murchison referred to the four-inch pipe as a violation when he ordered the Townhouse Villas owners to correct the situation by installing a five-inch sewer pipe.

You can guess who finally pays for all this confusion—the unsuspecting residents. As resident Morris Goldenberg put it, "You expect when you buy a new home that the city has done its job and inspected it properly."

His comment underscores the importance of thorough building inspections which insure that all requirements of the building code are met.

It is why The Herald's Broward News Section has continued to look into building inspection practices that ultimately end up victimizing unsuspecting buyers.

[From the Fort Lauderdale News, Dec. 9, 1975]

EDITORIAL: BUILDING VIOLATIONS POINT UP THE NEED FOR COUNTY ACTION

Let the buyer beware is an admonition that applies all too well to the purchasers of homes in Broward County. And it appears that the buyer of a home had best beware mostly of his own safety because of shoddy construction that has been allowed.

Evidence is mounting that a great number of persons have bought a lot of trouble along with their new homes . . . trouble in the form of dangerous electrical and structural defects.

The South Florida Building Code, the law designed to insure the protection of safe and sturdy buildings, has not been followed. And the guardians of that law, the building inspectors in the cities where these homes have been built, have failed to see that the code is enforced.

The widespread reports of such violations has prompted Broward County State Atty. Philip Shailer to begin an investigation that will undoubtedly end up before the grand jury. The announcement of the investigation by Shailer comes about a week after The News ran a comprehensive story indicating numerous cases of possible code violations in West Broward cities.

In some cases the failure to enforce the code may have been caused by incompetence. In some it seems just plain negligence. It is suspected in other cases that it may be inspectors looking the other way for a price.

Asst. State Atty. Harry Gulkin, who will head up the investigation, points out that violations of the code are crimes and that elected officials who knowingly allow the violations to exist or do not correct them can be removed from office.

Meanwhile, it is the homeowner who is holding the bag. It is not fair to penalize him for something he didn't do.

It may just be that some cities may find themselves legally responsible to make the corrections or see that they are corrected.

This is not the first time that the grand jury has taken note of the handling of building inspections by the cities in Broward County. But it is evident that the warning that corrective steps needed to be taken was not enough. It is important now that the conditions which allowed the violations to happen are not permitted to continue.

It is bad enough to consider the tremendous investment of money these homeowners have in the property involved, but even more concern is the danger to life and property that exists.

In addition to any criminal action, it is mandatory that qualified inspectors are hired by the cities and that rigid requirements are met for such jobs.

It may be best to take inspectors out from under control of the cities and put them under a countywide board.

The county board of Rules and Appeals has the power to file suits to stop shoddy construction of which it is aware and should exercise that power where appropriate.

The building code itself should be better defined to insure greater compliance.

The time is past for officials to ignore warnings. County officials must act to insure the proper protection of lives and property.

EXHIBIT G

FINAL JUDGMENT

In the circuit court of the eleventh judicial circuit of Florida, in and for Dade County, general jurisdiction division, case No. 74–2938.

El Conquistador Condominium, Inc., plaintiff/counter-defendant, v. Mr. and Mrs. William Day, et al., defendants/counter-plaintiffs, and El Conquistador Condominium, Inc., third party plaintiff, v. Planas and Franyie Engineers, Inc., a Florida corporation, and Juan E. Planas, individually, third party defendants.

This cause having come on for final hearing, and the Court having heard testimony, received memoranda of law and final argument of counsel, the Court finds as follows:

1. The builder-developer of El Conquistador Condominium South was and is El Conquistador Condominium, Inc., the Plaintiff/Counter-defendant.

2. The builder-developer of El Conquistador South (i.e. Phase I) erected and constructed the several buildings in said phase below the accepted construction standards prevailing in the community and, in numerous respects, contrary to both plans and specifications for the building and the South Florida Building Code.

3. The evidence and testimony clearly demonstrates that the defective construction has resulted and will continue to result in ongoing maintenance problems and structural defects. The Counterdefendant's witness, Paul Gioia, confirmed the substandard construction and workmanship of these buildings, as initially proven by the Counterplaintiffs by substantial competent evidence.

4. The Court finds the circumstances of the construction of the El Conquistador project to be both inexplicable and incredible and the Court observes that it is perplexing that this matter has not been thoroughly considered by the Grand Jury.

5. The engineer on the project, Planas and Franyie Engineers, Inc. and Juan Planas individually had a moral obligation and professional responsibility to report the flagrant violations of the building code (which the Court finds to exist) to the appropriate county authorities, at the earliest reasonable opportunity. However, the Court finds that said engineers technically complied with the legal obligations imposed upon them as special inspector by the South Florida Building Code.

6. The Court specifically finds the following defects to exist as a result of the breaches by the Counterdefendant and assigns as monetary damage, the sum indicated alongside each item:

Fill and foundation including unclean and poor quality fill, failure to adequately compact, failure to provide a vapor barrier and other problems relating to the first floor slab and its thickened edge	$61,924
Plus, preventative termite treatment	9,639
Variations in stair treads and risers	7,715
Gates to prevent access to the roof	315
Fire rated partitions not provided between all apartment units	60,636
Electrical not in accordance with code	9,945
Masonry walls improperly constructed	196,650
Stucco	13,500
Roofing, including failure to insulate, improper slope, drainage and flashing, and raised electrical conduits	177,585
Walkways and balconies discontinuous	74,853
Interior floors at same elevation as exterior walkways and balconies	258,696
First floor elevation not sufficiently above grade (building E)	17,100
Intercom system (close exposed pipe)	1,800
Drywall system unstable	11,484
Architectural columns deleted	18,909
Air conditioning defects	180,270
Awning windows omitted	54,588
Asphalt parking defects	19,260

In addition to the items above enumerated there are several items of defective construction for which the actual damage figure is not at present readily determinable or where the cost of correction or repair is prohibitive. These items include the placement of rigid metalic conduit less than 18" below the surface of the ground, expansion joint defects, flat plate (slab) design not in accordance with code requirements, improper construction practices with respect to reinforcing steel and concrete, and diminished value of the condominium property and units.

7. The Court makes no finding herein with respect to the liability of other parties, such issues having been reserved to be tried separately.

In accordance with the foregoing findings of fact, it is

Ordered and adjudged that

1. Third party defendants Planas and Franyie Engineers, Inc. and Juan E. Planas' motion for directed verdict is granted and the third party complaint be and it hereby is dismissed.

2. Counterplaintiffs, William Day, et al., shall have and recover from the Counterdefendant, El Conquistador Condominium, Inc. the sum of $1,174,869 for which let execution issue forthwith.

3. Sums received by execution or other satisfaction of this judgment, by Counterplaintiffs or their attorneys in their behalf shall be paid into a Trust Account for the benefit of the class of Phase I unit owner represented by the named Counterplaintiffs to be administered by Steven Hessen, Esq. as Receiver, who shall collect said judgment by execution or otherwise and utilize said funds, after appropriate allowance for attorney's fees agreed to by Counterplaintiffs, to maintain and/or repair and/or rehabilitate the condominium property with respect to the items enumerated in paragraph 6 hereof. The Receiver is further authorized and directed to file a report of his survey and recommendations to the Court within 45 days of this Order.

4. The Court reserves jurisdiction to enter an Order respecting costs upon motion at some future date.

Done and Ordered at Miami, Dade County, Florida, this 31st day of July, 1975.

THOMAS A. TESTA,
Circuit Judge.

EXHIBIT K

INCREDIBLE RECREATION LEASE PAYMENTS "UNCONSCIONABLE"?

A table to give the real facts about recreation leases that have a cost-of-living escalation clause—this table assumes the cost of living will increase 5 percent in each and every year, and future year. This table provides multipliers to (1) determine the approximate lease payment for a period in any future year, and (2) determine the total of all lease payments through any future year.

Examples: If the initial lease payment of a condo is or was $100,000 per year, in the 99th year the lease payment will be about $11,927,500, or 119.275 times $100,000 (see table, column A). The total of all lease payments through the 99th will be about 2484.785 times $100,000, or $248,478,500 (see column B). If the initial lease payment of a condo is or was $100,000 per year, in the 20th year the lease payment will be about $252,600, or 2.526 times $100,000 (see column A). The total lease payments through the 20th year will be about $3,306,500, or 33.065 times $100,000 (see column B).

Year	A	B	Year	A	B	Year	A	B	Year	A	B
1	1.000	1.000	26	3.386	51.113	51	11.467	220.815	76	38.832	795.486
2	1.050	2.050	27	3.555	54.669	52	12.040	232.856	77	40.774	836.260
3	1.102	3.152	28	3.733	58.402	53	12.642	245.498	78	42.813	879.073
4	1.157	4.310	29	3.920	62.322	54	13.274	258.773	79	44.953	924.027
5	1.215	5.525	30	4.116	66.438	55	13.938	272.712	80	47.201	971.228
6	1.276	6.801	31	4.321	70.760	56	14.635	287.348	81	49.561	1,020.790
7	1.340	8.142	32	4.538	75.298	57	15.367	302.715	82	52.039	1,072.829
8	1.407	9.549	33	4.764	80.063	58	16.135	318.851	83	54.641	1,127.471
9	1.477	11.026	34	5.003	85.066	59	16.942	335.794	84	57.373	1,184.844
10	1.551	12.577	35	5.253	90.329	60	17.789	353.583	85	60.242	1,245.087
11	1.628	14.206	36	5.516	95.836	61	18.679	372.262	86	63.254	1,308.341
12	1.710	15.917	37	5.791	101.628	62	19.613	391.876	87	66.417	1,374.758
13	1.795	17.712	38	6.081	107.709	63	20.593	412.469	88	69.737	1,444.496
14	1.885	19.598	39	6.385	114.095	64	21.623	434.093	89	73.224	1,517.721
15	1.979	21.578	40	6.704	120.799	65	22.704	456.798	90	76.886	1,594.607
16	2.078	23.657	41	7.039	127.839	66	23.839	480.637	91	80.730	1,675.337
17	2.182	25.840	42	7.391	135.231	67	25.031	505.669	92	84.766	1,760.104
18	2.292	28.132	43	7.761	142.993	68	26.283	531.953	93	89.005	1,849.109
19	2.406	30.539	44	8.149	151.143	69	27.597	559.550	94	93.455	1,942.565
20	2.526	33.065	45	8.557	159.700	70	28.977	588.528	95	98.128	2,040.693
21	2.653	35.719	46	8.985	168.685	71	30.426	618.954	96	103.034	2,143.728
22	2.785	38.505	47	9.434	178.119	72	31.947	650.902	97	108.186	2,251.914
23	2.925	41.430	48	9.905	188.025	73	33.545	684.447	98	113.595	2,365.510
24	3.071	44.501	49	10.401	198.426	74	35.222	719.670	99	119.275	2,484.785
25	3.225	47.727	50	10.921	209.347	75	36.983	756.653	100	125.239	2,610.025

Source: Prepared by R. E. Wagenhals for the Condominium Executive Council of Florida, Apr. 3, 1974.

EXHIBIT M

EXCERPT FROM THE SOUTHERN REPORTER (FLORIDA)

Marvin Franklin and Norman Franklin, Appellants,

v.

White Egret Condominium, Inc., a non-profit Florida corporation, Appellee.

No. 76-1535. District Court of Appeal of Florida, Fourth District, Aug. 9, 1977. Rehearing Denied May 31, 1978.

Sale of a condominium apartment was made to one purchaser whose application had been approved by condominium association, and he conveyed half of his interest in apartment to his brother. Condominium association brought suit seeking declaratory judgment that transfer was void. Brothers' request for jury trial was denied, and the Circuit Court for Broward County, Gene Fischer, J., entered final judgment setting aside transfer by deed. Brothers appealed. The District Court of Appeal, Kovachevich, Elizabeth A., Associate Judge, held that: (1) ownership of an apartment by two blood brothers was permissible under condominium articles; (2) purchaser and brother met restriction that apartment was to be used only as a "single family residence"; (3) transfer by purchaser of one-half interest in apartment to brother did not require approval of

association; (4) condominium article prohibiting children under age 12 from residing on premises was unconstitutional, and (5) trial court did not err in refusing jury trial.

On petition for rehearing, the court, Cross, J., held that action of condominium association in seeking to invoke powers of trial court to compel reconveyance of interest in condominium apartment enabled the court to pass on question whether restrictive covenant violated Fourteenth Amendment.

Letts, J., dissented and filed opinion.

Affirmed in part, reversed in part, and remanded with directions.

1. Estates 11

Where condominium articles specifically allowed joint ownership of apartments and made no limitation upon amount of owners or character of ownership group, ownership of an apartment by two blood brothers was permissible.

2. Covenants 49

Provision of condominium articles which prohibited use of condominium apartment for any purpose other than as a "single family residence," being a restriction or free use of property, was to be strictly construed in favor of free and unrestricted use of real property.

See publication Words and Phrases for other judicial constructions and definitions.

3. Covenants 49

A restrictive convenant must be read in context of entire document in which it is contained.

4. Covenants 103(1)

Restriction in condominium articles that apartments were to be used for no purpose other than as a "single family residence", taken in context of joint ownership provision, was met by two brothers who jointly owned apartment, even if they constituted two separate families, in that each of brothers alternated their stays on premises and use to which they put apartment was that of a single-family dwelling.

See publication Words and Phrases for other judicial constructions and definitions.

5. Covenants 92

Where condominium articles specifically allowed transfer of apartment to member of "immediate family," without approval of association, conveyance by purchaser of apartment of an undivided one-half interest in apartment to his brother was valid despite failure to seek approval of condominium association.

6. Constitutional Law 82(9), 242.1; Estates 11

Condominium article prohibiting children under age of 12 from residing on condominium premises was an unconstitutional violation of apartment purchaser's rights to marry and procreate; furthermore, no compelling reason was shown for the prohibition, and fact that condominium association provided for designation of children guests and had certain families with children under 12 residing on premises made enforcement of restrictions unreasonably selective and arbitrary and thus a violation of equal protection. U.S.C.A. Const. Amend. 14.

7. Jury 18

In action by condominium association seeking declaratory judgment that transfer by apartment purchaser of one-half interest in apartment to his brother was void, trial court did not err in refusing to grant brothers' motions for jury trial, in that question for determination involved title to real property, no claim or counterclaim was made for damages or any other commonlaw issue, and jury trial, if affordable at all, was subject to discretion of trial court.

ON PETITION FOR REHEARING

8. Constitutional Law 213(4)

So long as objectives of restrictive covenants contained in condominium documents are effected by voluntary adherence to their terms, no state action would be involved, and no rights protected by Fourteenth Amendment to the

United States Constitution could be said to have been violated. U.S.C.A. Const. Amend. 14.

9. Constitutional Law 213(4)

By seeking to invoke powers of trial court to compel reconveyance by apartment owner of one-half interest in condominium apartment to owner's brother on basis that conveyance was contrary to rules of declaration of condominium, condominium association invoked sovereign power of state to legitimize restrictive covenants in question, thus enabling District Court of Appeal to pass upon question whether covenant was violative of Fourteenth Amendment to the United States Constitution. U.S.C.A. Const. Amend. 14.

10. Constitutional Law 82(9), 83(1); Covenants 1

Restrictive covenant forbidding occupancy of condominium premises by families with young children amounts to substantial interference with choice to beget and bear children; other constitutionally protected interests which may also be infringed to varying degrees by such restrictive covenant include interest which supports free and open travel among the states, interest which parents have in being able to supervise their children's education and enjoy their companionship, and interest concerning family living arrangements. U.S.C.A. Const. Amend. 14.

11. Constitutional Law 82(10)

In our society the family unit is swathed in protection of the Constitution, and any substantial interference directly affecting family must be supported by countervailing and superior interest. U.S.C.A. Const. Amend. 14.

12. Constitutional Law 83(1)

Constitutional rights, even those characterized as fundamental, are not absolute; occasionally, exercise of protected right must give way when public interest is sufficiently compelling to justify infringement of personal liberties.

James G. Kincaid, Fort Lauderdale, for appellants.

Michael K. Davis of Watson, Hubert & Davis, Fort Lauderdale, for appellee.

Kovachevich, Elizabeth A., Associate Judge.

Appellants-defendants appeal a final judgment entered in favor of the appellee-plaintiff-condominium which set aside the transfer by deed of a certain ownership interest from one defendant-brother to the other defendant-brother on the basis that the same was contrary to the rules of the declaration of condominium which prohibited ownership by more than one family, and ordered the reconveyance by defendant, Norman Franklin of all of his interest in an apartment back to defendant Marvin Franklin. Of the six points raised on appeal, four have merit, and on the same, we reverse.

Defendants are out-of-state residents who desired to purchase a condominium apartment; their plans were contingent upon owning it jointly. Defendants decided to purchase a certain unit which was then owned by a Mr. and Mrs. Murray, who had listed the property for sale with a real estate broker, who represented those sellers. A salesman for that broker brought the ultimate purchaser, defendant Marvin Franklin, together with the owners in negotiations which culminated in the signing of a contract for the purchase of said apartment in the name of "Marvin Franklin or nominee".

Defendants testified that they wanted this apartment as a joint venture so that their respective families would have a place to stay when they visited Florida; they maintained that this was the sole motivation for their purchase in the first instance. Both defendants applied for approval of ownership and submitted membership applications to the plaintiff. There is a conflict in the testimony as to whether or not the plaintiff failed to give written notice of rejection of either of the applications to the unit owner; defendants contend that under Article XXII of the Declaration of Condominium, failure to give such written notice within ten (10) days was tantamount to consenting to the defendants' applications. At the closing, defendants' attorney was informed that defendant Norman Franklin's application could not be found. Sale of the apartment was made to defendant Marvin Franklin, whose application had been approved, and who then conveyed half his interest to defendant Norman Franklin.

Plaintiff asserted that defendant Norman Franklin's application had never been accepted because he had a child under age twelve in violation of condominium rules. Despite said rules, defendant Norman Franklin had been informed by the

real estate agent for the Murrays that it was permissible for non-Florida residents to have guests under the age of twelve (12) live there, and, defendants were aware of two other non-Florida residents in the condominium with children under twelve (12) years of age. Ten (10) months after the closing, plaintiff brought suit seeking a declaratory judgment that the transfer from defendant Marvin Franklin to himself and his brother vesting an undivided one-half (½) interest in said apartment in each of them was void. The lower court denied defendants' request for a jury trial and subsequently entered a final judgment, as indicated hereinabove.

[1] This point on appeal questions the holding of title jointly by defendants. Ownership by the two defendant blood brothers was permissible; Article X specifically allows joint ownership of condominium apartments: "Membership may be held in the name of more than one owner . . ." In the entire Article there is no mention of any limits upon the amount of owners or the character of the group that might own the apartment; the word "family" is not even mentioned in the provision. It speaks not to the manner of use but specifically to the number of owners. The court should not now aid the plaintiff in reading a new and unstated restriction into the unqualified language of its own condominium document.

The next point questions what a "single family" is. Defendants contend that they were members of a single family and the use to which they put the condominium apartment was that of a single family residence. Article XXIII prohibits use for any other purpose than as a "single family residence." The word "family" has been used to describe a number of different sets of relationships and there is no consensus as to exactly what a family is. A zoning ordinance in *Carroll* v. *City of Miami Beach*, 198 So.2d 643 (Fla. 3rd DCA 1967), defined a family as "one or more persons occupying premises and living as a single housekeeping unit". The most recent federal expression on the same was an opinion filed on May 31, 1977, by the Supreme Court of the United States in *Moore* v. *City of East Cleveland, Ohio*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531, wherein a municipal housing ordinance sought to limit occupancy of a dwelling unit to members of a single family, but defined "family" in such a way that the appellant's household did not qualify.

In reversing, the majority concluded that the ordinance there deprived the appellant of her liberty in violation of the due process clause of the Fourteenth Amendment; it expressly selected certain categories of relatives who may live together and declared that others may not. The court indicated that the strong constitutional protection of the sanctity of the family established in numerous decisions of the Supreme Court extends to the family choice involved in that case and is not bound within an arbitrary boundary drawn at the limits of the nuclear family, which essentially is a couple and its dependent children. In conclusion, the court said that the history and tradition of this nation compel a larger conception of the family: " . . . the Constitution prevents East Cleveland from standardizing its children—and its adults—by forcing all to live in certain narrowly defined family patterns." In his concurring opinion, Mr. Justice Stevens finds that the right involved is the right to use one's own property as one sees fit.

[2–4] The confusion surrounding the definition of the term "family" must be taken into account when interpreting the restrictions in the instant case, sub judice. As a restriction on the free use of property the single family rule must be "strictly construed in favor of free and unrestricted use of real property". *Moore* v. *Stevens*, 90 Fla. 879, 106 So. 901 (1925). "Substantial ambiguity or doubt must be resolved against the person claiming the right to enforce the covenant." *Moore, supra*, at 904. A restrictive covenant must be read in the context of the entire document in which it is contained. *Moore, supra*. When the "single family residence" restriction is read in conjunction with the context of the joint ownership provision, the two sections are inconsistent, and inherently ambiguous. Even if one were to consider that the defendants constitute two separate families, the use to which they put the apartment was that of a single family dwelling; according to the record herein, each of the defendants alternated their stays on the premises.

[5] Two other points involve the subject of approval, but regarding different conveyances. Article XXII deals with written notice of disapproval to the Murrays, who were then owners of the apartment, and did not require notice to the defendants. The Murrays did not convey to both defendant brothers; they conveyed to defendant Marvin Franklin. From the record on appeal, the Murrays

are not parties to this law suit and have made no complaint concerning this procedural matter. Further, the conveyance in dispute, sub judice, is not the conveyance from the Murrays, but rather, is the conveyance from the defendant Marvin Franklin to his brother. Thus, the question is whether or not, under the facts of this case, the conveyance of an undivided one-half interest in the apartment from defendant Marvin Franklin to defendant Norman Franklin required any approval. Article XXII specifically allows transfer of an apartment to a member of the "immediate family"; no approval is needed for such a transfer. Plaintiff concedes that where other requirements and restrictions were satisfied, an owner does not need the approval by the condominium association to convey an outright fee simple interest in the apartment to his brother. Defendant Norman Franklin is a member of the immediate family of Marvin Franklin. Thus, the transfer of part of the interest in the apartment from Marvin Franklin to Marvin Franklin and Norman Franklin was valid.

The final point on appeal that we find has merit relates to a restriction in condominium documents against children under the age of twelve (12) as an unconstitutional restriction and violation of defendant Norman Franklin's rights to marriage, procreation, and association, and violation of his right to equal protection of the laws.

[6] Article XXIII prohibits children under the age of twelve (12) from residing on the condominium premises. This was the reason given by plaintiff for its disapproval of Norman Franklin's membership application. The instant case involves a number of rights which the Supreme Court of the United States has labeled "fundamental": the right to marry, *Loving* v. *Commonwealth of Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed. 2d 1010 (1966), and the right to procreate, *Skinner* v. *Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Sd. 1655 (1942), and the right to marital privacy, *Griswold* v. *Connecticut*, 381, U.S. 479, 85 S.Ct. 1678, 14 L.Ed 2d 510 (1965). This restriction is an unconstitutional violation of this defendant's rights to marry and procreate. Further, no compelling reason has been shown for refusing to allow children under twelve (12) to reside in the condominium. It seems difficult to comprehend that change that occurs on a child's twelfth birthday which suddenly renders him fit to live in the condominium, and the plaintiff has offered no explanation regarding the same. Additionally, the plaintiff provides for a designation of children guests and has certain families with children under twelve (12) residing on the premises. Thus, the enforcement of the restriction is not only unsupportable by a compelling interest but is obviously unreasonable, since the plaintiff seeks to selectively and arbitrarily enforce the restriction. Even if the rule were valid, such unequal enforcement would be a violation of equal protection, *East Coast Lumber Terminal* v. *Town of Babylon*, 174 F.2d 106 (2d Cir. 1949).

We find that the trial court erroneously ordered defendant Norman Franklin to transfer his interest in the apartment to defendant Marvin Franklin, and reverse the lower court and remand for the entry of a final judgment in favor of defendants, Marvin Franklin and Norman Franklin.

[7] However, on the other point raised on appeal, we affirm the trial court. The lower court did not err in refusing to grant the defendants' motion for a jury trial. In this cause, the question for determination involved title to real property. No claim or counterclaim was made for damages or any other common law issue. Considering the equitable nature of the complaint, any jury trial, if affordable at all, is clearly subject to the discretion of the trial court, and no abuse of discretion is shown. See *Commodore Plaza at Century Twenty One Condominium Association, Inc.* v. *Century Twenty One Commodore Plaza, Inc.* 290 So. 2d 539 (Fla. 3rd DCA 1964); *Davis* v. *McGahee*, 257 So. 2d 62 (Fla. 1st DCA 1972).

Accordingly, we affirm, in part, and reverse, in part, and remand, with directions consistent with the views expressed herein.

Affirmed, in part; Reversed, in part, and Remanded, with directions.

Mager and Cross, JJ., concur.

On petition for rehearing; Cross, Judge.

By petition for rehearing, appellee, White Egret Condominium, Inc., asks reconsideration of our determination that a restrictive covenant contained in condominium documents forbidding residency by families with children under twelve years of age is unconstitutional and therefore is unenforceable in the courts of this state.

[8, 9] Appellee correctly points out that the constitutional protection envisaged by the Fourteenth Amendment to the Constitution of the United States has been consistently held to inhibit only state action and offers no recourse against merely private conduct, no matter how discriminate or repugnant to public notions of wrongfulness.[1] So long as the objectives of these types of agreements are effectuated by voluntary adherence to their terms, it is clear that no action by the state would be involved, and therefore no constitutionally protected rights can be said to have been violated.

State action is, however, a broad concept and the actions of state courts and of judicial officers performing in their official capacities have long been regarded as state action.[2] When the appellee as plaintiff below sought to invoke the powers of the trial court to compel a reconveyance of the interest of Norman Franklin in the condominium apartment to his brother, it invoked the sovereign powers of the state to legitimize the restrictive covenant at issue. This court therefore owed a duty to carefully scrutinize that covenant with a view toward forbidding its enforcement should it fail to pass constitutional muster.

In our original opinion rendered in this matter [3] we chose to concern ourselves with an examination of the constitutional rights of appellants as parents rather than to focus on the rights of appellants' children to be free of discrimination due to their age. The question presented was whether the recognized constitutional right of privacy [4] protects a family from losing its interest in property solely because children under the age of twelve reside with their parents. In view of the unique position of homage which the family unit enjoys in our society [5] and with regard to the panoply of rights associated with family life,[6] we determined that the right of privacy grants to the family protection from unreasonable restrictions on the use of a residence.

We express particular concern for the intrusion which a restrictive covenant such as that at issue has on the decision to beget and bear children. The right to be free of unwarranted interference with the decision to have children has been identified on numerous occasions by the United States Supreme Court as one of the matters protected by the right of privacy.[7] Recent decisions [8] by that court make it clear that the Constitution will not permit any undue burden being placed on the decision to bear a child. There can be little doubt that the restrictive covenant forbidding occupancy of condominium premises by families with young children amounts to a substantial interference with the choice to beget and bear children. The fear of being compelled by the courts of this state through the operation of this covenant to sell or relocate a family domicile merely because a couple may choose to have children is a burden which neither the Constitution nor this court will condone.

[10, 11] We pause to note that other fundamental interests which fall within the penumbra of constitutional protection may also be infringed to varying degrees by the restrictive covenant under consideration: the interest which supports free and open travel among the states,[9] the interest which parents have in being able to supervise their children's education [10] and enjoy their companion-

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[1] *Shelly* v. *Kreamer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). See also *United States* v. *Harris*, 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1883).

[2] *Shelley* v. *Kreamer*, id.

[3] *Franklin* v. *White Egret Condominium, Inc.*, 358 So. 2d 1084 (Fla. 4th DCA Opinion issued August 9, 1977).

[4] See, e. g., *Whalen* v. *Roe*, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977), *Roe* v. *Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Griswold* v. *State of Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

[5] See *Trimble* v. *Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (slip opinion issued April 26, 1977); *Moore* v. *City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

[6] See *Moore* v. *City of East Cleveland*, id.; *Stanley* v. *Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Loving* v. *Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967); *Prince* v. *Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Pierce* v. *Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

[7] E. g., *Griswold* v. *State of Connecticut*, supra n.4; *Roe* v. *Wade*, *supra n.4*.

[8] *Carey* v. *Population Services International*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1974); *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); *Eisenstadt* v. *Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972).

[9] *Dunn* v. *Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *United States* v. *Guest*, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966).

[10] *Wisconsin* v. *Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Prince* v. *Commonwealth of Massachusetts*, supra n.6; *Pierce* v. *Society of Sisters*, supra n.6; see also *Meyer* v. *Nebraska*, supra n.6.

ship;[11] the interest concerning family living arrangements.[12] In our society the family unit is swathed in the protection of the Constitution, and any substantial interference directly affecting the family must be supported by a countervailing and superior interest.[13]

Appellee-condominium association offers as its only justification in support of this restriction on residency of apartments by families with children under twelve years of age the fact that young children "are noisy, distracting and frequently an imposition upon our neighbors." Although peace and quiet in living accommodations is an admirable objective, we do not believe that this interest is sufficiently important to justify divestiture of one's interest in property.

Appellee argues that all buyers of condominium apartments have voluntarily consented to the imposition of these limitations upon their rights. We emphasize that we have here a willing seller and a willing buyer, and a contract of sale which was properly consummated. It is clear that but for the intervention of the courts, appellants would be free to occupy the property in question without restraint.

Appellee asks us to review the cases of *Riley v. Stoves*, 22 Ariz.App. 223, 526 P.2d 747 (1974), and *Coquina Club, Inc. v. Mantz*, 342 So.2d 112 (Fla. 2d DCA 1977). In *Riley*, the Court of Appeals of Arizona upheld against constitutional attack a restriction which limited residency of a portion of a mobile home development to persons twenty-one years of age or older. To the extent that the Arizona Court of Appeals determined that restricting residency by children to reduce distractions and disturbances is reasonable in light of the significant interference with the traditional family, we must disagree. To the extent that peace and quiet in a neighborhood is a legitimate objective, restricting occupancy by families with children imposes a burden on the exercise of constitutionally protected rights which is entirely disproportionate to the slight benefit received.

In *Coquina Club*, the Court of Appeals for the Second District of Florida discussed the existence of condominium use restrictions based on age. However, the court admitted that the validity of use and occupancy restrictions was only a "subsidiary question" and was not "dispositive of the primary issue." The court acknowledged that age restrictions in at least one other jurisdiction "have even withstood constitutional attacks," and cited the *Riley* case discussed above. The court also noted that "reasonable" restrictions concerning the use and occupancy are permitted by statute. However, the decision in *Riley* did not address itself to whether such restrictions were reasonable as we have done here today, and therefore it is clear that *Coquina Club* is not in conflict with the views expressed herein.

Finally, appellee re-asserts that the transfer of ownership to Norman Franklin must be voided because it is in violation of a second restrictive covenant which limits use of condominium apartments to "single family" occupancy. In response, we again refer appellee to the decision of the United States Supreme Court in *Moore* v. *City of East Cleveland*, supra n.5, for a constitutionally accepted definition of "single family."

[12] We are cognizant of the great interest which our former opinion in this action has created. We are also aware that restrictive covenants, such as those at issue today, are commonplace among condominium associations in Florida. We believe that the conflicting interests between those who would live with children and those who desire to live apart from families with children are amenable to resolution. Constitutional rights, even those characterized as fundamental, are not absolute. Occasionally, the exercise of a protected right must give way when the public interest is sufficiently compelling to justify the infringement of personal liberties. Several courts have already recognized that senior members of our society possess significant interests which are deserving of special consideration.[14] The proper balancing of the competing interests high-

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[11] *Stanley* v. *Illinois*, supra n.6; *Kovacs* v. *Cooper*, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949) (Frankfurter, J., concurring).

[12] *Moore* v. *City of East Cleveland*, supra n.5.

[13] *Moore* v. *City of East Cleveland*, id.; *Roe* v. *Wade*, supra n.4; *Taxpayers' Association of Weymouth Township, Inc.* v. *Weymouth Township*, 71 N.J. 249, 364 A.2d 1016 (1976).

[14] See *Shepard* v. *Woodland Tp. Com. & Plan. Bd.*, 71 N.J. 230, 364 A.2d 1005 (1976); *Maldini* v. *Ambro*, 36 N.Y.2d 481, 369 N.Y.S. 385, 330 N.E.2d 403 (1975); *Taxpayers' Association of Weymouth Township, Inc.* v. *Weymouth Township*, supra n.13. But see *Molino* v. *Mayor and Council of Bor. of Glassboro*, 110 N.J.Super. 195, 281 A.2d 401 (1971).

lighted in this case cannot, however, be achieved through court enforcement of the restrictive covenants.

Accordingly, the petition for rehearing is denied.

Kovachevich, Elizabeth A., Associate Judge, concurs.

Letts, J., dissents, with opinion.

Letts, Judge,[15] dissenting:

I would grant the rehearing.

The majority decision establishes a unique and unfortunate precedent in holding that the Equal Protection Clause of the Fourteenth Amendment applies to age restrictions in an environment created for senior adults.

There are countless examples of apparently valid and enforced age restrictions which run the gamut from the required 3 years of age for Kentucky Derby entrants, all the way to the necessary 35 years that any aspirant to the Presidency must have attained under the Constitution itself. Art. II, § 1, U.S.Const. Judge Kovachevich finds it difficult to comprehend the ". . . change that occurs on a child's twelfth birthday which suddenly renders him fit to live in a condominium." Maybe so, but from whence the magic of a 35th birthday which suddenly renders a person fit to live in the White House, even though one can serve as a U.S. Senator for 5 years before that? (and why 30 years of age for the Senate?) The answer is that, "between night and day, childhood and maturity, or any other extremes . . . a line has to be drawn [somewhere]", *Riley* v. *Stoves*, 22 Ariz. App. 223, 526 P.2d 747, 68 A.L.R.3d 1229 (1974).

The Federal Courts have held repeatedly that age by itself is not a suspect classification even where actual State action results in the mandatory retirement of policemen at age 50 [see *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed. 520 (1976)]. This being so, it has to follow that an age restriction emanating from private contract would be even less suspect—provided it has a rational basis. True, it can be argued that enforcement of an age restriction by the courts, constitute State action; however, I agree with the Arizona Court of Appeals that such an argument is "unrealistic" here. *Riley* v. *Stoves*, supra. In other words, is the line that has been drawn, reasonable?

Adapting this rational basis test to age discrimination, I do not find a restriction barring the RESIDENCY of children under 12 to be unreasonable, for example, in an elderly retirement community or condominium. Nature itself biologically provides that only younger adults can procreate. It is axiomatic that catabolism in the old results in physical and mental frailties which render them not only incapable of reproduction, but also incompetent, to withstand the rough, tumble and noise of rampaging youngsters—inevitable accompaniments to the normal rearing of young children. For this very reason, kids are commonly barred from hospitals. Sick people need peace and quiet and so do old people who lose their erstwhile resilience to turmoil and commotion. Indeed, tranquility is a must for the mental health of older people and I would allow them to have it. So would the only other two Florida decisions that have so far touched on the question. This very court in *Hidden Harbour Estates, Inc.* v. *Norman*, 309 So.2d 180 (Fla. 4th DCA 1975) said, in an opinion written by Judge Downey:

"It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization. The Declaration of Condominium involved herein is replete with examples of the curtailment of individual rights usually associated with the private ownership of property. It provides, for example, that no sale may be effectuated without approval; NO MINORS MAY BE PERMANENT RESIDENTS: no pets are, allowed." (emphasis, supplied) at page 181.

Likewise the Second District has suggested that age restrictions are not unreasonable and perhaps even enforceable by Statute under Section 718.104(5),

[15] By the time the petition for rehearing was filed subsequent to the issuance of the original opinion, Judge Mager had resigned from the bench to resume the practice of law. Judge Letts took his place on the panel for the purpose of said petition.

Fla. Stat. (1977).[16] *Coquina Club, Inc.* v. *Mantz*, 342 So.2d 112 (Fla. 2d DCA 1977).

The majority opinion believes that age restrictions run afoul of fundamental rights such as marriage and procreation. These are "motherhood and the flag" proclamations and the cases cited in support simply do not relate these unassailable fundamentals to an age restriction. Certainly this particular age restriction does not deny the right of any adult owner to take a bride and continue to live in his condominium apartment. Nor does it deny him the right to procreate; he simply has to move when the child is born. This is comparable, in principle, to a couple with three kids having to move to a bigger house upon the arrival of the fourth, because the existing living quarters are bursting at the seams and the zoning will not permit the addition of another room.

There is a case noted by Judge Cross, which *did* hold that a zoning ordinance, which had the effect of keeping children out of the municipality, violated the Equal Protection Clause. See *Molino* v. *Mayor and Council of Bor. of Glassboro*, 116 N.J. Super. 195, 281 A.2d 401 (1971). However, the facts of that case reveal an acute shortage of any living units in the area where children could be housed. No such shortage is demonstrated in the case at bar. Moreover, the *Molino* case did involve state action, and all can agree that zoning is ever subject to change in the interests of the general public good. This is a far cry from a private restriction in a declaration of condominium.

The foregoing paragraphs say little about Judge Cross' contribution in defense of the original opinion which defense is much harder to argue with because it covers the constitutional waterfront with blue chip citations. To me, his most telling sentence is where he expresses "the fear of being compelled by the courts of this State through the operation of this covenant to sell or relocate a family domicile merely because a couple may choose to have children . . ." In reply, I would say first, that under the facts of this case, the couple had already had the children BEFORE the purchase, so the argument is not pertinent to the case at bar. There remains, however, the on-going problem of a young couple who have no children when they purchase a condominium, but a child later appears. Such a situation requires a much stricter scrutiny, and I am troubled by it. Nonetheless, I believe that this age restriction still passes the test and I fall back on Judge Downey's language relative to condominium living, already quoted from the *Hidden Harbour Estates* case, supra. All young couples buying living units can foresee the possibility of children and this restriction has not "snuck" up on them, for they well knew of it prior to purchase or conception. The choice was theirs.

In conclusion, I am also not in agreement with much of the reasoning behind the disposition of the other points on appeal, although estoppel could be a factor in this particular case. However, my dissent is already too wordy and I only agonize this long in the hopes that I facilitate higher appellate review of the majority's Equal Protection argument.

ITEM 2. EXCERPTS FROM PROPOSED HOUSING RULES BY THE FLORIDA ATTORNEY GENERAL, SUBMITTED BY ROD TENNYSON,* WEST PALM BEACH, FLA.

Condominium Recreation Leases

In recent years Florida's southern coastal regions have experienced a dramatic change in housing construction with a shift from single family detached housing to multiple family condominium housing. The major reason for this change in housing was escalating land and construction costs which drove the price of detached housing out of the middle income market. Many developers saw this marked change as a way to sell housing units with a continuing income through the use of long-term recreational leases.

A developer starts a condominium project by filing a declaration of condominium and incorporating a condominium association. Before any units are

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[16] Said section of the statute reads in part as follows:
The declaration may include covenants and restrictions concerning the use, occupancy and transfer of the units permitted by law with reference to real property.

*See statement, p. 133.

sold, or even constructed, the developer "elects the first board of directors for the condominium association.[1] During this joint control over the boards for the development corporation and the condominium association, the development corporation leases recreational facilities to the condominium association which allows members or unit owners of the association to use recreational facilities to be constructed adjacent to the condominium property. Then, as a condition of sale, a consumer purchasing a condominium unit must accept this recreational lease and agree to pay a monthly rental fee which escalates based on the consumer price index and which is enforced with a lien on the apartment.[2]

At first, the Florida courts were uniformly upholding these leases from numerous attacks.[3] The Attorney General of Florida first sought to attack the recreational leases as violations of Florida's "little FTC" act or Chapter 542, Florida Statutes, based on principle of anticompetitive or monopoly antitrust violations.[4] This so-called "tie-in sale" theory was basically rejected by the Florida Supreme Court[5] but the theory is very actively being litigated in the Federal courts under the Sherman Antitrust Act.[6] However, the most recent decisions of the Florida courts suggest the following remedies to attack recreational leases or portions of the lease.[7]

(1) The lien provisions used to enforce the rental payments may be unconscionable or may violate the homestead protection provisions of Article 10, Section 4, of the Florida Constitution.

(2) The condominium documents themselves may have incorporated the latest additions to the Florida Condominium Act, thereby, eliminating some of the recreational lease provisions such as escalation clauses.

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[1] See Chapter 718, F.S. (1976).

[2] See Sections 718.114 and 718.116, F.S. (1976).

[3] See *Fountainview Association, Inc.* v. *Bell,* 203 So. 2d 657 (Fla. 3d DCA 1967), affirmed, 214 So. 2d 609 (Fla. 1968), and *Point East Management Corp.* v. *Point East One Condominium Corp., Inc.,* 282 So. 2d 628 (Fla. 3d DCA 1973) conformed to 284 So. 2d 233 (Fla. 1973).

[4] *Robert L. Shevin, etc.,* v. *Cenville Communities, Inc., et al.,* 338 So. 2d 1281 (Fla. 1976), wherein the Supreme Court refused to review an order of the First District Court of Appeal which had prohibited the Attorney General from continuing an administrative action against a developer's recreational lease. The District Court wrote no opinion in its order of prohibition against the Attorney General but apparently concluded that the Florida Condominium Act granted condominium developers the right to tie-in the sale of recreational services or leases with condominium units. The Florida Supreme Court denied certiorari because the District Court's order did not conflict with other appellate decisions and did not affect a class of constitutional officers. However, in a separate concurring opinion, justices England, Overton and Adkins stated that jurisdiction may have been obtained had the Attorney General been pursuing a rule-making proceeding:

> It became apparent during oral argument in this case that the writ of prohibition issued by the First District Court of Appeals was not intended to operate as broadly as first appeared. The order "prohibited [the Department of Legal Affairs] from proceeding against the [respondents hereto] in attempting to exercise any jurisdiction under Chapter 501.204(1), Florida Statutes." The restrictive view of that order taken by my colleagues is obviously correct, for it is only if the order is confined to the narrow issue presented to the district court by the Attorney General that it would be within the power or authority of that court to enter. For that reason, I agree with the majority that the Department of Legal Affairs, the Governor and the Cabinet, as rule-makers under the act,[3] are not affected by this lawsuit. Similarly, the offices of State Attorney throughout Florida, in their capacity as enforcing authorities under the act[4] are in no way affected by the district court's decision. It follows that there is no "class" of constitutional or state officers affected by the district court's limited order, and that only one agency of state government, the Department of Legal Affairs, is affected . . . . Had the enforcement powers of the state attorneys been impinged by the district court in this case, for example or had the Cabinet's, we might well have had a different responsibility.
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> [3] See Section 501.205, F.S. (1975).
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> [4] See Section 501.203(4), F.S. (1975).

[5] In *Avila South Condominium Association* v. *Kappa,* 347 So. 2d 599 (Fla. (1977), the Court stated:

> The eighth and final count of the complaint alleges a violation of Section 542.05, Florida Statutes (1975), in that the defendants "preclude competitors . . . from offering the same or similar [recreational] facilities." In dismissing this count, the trial court concluded "that § 711.64 and its predecessor § 711.121 control specifically over the general provisions of Florida Statutes § 542.05 and § 542.10, and that accordingly, Count VIII fails to state a cause of action." Although Section 711.64, has now been repealed, Ch. 76-222, Laws of Florida, we believe the trial court correctly held that tying recreational facilities to housing is at the heart of the condominium concept, a concept which has been repeatedly sanctioned both by the legislature and by the courts; we affirm the trial court's dismissal of the eighth count.

See *Point One Condominium* v. *Point East Developers, Inc.,* 348 So. 2d 32 (Fla. 3d DCA 1977).

[6] See section E, Federal Antitrust Challenges, infra.

[7] See Avila South, note 5, supra.

(3) The lease, or portions thereof, may be unconscionable under common law.

(4) The original board of directors of the condominium association, if controlled by the developer, may have engaged in unlawful self-dealing in contracting for the recreational lease on terms which were designed to gain secret profits for the developers at the expense of the unit owners, all in violation of a fiduciary responsibility to the unit owners.

(5) The developer's sale of housing units conditioned upon the consumer's agreement to also purchase recreational services or the recreational lease may constitute a violation of the Sherman Antitrust Act if interstate commerce was affected and there was a restraint of trade in the sale of recreational services.

A closer examination of each of these potential remedies follows.

A. Recreational Lease Liens and Homestead Protections

Beginning with the 1868 Florida Constitution the State of Florida has taken a liberal attitude in protecting the head of a family and his homestead from levy of creditors.[8] This protection goes to the head of a family's permanent residence home and $1,000 in personal property.[9] Under Article 10, Section 4, of the present Constitution it states:

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereon, or obligations contracted for house, field or other labor performed on the reality, the following property owned by the head of a family: (1) a homestead. . . .

Therefore, the question arises as to whether or not the lien created under the Condominium Act[10] and under many declarations of condominium to enforce the rental payments under a long-term recreational lease can actually be used to foreclose a unit when such unit is the homestead of a family.

This question was recently dealt with in *Gersten* v. *Bessember*.[11] The recreational lease in this case actually dealt with single family homes rather than condominiums although the leases are similar. The single family subdivision involved was owned by the Behring Corporation which subdivided numerous lots for sale to the public. In February of 1969 the Gerstens bought a lot and home from Behring. The contract for sale specifically provided that the purchaser would agree to pay a monthly maintenance and recreational facility charge to Behring or its assigns. Nowhere in the contract for sale was there any mention of lien against the homestead.

On January 8, 1970, the Behring Corporation recorded a Declaration of Restrictions covering the subdivision on the Gerstens' home. Included within the Declaration was an obligation that each lot owner pay a monthly recreational fee for the use of a recreational facility to be built by Behring upon certain leased lots within the subdivision. The Declaration of Restrictions provided for the establishment of a lien upon each owner's lot for nonpayment of the recreational lease fee and foreclosure in the same manner provided for foreclosure on real property. The Gerstens finally closed in November 1970 and took title to their new home. They moved in shortly thereafter and established a homestead. The Gerstens were on constructive notice of the Declaration of Restrictions as these restrictions were filed eleven months prior to closing. However, they had no actual notice of the lien and did not learn of the lien provisions until the actual foreclosure proceeding had begun. The Gerstens never challenged their contractual obligation to pay the recreational fee but challenged the lien attachment against their homestead property in any foreclosure action for nonpayment of the recreational rents.

The Gerstens argued that the mere recording of a Declaration of Restrictions created no debt and if no debt was created then no lien could attach to the prop-

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[8] See *Crosby and Miller*, "Our Legal Chameleon, The Florida Homestead Exemption," 2 U. Fla. L. R. 12 (Spring, 1949).

[9] Art. 10, § 4, Fla. Const. (1968).

[10] See note 2, supra.

[11] 352 So. 2d 68 (Fla. 4th DCA 1977). This case has been certified to the Florida Supreme Court as a question of great public interest.

erty by the mere filing of a Declaration of Restrictions.[12] The Fourth District Court of Appeals appeared to agree, stating:[13]

> A lien may be created only by contract of the parties or by operation of law. 21 Fla. Jur., Liens, § 3. The original "Contract for Purchase and Sale" makes no reference whatsoever to the creation of a lien. The unilateral recording of a Declaration of Restrictions, to which defendants were not a party, did not create a lien either by contract or by operation of law. Nor do the circumstances reflect creation of an equitable lien. See 21 Fla. Jur., supra, § 8. It would seem that the only way it can be urged that a lien was created by "contract" was at the time the parties executed the deed which allegedly incorporated by reference the Declaration of Restrictions. Since the parties tacitly recognized (at oral argument) that the deed did incorporate by reference the Declaration of Restrictions, it follows that a lien was created by contract at the time of closing. . . .

The District Court then went on to state that because the lien attached, at best, at the time of closing and because homestead status was established shortly thereafter the attachment of the lien and the homestead status were, in effect, simultaneous. If the attachment of the lien and homestead are simultaneous then the homestead must prevail and the lien could not be foreclosed for failure to pay the recreational lease payment:[14]

> The "lien" in question, which was contractually created and arose as a result of a nonpayment of the recreational lease fee, does not fall within any of the permissible exceptions to forced sale set in Article X, section 4. In particular, it is not an "obligation(s) contracted for the purchase" of the homestead such as a mortgage and thereby enforceable by foreclosure. Luten v. Hower, 18 Fla. 872 (1882). Moreover, the lien was not one which, as a matter of law, can be said to have been created *prior* to the establishment of the homestead. Rather, it is a lien which attached to the property after or *simultaneously* with the establishment of the homestead and therefore becomes *subservient* to the homestead protections. Quigley v. Kennedy and Ely Insurance, Inc., 207 So. 2d 431 (Fla. 1968). In other words, the lien was not a lawfully acquired prior lien.

Several questions were left unanswered in *Gersten*, supra. It is uncertain whether or not a reale of the housing unit would still afford homestead protections to the new purchaser versus a purchaser from the original developer. Under the District Court's reasoning, the lien may have attached prior to the resale and therefore a new purchaser may take the homestead subject to a prior recorded lien which might be foreclosable against the homestead.[15]

Another question concerns the situation where purchasers, at time of closing, were asked by the developer to sign some form of pledge agreement. These pledge agreements are sometimes executed with the formality of a second mortgage fully outlining the lien, the consumer's obligation to pay and a pledge of his homestead against the recreational lease payments. Also, some developers had the consumer actually sign the recreational lease itself as an additional lessee.[16] The *Gersten* case did not involve pledge agreements but earlier Florida case law has held that consumers cannot contractually waive their homestead constitutional rights.[17] Therefore, an argument can be made that such pledge agreements were a contractual waiver of homestead rights in violation of public policy and unenforceable.

As previously discussed in other chapters, a violation of public policy constitutes an unfair and deceptive trade practice under the Florida "little FTC" act.[18] Under Federal Trade Commission precedents unfair and deceptive debt collection practices include the use of unenforceable contract provisions.[19] If a developer or holder of a recreational lease threatens or represents to a con-

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[12] See *Hendrie* v. *Hendrie*, 94 F. 2d 534 (5th Cir. 1938); see note 21, infra.
[13] Supra, note 11.
[14] Supra, note 11.
[15] See note 8, supra.
[16] Although an "association" may contract for recreational services under the Condominium Act, may a unit owner also contract or lease the same facilities? See note 2, supra; and *Ackerman* v. *Spring Lake of Broward, Inc.*, 260 So. 2d 264 (Fla. 4th DCA 1972).
[17] *Hodges* v. *Cooksey*, 15 So. 549 (1894); *Sherbill* v. *Miller Manufacturing Co.*, 89 So. 2d 28 (Fla. 1956).
[18] See Chapter 2, supra.
[19] See note 33, Chapter 2, supra.

sumer that their homestead will be foreclosed should the consumer fail to make his recreational lease payments, then such actions by the developer or holder of the lease may constitute unfair and deceptive debt collection practices in violation of the "little FTC" act.[20] However, a "little FTC" act cause of action which would require individual litigation as class action standing has been denied homestead status by the Florida Supreme Court.[21] See practice and procedural forms at the end of this chapter dealing with affirmative defenses to lien foreclosures and counterclaims under the "little FTC" act.

B. Defects in the Condominium Documents

Although lesses of the recreational properties do not have standing to challenge the lessor's recreational properties because of title defects[22] the practitioner should always look to the documents of the condominium itself for potential causes of action. More specifically, it was a common practice of many developers to include the definitional section of the Declaration of Condominium, which incorporated the recreational lease, the following language:

"The Florida Condominium Act as herein referred to shall mean Chapter 711, Florida Statutes, *as it may be amended from time to time.* (e.s.)"

Such language has recently been interpreted to include all new provisions of the Florida Condominium Act, including those provisions prohibiting escalation clauses.[23]

In *Coffin* v. *Shere*,[24] the Court held that a developer or lessor could not enforce the escalation rental provisions of a recreational lease because of the following language which appeared in the definitional section of the Fifth Moorings Condominium Declaration of Condominium:[25]

> Except where variances permitted by law appear in this Declaration or in the annexed By-Laws or in the annexed Charter of Fifth Moorings Condominium, Inc., or in lawful amendments thereto, the provisions of the Condominium Act as presently existing, or *as it may be amended from time to time*, including the definitions therein contained, are adopted and included herein by express reference. (e.s.)

The Court held this language to mean the parties agreed to accept all future changes in the Florida Condominium Act:[26]

> The contested clause unequivocally states that provisions of the Condominium Act are adopted *"as it may be amended from time to time."* (e.s.) We perceive no ambiguity in this language, and thus find that it was the express intention of all parties concerned that the provisions of the Condominium Act were to become a part of the controlling document of Fifth Moorings whenever they were enacted. Even if we were to find an ambiguity, we would be forced to construe it against the defendant developer/lessors as authors of the Declaration of Condominium. See Bouden v. Walker, 266 So. 2d 253 (Fla. 2d DCA 1972); see generally, 49 Am. Jur. 2d, Landlord and Tenant, § 143.

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[20] See Chapter 2, supra.

[21] See *Avila South*, supra, note 5, wherein the Court stated:

> In the sixth count, plaintiffs complain of an alleged violation of the homestead exemption provisions of the Florida Constitution. From the pleadings and exhibits, it appears that the Association, which is obligated under the recreational lease, looks in turn to its members, the unit owners, for money with which to pay the lease obligations. The unit owners' obligations to the Association, including their pro rata shares of lease payments, are secured by liens on the units, which were created upon the filing of the declaration of condominium. The effect of these arrangements, appellants urge, is that homestead property is subject to forced sale for failure to pay for recreational facilities in contravention of the strong state policy in favor of protecting the homestead against certain creditors. In order to avail himself of the homestead exemption, however, a debtor must establish the homestead character of his property as of the time the lien attaches. The complaint in the present case fails to allege facts that would qualify any unit as homestead property, as of the time of the creation of the liens. For that reason, we conclude that Count VI fails to state a claim for relief. In reversing the trial court's denial of the motion to dismiss as to Count VI, we do not decide any other question as to the efficacy of a lien of this kind, however, and direct that plaintiffs be given leave to amend this count or remand.
> . . . With respect to the sixth count, however, there is no possibility of a class action because the homestead status of each condominium unit will depend on facts peculiar to it. Corporations have no homestead exemption, of course, so the Association could not properly raise such a claim.

[22] See *Avila South*, supra, note 5.

[23] Section 718.401(8), F.S. (1976).

[24] Case No. 76-1429 (Fla. 3d DCA Opinion Filed May 3, 1977). Rehearing has been denied.

[25] Id.

[26] Id.

> We hold that the trial judge properly ruled as a matter of law that Florida Statutes, § 711.236 was incorporated into the Fifth Moorings Declaration of Condominium by virtue of the express wording of the Declaration itself. In light of this holding, the prohibition against further rent increases subsequent to the effective date of Section 711.236 was also proper.

If a particular condominium document and recreational lease contains similar language of the Fifth Moorings Condominium documents then enforcement of escalation clauses by the developer or lessor could again constitute unfair and deceptive debt collection practices under the "little FTC" act. A business' attempt to enforce contractual provisions which it knows to be unenforceable creates a cause of action under the "little FTC" act.[27]

C. Unconscionable Recreation Leases

Although this chapter will attempt to segregate the concepts of unconscionability and corporate self-dealing[28] as separate causes of action, the two theories may overlap and may well be considered together in a cause of action against recreational leases. However, before any discussion on this matter, one must first review the case law in trying to define an unconscionable lease or contract.

The Florida Supreme Court has recently stated on two occasions that a cause of action does exist to attack recreational leases on theories of unconscionability:

> Given the narrow issue presented by these appeals we do not decide questions as to validity of these leases on any other grounds. Thus, although there is reference to the possibility that in some instances lease arrangements for individual unit owners may be unconscionable, inequitable, or contain other deficiencies recognized in law as a basis for judicial invalidation, these matters are not considered or decided here.[29]
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> . . . In affirming the dismissal of the court alleging violations of Section 711.66(5)(e), we do not preclude the plaintiffs on remand the possibility of stating an amended claim of unconscionability independent of Section 711.66(5)(e).[30]

In the above-cited *Fleeman* decision the Florida Supreme Court footnote cites Section 672.302, Florida Statutes, relating to unconscionable contracts under Article 2 of the Uniform Commercial Code.[31] However, in *Gable v. Silver*,[32] the Supreme Court had held that Article 2 of the Uniform Commercial Code does not apply to the sale of condominiums. Perhaps this reference to the UCC is the Court's conclusion that the common law concept of unconscionable contracts or clauses is equivalent to the Uniform Commercial Code's statutory concept of unconscionability. In fact, there is considerable authority that the UCC provision on unconscionability does nothing more than codify the common law rule in this area.[33] If this conclusion is correct then the case law defining unconscionability which makes reference to the UCC provision may be used to attack recreation leases based on common law principles.

Williams v. *Walker Thomas Furniture Co.*[34] is the most often cited case on unconscionability. The contract in question contained a revolving charge account provision wherein the consumer agreed to secure his debt with all after acquired consumer items. If the revolving charge account remained unpaid and in default then the creditor reserved the right to repossess *all* of the consumer's goods that were purchased on the charge account.[35] Default occurred in this particular case in 1962 although the first sales transaction took place in 1957. The consumer was a welfare recipient with limited education living in Washington, D.C.

The contract in *Williams* was challenged as being unconscionable even though the Uniform Commercial Code had not been enacted in the District of Columbia at that time. However, the Court stated:[36]

> The enactment of this section [UCC], which occurred subsequent to the contracts herein suit, does not mean that the common law of the District

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[27] See note 19, supra.
[28] See Section D, Corporate Self-Dealing, infra.
[29] *Fleeman* v. *Case*, 342 So. 2d 815, 818 (Fla. 1977).
[30] *Avila South*, supra, note 5.
[31] *Supra*, note 29 at p. 818.
[32] 258 So. 2d 11 (Fla. 4th DCA 1972), affirmed 264 So. 2d 418 (Fla. 1972).
[33] See Davenport, "Unconscionability and the Uniform Commercial Code," 22 U. Miami L. R. 121 (1967).
[34] 30 F. 2d 44 (D.C. Cir. 1965).
[35] See Section 516.31(4), F.S. (1975).
[36] Supra, note 34.

> of Columbia was otherwise at the time of enactment, nor does it preclude the court from adopting a similar rule in the exercise of its powers to develop the common law for the District of Columbia. In fact, in view of the absence of prior authority on the point, we consider the congressional adoption of § 2–302 persuasive authority for following the rationale of the cases from which the section is explicitly derived. Accordingly, we hold that where the element of unconscionability is present at the time the contract is made, the contract should not be enforced.

The court in *Williams* sets up a two-step approach in determining unconscionability. The first step requires examination of the commercial setting of the transaction at the time the contract was made. Did the circumstances of the transaction allow the consumer a meaningful choice in accepting the contract terms? In many cases a "Meaningful choice" is lacking when there exists a gross inequality of bargaining power between consumer and seller. In other words, a court should look to the facts surrounding the commercial setting, i.e., was there deception; was there an overreaching against inexperienced consumers; or did the consumer have little choice in accepting his contractual obligation,[37]

After analyzing the commercial setting surrounding the initial signing of the contract, the *Williams* court then proceeded to examine the individual contract terms to determine whether or not said terms were "unconscionable." This examination of the contract provisions is the second step in the determination of unconscionability. The court then found the after acquired property security interest provision in the contract to be unconscionable when reviewed with the commercial setting.[38]

The Florida courts have also established a common law or equitable concept of unconscionability. In *Peacock Hotel* v. *Shipman*,[39] the commercial setting involved an inexperienced buyer and a seasoned business seller wherein allegations were made of misrepresentation in the sale of a business. The Court found no fiduciary responsibility between the buyer and the seller,[40] the parties were acting at arms' length, and there was insufficient misrepresentation and deception in the commercial setting to invalidate the contract. However, the Court did state the general rule concerning unconscionable contracts at common law in Florida.[41]

> It seems to be established by the authority that where it is perfectly plain to the court that one party has overreached the other and has gained an unjust and undeserved advantage which it would be inequitable to prevent him to enforce, that a court of equity will not hesitate to interfere, even though the victimized parties owe their predicament largely to their own stupidity and carelessness. . . . It is not the function of the courts to make contracts for parties, or to relieve them from the effects of bad bargains. But where the simplicity and credibility of people are taken advantage of by the shrewdness, overreaching, and misrepresentation of those with whom they are dealing, and they are thereby induced to do unwittingly something the effect of which they do not intend, foresee, or comprehend, and which, if permitted to culminate, would be shocking to equity and good conscience, we think a court of equity may with propriety interpose.

Another Florida case, *Vokes* v. *Arthur Murray, Inc.*,[42] involved a middle aged widow swayed by the advances of a young dashing dance instructor. Here the

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[37] See also In Re: State of New York, 275 N.Y. Supp. 2d 774 (1966); *Jones* v. *Star Credit Corp.*, 298 N.Y. Supp. 2d264 (1969); *Milford Finance Corp.* v. *Lucas*, 8 UCC Rptr. 801 (Mass.App.Ct. 19); *Toker* v. *Westerman*, 8 UCC Rptr. 798 (N.J. Dis. Ct. 1970); *Patterson* v. *Walker-Thomas Furniture Co.*, 277 A. 2d 111 (D.C. 971); and *J. L. McEntire & Sons, Inc.* v. *Hart Cotton Co., Inc.*, 14 UCC Rptr. 1303 (Ark. Sup. Ct. 1974).

[38] In comparison, if the lien provisions of the recreational lease secure rental payments in an unconscionable manner then said lien provisions are unenforceable. See Proposed Rule 2–25. Unconscionable Liens. Chapter 16, Volume 2. For example, *Fairfield Lease Corp.* v. *Amberto*, 7 UCC Rptr. 1181 (N.Y. Civ. Ct., 1970) involved a lease of vending machines wherein the lease required the lessee to make all repairs and pay all taxes and fees on the machines. If the lease was breached, even a minor breach, then the lessor was entitled to not only repossess the machine but also to accelerate all unaccrued and unearned rent on the machine. Therefore, the lessor not only got the machine returned but could hold the lessee liable for all the rents which would have come due under the terms of the lease. The court found the provision allowing both repossession and acceleration of the rents to be unconscionable and to also constitute a form of penalty. The court then found the lease to be unconscionable in its entirety and refused to enforce it. See also *Ashland Oil Co., Inc.* v. *Donohue*, 18 UCC Rptr. 1129 (W.V. App. Ct., 1976).

[39] 138 So. 44 (Fla. 1931).

[40] A greater duty to disclose all facts is imposed upon the seller if he has a fiduciary responsibility to the buyer. *Dale* v. *Jennings*, 107 So. 175 (Fla. 1925).

[41] Supra, note 39 at page 46.

[42] 212 So. 2d 906 (Fla. 2d DCA 1968).

Court clearly looked to the commercial setting finding various forms of deception and overreaching to lure the unsuspecting widow. After reviewing the commercial setting, the Court found the advanced contract price to be both inequitable and unconscionable.

Many of the previously cited cases found some form of fraud, deception or overreaching in the commercial setting of the transaction. The courts in these cases found that because of this deception the consumer lacked a meaningful choice when accepting the contractual terms.[43] However, in examining the commercial setting one may look beyond deception or lack of disclosure. For example, if no deception is uncovered in the transaction then such factors as economic leverage, consumer appeal, or corporate self-dealing may show a lack of meaningful choice in the commercial setting.[44] Also, other courts have found some contracts unconscionable without reviewing the commercial setting of the transaction.

In *Campbell Soup Co.* v. *Wentz*,[45] a group of farmers had contracted with the Campbell Soup Company by way of form adhesion contracts. The contract price for the farmers' crop of carrots was considerably below the market price at the time of delivery. The Court refused to enforce the contract stating:[46]

> The reason that we shall affirm instead of reversing with an order for specific performance is found in the contract itself. We think it is too hard a bargain and too one-sided an agreement to entitle the plaintiff to relief in a court of conscience. For each individual grower the agreement is made by filling in name and quantity and price on a printed form furnished by the buyer. This form has quite obviously been drawn by skillful draftsmen with the buyer's interests in mind.

It is important to note that the Court in *Campbell Soup* did not review the commercial setting of the transaction, i.e., there was no apparent deception or other forms of fraud and deceit involved. The Court simply looked to the four corners of the document, finding the contract unconscionable and unenforceable. The provisions found to be offensive included: (a) the contract price; (b) the lack of any provision for liquidated or other damages to protect the farmers from Campbell's breach of contract; and (c) a provision allowing the Campbell Soup Company to reject the carrot crop at their sole discretion. The Court did not suggest that the contract was illegal but rather was unenforceable in a court of equity:[47]

> ". . . . that equity does not enforce unconscionable bargains is too well established to require elaborate citation."

In *American Home Improvement Co.* v. *MacIver*,[48] the sales price in a home improvement contract was considerably over the actual value of the goods and services performed which the Court found to be unconscionable and unenforceable. The contract also violated the New Hampshire Truth-in-Lending laws relating to interest rates, i.e., conceivably some element of deception in the commercial setting. However, the Court appeared to ignore the commercial setting and looked to the four corners of the contract itself. The Court concluded that the price for the home improvement contract was in and of itself unconscionable and unenforceable.

When must a court look to the commercial setting of a contract before determining unconscionability and when may a court simply look to a contract in and of itself in determining unconscionability? Perhaps the answer is best expressed in *Mobile American Corp.* v. *Howard*,[49] wherein the Florida Second District Court of Appeal stated:[50]

> Of those cases dealing with price at all, most require, in addition to a grossly excessive price, some element of nondisclosure, fraud, overreaching or manifestly unequal bargaining position [commercial setting]. Only a few courts have indicated that an excessive price disparity may be sufficient of itself under § 2–302 supra, but such cases involved *grossly* excessive prices and finance charges considering average market conditions.

In summary, contracts or contract provisions may be considered unconscionable when: (a) the contract price or term is excessive coupled with a commercial

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[43] Supra, note 37.
[44] See note 85, infra.
[45] 172 F. 2d 80 (3d Cir. 1948).
[46] Id.
[47] Supra, note 45.
[48] 201 A. 2d 886 (N. Hamp. 1964).
[49] 307 So. 2d 507 (Fla. 2d DCA 1975).
[50] Id. at 508.

setting wherein some form of nondisclosure, fraud, overreaching or manifestly unequal bargaining position plagued the consumer buyer; or (b) the contract term or price is so grossly excessive in comparison with average market conditions that the price or contract term is unconscionable in and of itself, regardless of the commercial setting of the transaction. When does a contract term or price become so grossly excessive in comparison with average market conditions is a case-by-case question of equity.[51]

The use of unconscionable contracts or the attempted enforcement of said contracts constitutes unfair and deceptive trade practices in violation of the "little FTC" act. In *Kugler* v. *Romain*,[52] the Attorney General for the State of New Jersey brought an action under its consumer protection statutes [53] seeking injunctive relief and restitution to injured consumers who were the victims of unconscionable contracts. The Attorney General brought action against the sale of educational devices to uneducated low income consumers through door-to-door solicitations. The Attorney General maintained that because the price of the educational package was approximately two and one-half times its market value, together with deceptive sales practices in the commercial setting, the contracts were therefore unconscionable under the Uniform Commercial Code.

The sellers of the educational program maintained that the Attorney General had no standing under the New Jersey consumer protection statute to enforce the provisions of the Uniform Commercial Code relating to unconscionable contracts. The New Jersey Supreme Court disagreed, stating that if the contracts were unconscionable under the Uniform Commercial Code then the Attorney General had the power under its consumer protection statute to enjoin the activity and seek restitution on behalf of a class of consumers all similarly situated: [54]

> Such price value clearly constitutes unconscionability and renders Section 2 available to the Attorney General in a class-type remedial action for the benefit of all similarly situated consumers.

The Massachusetts Supreme Court has determined that its "little FTC" act [55] may be used to challenge unconscionable contracts. In *Commonwealth* v. *Decotis*,[56] the Attorney General of Massachusetts used its "little FTC" act to enjoin a mobile home park from imposing resale fees on tenants when tenants sought to sell their mobile homes within the park. This resale fee had been disclosed to most of the tenants when they first moved into the park. However, the resale fee had no relation to any services performed by the park owners and was therefore found to be unconscionable.

Although the Massachusetts Court found no deception in the transaction, it looked to other aspects of the commercial setting. The prospective tenants were retired or near retirement age living on fixed incomes. The economics of removing a mobile home, should the tenant refuse to pay the resale fee, precluded

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[51] For example, the Florida court in *Mobile American Corporation, supra* note 49, found the contract price or interest rate of 11.75 percent to be high but within the limits prevalent to the current status of the installment sales market. In other words, the court, finding no deception or overreaching in the commercial setting, looked to the average market price and concluded there was no unconscionability within the contract itself. It is conceivable that had the court found deception or overreaching in the commercial setting then it may well have invalidated the 11.75 percent interest rate as unconscionable. Or if the court had found no deception or overreaching in the commercial setting but had found the interest rate to be greatly in excess of the average market price, then it would have invalidated the interest rate as being unconscionable.

In *Vom Lehn* v. *Astor Art Galleries*, 18 UCC Rptr. 861 (N.Y. trial ct., 1976), a jade statue was sold for $67,000 even though the market value was only approximately $15,000. The seller knew that the buyer was totally unfamiliar with the value of jade, which persuaded the court to find the price to be unconscionable. See also note 37, supra, and *Wechsler* v. *Goldman*, 214 So. 2d 741 (Fla. 3d DCA 1968).

[52] 279 A. 2d 640 (N.J. 1971).

[53] N.J.S.A. 56:8-2.

[54] Supra, note 52 at page 653. Note that the New Jersey Supreme Court in reviewing the commercial setting of the transaction looked at the legalistic complicated language of the contracts, the actual benefits that the educational packages would give to minority uneducated children, and the method of enforcing these contracts as a collection practice. All of these elements constituted the commercial setting of the transaction which, when coupled with the excessive price of the educational packages, resulted in unconscionable and unenforceable contracts.

[55] G.L.c. 93A.

[56] 316 NE 2d 748 (Mass. 1974).

the tenant from any real bargaining power.[57] The fact that the resale fee was a widely used, industry accepted trade practice was not considered a defense.[58] The Court concluded:[59]

> Although deception may not have been involved where the disclosure by the defendants to the prospective tenant was timely and complete, we believe that the practice of charging a fee for no service whatsoever was an unfair act or practice within the intent of § 2(a) of G.L.c. 93A and that it was therefore unlawful....
>
> What we can determine is that the collection of resale charges by the defendants was an unfair act or practice. That provision of the Uniform Commercial Code which permits a court to refuse to enforce a contract or contract provision which is unconscionable provides a reasonable analogy here.

In summary, *Kugler*, supra, and *Decotis*, supra, conclude that the "little FTC" act may be used as a remedy in attacking unconscionable contracts or leases. It is important to note in these cases that the Attorney Generals of New Jersey and Massachusetts were given class action standing to seek restitution for injured consumers who were the victims of unconscionable contracts.[60] These cases are the authority under which the Florida Attorney General, Governor and Cabinet are now promulgating rules under the Florida "little FTC" act defining unconscionable recreational leases and contracts. The proposed rules

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[57] See Chapter 8, supra.

[58] Supra, note 56 at page 753:

> The defendants argue that their actions were not deceptive or unfair because resale charges were uniformly collected by mobile home park operators in the Commonwealth. Such a fact was not proved and, even if it had been, the existence of an industry-wide practice would not constitute a defense to unlawful conduct. *Minter* v. *Federal Trade Commn.*, 102 F. 2d 69, 70 (3d Cir. 1939); *International Art Co.* v. *Federal Trade Commn.*, 109 F. 2d 393, 397 (7th Cir. 1940); cert. den. 310 U.S. 632, 60 S. Ct. 1078, 84 L. Ed. 1402 (1939); *P. F. Collier & Son Corp.* v. *Federal Trade Commn.*, 427 F. 2d 261, 275–276 (6th Cir. 1970). See *Federal Trade Commn.* v. *Keppel & Bro. Inc.*, 291 U.S. 304, 313, 54 S. Ct. 423, 78 L. Ed. 814 (1934).

[59] Supra, note 56 at page 754. The Massachusetts court, even though finding no deception in the transactions, concluded that the $250 resale fee was unconscionable and therefore constituted an unfair trade practice under its "little FTC" act. In analyzing the commercial setting of the transaction, the court noted that most of the tenants were elderly, on fixed incomes, and unable to remove their mobile home if they refused to pay said fee. The court concluded that the commercial setting relevant to unconscionability can be something besides deception or failure to disclose.

[60] See Section 501.207(1)(c), F.S. (1975) and *Avila South*, supra, note 5. Use of the "little FTC" act as a remedy is important as the Act gives damages and attorneys fees. Sections 501.210, 501.211, F.S. (1975). See Chapter 6, supra. Remedies at common law and under the UCC do not give damages or attorneys fees. See *Vom Lehn*, supra, note 51. Use of the "little FTC" act as a remedy allows retroactive application of the Act to leases signed before October 1, 1973:

> Remedial statutes are exceptions to the rule that statutes are addressed to the future, not the past. . . . Remedial statutes do not come within the legal conception of a retrospective law, or the general rule against the retrospective operation of statutes.

Grammer v. *Roman*, 174 So. 2d 443, 446 (Fla. 2d DCA 1965). The Florida Supreme Court has often applied these principles, including the recent case of *Palm Beach Mobile Homes, Inc.* v. *Strong*, 300 So. 2d 881, 887 (Fla. 1974):

> The remedial law in force at the time the contract is made enters into and becomes a part thereof, but the parties to the contract have no vested right under the contract clause of the Federal Constitution, in the particular remedy or modes of procedure then existing. It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract, which may be done by a State without impairing contract obligations. See *Pittsburg Steel Co.* v. *Baltimore Equitable Society*, 226 U.S. 455, 33 S. Ct. 167, 57 L. Ed. 297. A state may by legislative enactment modify existing remedies and substitute others without impairing the obligation of contracts, provided a sufficient remedy be left or another sufficient remedy be provided. See *Waggoner* v. *Flack*, 188 U.S. 595, 23 S. Ct. 345, 47 L. Ed. 609.

In interpreting its "little FTC" act the Massachusetts Supreme Court has stated:

> . . . We disagree with the claim that G.L. c. 93A "merely provided for new procedural methods of prosecution for consumer abuse" which could be applied retroactively. [citations] Although G.L. c. 93A admittedly established new procedural devices to aid consumers and others (which in this respect could constitutionally be applied retroactively), it also created new substantive rights by making conduct unlawful which was not unlawful under common law or any prior statute.
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> *Commonwealth* v. *Decotis*, supra, note 56 at page 755; cited also in *Slaney* v. *Westwood Auto, Inc.*, 322 N.E. 8d 768 (Mass. 1975).

See also *Walker & LaBerge, Inc.* v. *Halligan*, 344 So. 2d 239 (Fla. 1977).

basically codify the previously discussed case law both at common law and Section 2-302 of the Uniform Commercial Code.[61]

D. Corporate Self-Dealing

In *Avila South Condominium Association, Inc.* v. *Kappa*,[62] the plaintiff condominium association had alleged that the individual developers were the original incorporators and directors of the condominium association when the association had entered into the recreational lease. The plaintiff's complaint charged such acts of self-dealing to be in breach of the original association board of directors' fiduciary responsibilities. Separate counts of the complaint had also alleged actions sounding in fraud and deceit.[63]

In reviewing the self-dealing allegations of the complaint the Supreme Court discussed its decisions in *Point East Management Corp.* v. *Point East One Condominium Corp.*;[64] *Fountainview Association, Inc. No. 4* v. *Bell*;[65] and *Lake*

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[61] See Proposed Rules 2-25 and 2-26. Chapter 16. Volume 2. During the 1977 session of the Legislature SB 40 was passed. The new law is an evidentiary statute relating to a presumptive of unconscionability and burden of proof:

Section 3. Section 718.122, Florida Statutes, is created to read:

718.122 Unconscionability of certain leases; rebuttable presumption.—

(1) A lease pertaining to use by condominium unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) the lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners, other than the developer, to represent their interests;

(b) the lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

(c) the least requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

(d) the lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

(e) the lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 21 years or more;

(f) the lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of, a lien upon individual condominium units of the condominium to secure claims for rent;

(g) the lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved; provided that for purposes of this paragraph "annual rental" means the amount due during the first twelve months of the lease for all units regardless of whether such units were in fact occupied or sold during that period and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

(h) the lease provides for a periodic rental increase based upon reference to a price index;

(i) the lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease;

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

[62] 347 So. 2d 599 (Fla. 1977).

[63] These counts were denied class action standing based on *Osceola Groves* v. *Wiley*, 78 So. 2d 700 (Fla. 1955).

[64] 282 So. 2d 628 (Fla. 3d DCA 1973), conformed to 284 So. 2d 233 (Fla. 1973).

[65] 203 So. 2d 657 (Fla. 3d DCA 1967), affirmed, 214 So. 2d 609 (Fla. 1968). In referring to *Fountainview Association*, the Florida Supreme Court in *Avila South*, stated:

While reaffirming our decision in Point East, that self dealing by officers and directors of condominium associations, without more, is not actionable, we believe the time has come to reexamine the laconic imprimatur with which we stamped the Third District's decision in *Fountainview Ass'n, Inc., No. 4* v. *Bell, supra*. The Third District

Mabel Development Corp. v. *Bird.*[66] Although the Court attempted to distinguish the recent *Point East* decision, it in effect overruled the *Fountainview* decision:[67]

> A director occupies a trust relation not only to the present stockholders, but also to those who may become such in the *future*, and . . . for this reason, where directors have profited in some *secret way*, stockholders who are subsequently admitted may demand that an account of the profits be made to the corporation. . . . (e.s.)
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> . . . Transactions in which a corporate fiduciary derives personal profit, either in dealing with the corporation or its property, or in matters of corporate interest, are subject to the closest examination, and the form of the transaction will give way to the substance of what was actually being brought about. Personal dealings with the corporation or transactions with the corporation in which the director has some personal interest may be avoided, unless good faith and fairness are shown. While occupying such a fiduciary relation, the officers and directors of a corporation are precluded from receiving any personal advantage *without the fullest disclosure to, and assent of, all concerned.* . . . (e.s.)

The Court in *Avila* appears to recognize the recreational lease as a possible way to finance condominium projects and to allow the sale of units at a lower price.[68] However, the Court found no excuse for the use of secret misbehavior, i.e., some kind of deception, failure to disclose or misrepresentation. If secret misrepresentation, betrayal of trust, or inordinate personal gain occur, then a cause of action will arise wherein the individual corporate director is personally liable to the condominium association for that amount by which he was unjustly enriched as a result of the recreation lease.[69]

Note that the Court in *Avila* makes reference to full disclosure or forms of deception used in the sale of condominiums.[70] Should these secret dealings be proven then the trial judge, in his discretion and pursuant to concepts of equity, could determine whether or not the excessive rental payments should be reimbursed to the condominium association.

As previously discussed, the commercial setting relating to unconscionability is similar to the commercial setting of self-dealing, i.e., secret nondisclosure or deception.[71] Also, the excessive or unconscionable rental payments are analogous to "inordinate personal gain at the expense of those to whom they owe a fiduciary duty."[72] However, as also previously discussed, unconscionable contracts can be voided without reference to the commercial setting, while self-dealing requires such reference.[73] Therefore, unconscionability may be the most practical remedy

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there held that a condominium association could not recover from former officers and directors even when they were guilty of undisclosed self dealing "upon inflated terms." 203 So. 2d at 658. Insofar as is revealed by the opinion, this decision was based entirely on a misapprehension as to the reach of the *Lake Mabel* case, as we have undertaken to demonstrate, ante pp. 11–12. Neither the Third District nor this Court articulated any basis in public policy for the *Fountainview* decision, and it is difficult to conceive of any.

[66] 126 So. 356 (1930).

[67] Supra, note 62.

[68] Supra, note 62:

> Certain public interests may be served by leaving to developers the possibility of self dealing; such flexibility may facilitate financing of some phases of some projects, with resulting economies that can be passed on to the public. But there is absolutely nothing to recommend a rule of law which encourages persons in positions of trust secretly to betray their trust for inordinate personal gain, at the expense of those to whom they owe a fiduciary duty. We now reaffirm our decision in *News Journal Corporation* v. *Gore*, supra, and hold that any officer or director of a condominium association who has contracted on behalf of the association with himself, or with another corporation in which he is, or becomes substantially interested, or with another for his personal benefit may be liable to the association for that amount by which he was unjustly enriched as a result of his contract. However, no director or officer shall be required to return any portion of moneys paid by the association where it is shown that he received the funds with the consent of the association or with the consent of a substantial number of the individuals comprising the association. After careful consideration of the facts in each case, based upon specific findings, the trial judge, in his discretion, shall grant such relief as equity dictates.

[69] Id.

[70] Supra, note 68.

[71] Supra, note 37.

[72] Supra, note 68.

[73] Supra, note 51.

to invalidate recreational leases, as the cause of action may be litigated by simple reference to the four corners of the lease document.[74]

E. Federal Antitrust Challenges

Although the Florida Supreme Court has stated that recreational leases may not be attacked in state court based on state antitrust laws,[75] the federal courts have allowed antitrust challenges under Federal statutes.

Unfair methods of competition were the first prohibited activities under the Federal Trade Commission Act passed by the Congress in 1914 to protect competition in the marketplace. An unfair trade practice is any activity which violates the "letter or the spirit" of the federal antitrust laws.[76] The federal antitrust laws prohibit restraint of trade and monopolization.[77] Therefore, contracts or leases that restrain or monopolize trade violate the federal antitrust laws.[78]

In *Northern Pacific Railroad Co. and Northwest Improvement Co.* v. *U.S.*,[79] the Northern Pacific Railroad Company was requiring all grantees or lessees of the railroad's land to ship their commodities over the company's railroad. This "tie-in sale" agreement provided that the rates of the railroad were to be equal to those of competing carriers. The government filed suit against this agreement alleging that preferential routing agreements were unlawful as unreasonable restraints of trade under the Sherman Antitrust Act. The Supreme Court held the preferential routing arrangements were, in fact, tying agreements, unlawful under Section 1 of the Sherman Antitrust Act and therefore were *per se* unreasonable restraints of trade. This case was extensively cited by the Fifth Circuit Court of Appeal in a recent case where the court held that a cause of action existed under the Sherman Act for alleged tie-in sales of condominium units and managements services.[80]

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[74] Supra, note 51. If it becomes necessary to examine the commercial setting then questions concerning class action standing will arise. Supra, note 63. The Supreme Court in *Avila South,* supra, note 5, while denying class action standing for actions sounding in fraud and deceit, allowed association and class standing for actions based on self-dealing and unconscionability:

> Although not grounded on a contract theory, the self-dealing claim in Count VII is nevertheless concerned with a contract to which the Association is alleged to be a party, namely, the rereational lease. As this cause of action has been pleaded, the Association is the only party that may properly bring suit because the allegation, boiled down, is that a fiduciary duty owed to the Association was breached. While the Condominium Act expressly saves "any statutory or common law right of any individual unit owner or class of unit owners to bring any action which," is available independently of the Act, Section 718.111(2), Florida Statutes (1976 Supp.), the named, individual plaintiffs in the present case did not plead any injury to themselves distinct from the injury done the Association.
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> In the event the unconscionability count is amended to state a cause of action on remand, the Association would have standing again because the Association is alleged to be a party to the lease. The named, individual plaintiffs are also interested as third party beneficiaries under the recreational lease and might be able to state a claim whether as individuals or as a class.

There appears to be some confusion in the Supreme Court's decision wherein they allowed class or association standing for self-dealing and unconscionability but denied standing in actions sounding in fraud and deceit. The Court indicates that self-dealing and unconscionability may well involve certain allegations of secret dealings or forms of mispresentation and deception. Do these allegations sound in fraud and deceit in relation to each individual unit owner? Does this mean that allegations of self-dealing and unconscionability require that each individual unit owner testify as to the commercial setting and deception in his particular transaction? If such is the case, is the cause of action again sounding in fraud and deceit with subsequent loss of class action standing? The Court does not attempt to answer these questions but simply states that unconscionability and self-dealing will allow standing on behalf of the condominium association. See Chapter 5, Section B, Class Action Standing, supra.

[75] Supra, note 62.

[76] See Chapter 2, supra.

[77] *Charles A. Ramsay Co.* v. *Assoc. Bill Posters of the U.S. and Canada,* 260 U.S. 501 (1923); United Shoe Machinery Corp. v. U.S., 258 U.S. 451 (1922).

[78] Id.

[79] 356 U.S. 1 (1958).

[80] *Miller* v. *Granados,* 529 F. 2d 393, 396–397 (5th Cir. 1976), where the Court stated: Tying arrangements have been defined by the Supreme Court as: "[A]n agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying arrangements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California and Standard Stations* v. *United States,* 337 U.S. 293, 305–306, 69 S. Ct. 1051, 1058, 93 L. Ed. 1371, 1381, 1382. They deny competitors free access to the market for the

It is important to note that not all tie-in sales unlawfully restrain trade. Tie-in sales unlawfully restrain trade when the seller has sufficient economic leverage in the sale of one product (condominium units) to, in effect, require the buyer to purchase a different or tied product (recreation services) which excludes interstate commerce competitors in the tied product from a not insubstantial amount of potential business.[81] The necessary elements of an unlawful restraint of trade tie-in sale consist of:[82]

(1) The existence of a conditional sale with the purchase of a condominium unit tied to the buyer's acceptance of another product, the developer's recreational lease.

(2) The existence of economic leverage by the developer over the sale of the tying product, condominium units.

(3) The exclusion of interstate commerce competitors in the recreational services industry from a not insubstantial market, the numerous condominium units within the development.

The first step in proving an unlawful restraint of trade involves the existence of "two products" in the "tie-in sale." If the condominium recreational lease is a "net-net lease,"[83] then the developer will maintain that his sale of the condominium unit and lease of a recreational facility was a "one product" sale and not a "tie-in sale" which requires "two products."[84] However, the existence of one or two products is a question of fact based on the following:

(1) Where is the physical location of the recreational facilities in relation to the condominium units? The more physical segregation of units and recreational area is evidence of "two products."

(2) Have condominium units and recreational facilities or services been sold separately in other similar developments? For example, the successful marketing of similar units with no recreational facilities is evidence that the units and recreation are not inherently "one product."

(3) Are there any interstate commerce businesses such as country clubs, tennis clubs, health spas, YMCA, etc., in the area that contract with consumers to use recreational facilities which are the same or similar to those facilities provided in the recreational lease? The sale of these services independent of housing units is evidence of recreation being a separate product from housing.

Economic leverage is perhaps the most complicated element of an unlawful tie-in sale. One must show that the developer, at the time of sale of the condominium units, had some form of economic leverage over the purchaser in the sale of the condominium unit. Economic leverage over the sale of condominiums may take the form of monopoly, market dominance, consumer desirability, or

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tied product, not because the party imposing the typing requirements has a better product or a lower price but because of his power or leverage in another market."

Northern Pacific Railway Company v. *United States*, 356 U.S. 1, 5, 6, 78 S. Ct. 514, 518, 2 L. Ed. 2d 545, 550 (1958). "[T]ying agreement fare harshly under the laws forbidding restraint of trade," *Times-Picayune Pub. Co.* v. *United States*, 345 U.S. 594, 606, 73 S. Ct. 872, 879, 97 L. Ed. 1277, 1288 (1953), and are unreasonable per se where a party has sufficient economic power over the tying product to appreciably restrain free competition for the tied product and the amount of interstate commerce involved is 'not insubstantial.' *Fortner Enter., Inc.* v. *United States Steel Corp.*, 394 U.S. 495, 501, 89 S. Ct. 1252, 1257, 22 L. Ed. 495, 503, 504 (1969); *International Salt Co.* v. *United States*, 332 U.S. 392, 68 S. Ct. 12, 92 L. Ed. 20 (1947); *Northern Pacific Railway Company* v. *United States*, supra, 356 U.S. at 6, 78 S. Ct. at 518, 2 L. Ed. 2d at 550.

[81] Id. Recreational services industry would consist of health spas, tennis clubs, country clubs, etc.

[82] See *Imperial Point Colonnades Condominium Inc.* v. *Mangurian*, 1977-1 CCH Trade Cases. ¶ 61,362 (5th Cir. 1977). Condominium associations do not have standing to represent their unit owners in federal court. *Buckley Towers Condominium, Inc.* v. *Buchwald*, 1976-1 CCH Trade Cases, ¶ 60,937 (5th Cir. 1976).

[83] A "net-net lease" is where the recreational facilities are maintained and taxes are paid by the condominium association and not the developer.

[84] In *Kugler* v. *Aamco Automotive Transmissions, Inc.*, 337 F. Supp. 872, 874 (D. Minn. 1971), the court stated: While the "single product" doctrine is well established, there are few cases which have delineated the criteria for determining singleness. The leading case in this area is apparently *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545 (E.D. Pa. 1960). After analyzing the Jerrold case, the court went on to state: A similar test for determining separability is suggested by Professor McCarthy. He contends that whether separate items are involved is a question of economics, and he concludes that the proper way to answer the economic question is to look at the industry as a whole to determine if the items have or can be sold separately.

uniqueness of the condominium unit.[85] This leverage need not have involved all buyers in the market but must have involved some buyers.[86] The following checklist relates to facts needed to prove economic leverage:

(1) At the time of the sale of the condominium units, what type of units were other developers offering in the area? Sometimes different developers are building almost identical units within one large complex and may not be imposing any tie-in.

(2) Is the condominium complex substantially different from other complexes in the area in terms of price, location and physical features? However, as condominiums are creatures of real property one complex may well be inherently unique as compared with other complexes or with other forms of housing. Also, low priced condominiums may well have consumer appeal to evidence economic leverage.

The third element of an unlawful tie-in sale involves a "not insubstantial" effect on interstate commerce competition.[87] Proof of this element does not require an in-depth analysis of the recreational services market in the area.[88] This element can be proven by showing that the recreational payments from unit owners are of such dollar volume that recreational services industry competitors would otherwise be attracted to enter this market but cannot practically do so because of the tie-in sale. The following checklist should be reviewed:

(1) What is the total cost now being paid by unit owners to maintain, operate and lease the developer's recreational facility? Compare the cost with the cost of similar services from a recreational service competitor.

(2) Do competitors in the recreational services industry feel that the developer's recreational lease effectively precludes them from an attractive market of unit owners within the complex? The more units in the complex the more attractive is the market.

Needless to say, the antitrust approach in challenging recreational leases is considerably more complicated than the previously discussed state court actions. However, use of the Sherman Act provides treble damages which can be a potent weapon.[89] The disadvantages of this remedy include high costs and the need to show some effect on interstate commerce.[90]

F. Practice and Procedure

The previously discussed remedies, available to attack recreational leases, should be considered in light of the specific lease and condominium development. In chosing the best remedy, the following check list should be reviewed:

(1) Will the remedy afford class action standing[91] or association standing?[92]

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[85] In *Fortner Enterprises, Inc.* v. *U.S.*, 394–495 (1969), the court discussed the correct standard for finding "substantial economic power." Observing that the economic power over the tying product can be sufficient even though the power exists only with respect to some of the buyers in the market, the court found that crucial economic power may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes. The court stated:

Market power is therefore a source of serious concern for essentially the same reason regardless of whether the seller has the greatest economic power possible or merely some lesser degree of appreciable economic power. In both instances, despite the freedom of some or many buyers from the seller's power, other buyers—whether few or many, whether scattered throughout the market or part of the same group within the market—can be forced to accept the higher price because of their stronger preferences for the product, and the seller could therefore choose instead to force them to accept a tying arrangement that would prevent free competition for their patronage in the market for the tied product. Accordingly, the proper focus for concern is whether the seller has the power to raise prices, or impose other burdensome terms, as a tie-in, with respect to any appreciable number of buyers within the market. 394 U.S. 495, 503.

Discussing one of the three criteria for finding economic power, the court noted in footnote 2 that:

Uniqueness confers economic power only when other competitors are in some way prevented from offering the distinctive product themselves. Such barriers may be legal, as in the case of patented and copyrighted products, e.g., International Salt; Loew's or physical, as when the product is land, e.g., Northern Pacific. 394 U.S. 495, 505.

Compare the above with the Supreme Court's most recent review of Fortner in *United States Steel* v. *Fortner*, 1977–1 CCH Trade Cases, ¶ 61,294; 97 S. Ct. 861 (1977).

[86] *Id.*

[87] See *Mortensen* v. *First Federal Savings and Loan Ass'n.*, 1977–1 CCH Trade Cases, ¶ 61,259 (3d Cir. 1977) wherein the Court looked to the interstate commerce aspects of both the tying and tied product citing *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773 (1977).

[88] Tie-in sales are considered per se violations of the antitrust laws. See note 80, supra.

[89] 15 U.S.C. § 15.

[90] Supra, note 87.

[91] Supra, note 74.

[92] Supra, notes 74 and 82.

(2) Can the association legally assess its members to pay costs and attorney's fees? [93]

(3) Do the condominium documents define the Condominium Act as it may be "amended from time to time"? [94]

(4) Did the commercial setting of the sale of condominium units involve any lack of disclosure, deception, overreaching or economic leverage? [95]

(5) Are the rental payments under the escalation clause of the recreational lease grossly excessive in comparison with other available recreational services? [96]

(6) Were the original board of directors of the association the officers, agents or employees of the developer/lessor? [97]

(7) Did the individual unit owners sign or execute any document which obligated them personally to the lease? [98]

(8) Is the lien provision of the lease enforceable against a substantial number of units within the development? [99]

(9) Did the sale of condominium units with a recreational lease affect interstate commerce? [100]

See the pleading and practice forms at the end of this chapter.

Chapter 16

[*Proposed rules*]

(1) DEPARTMENT OF LEGAL AFFAIRS: RULES PROPOSED TO THE GOVERNOR AND CABINET

CHAPTER 2-25 UNCONSCIONABLE RECREATIONAL SERVICE CONTRACTS

CHAPTER 2-26 UNCONSCIONABLE MANAGEMENT AND MAINTENANCE CONTRACTS

JUSTIFICATION AND ECONOMIC IMPACT STATEMENT

The Department of Legal Affairs proposes that Rule Chapters 2-25 and 2-26 be adopted by the Governor and Cabinet pursuant to the authority of Chapter 501, Part II, Florida Statutes, and in accord with the requirements of Chapter 120, Florida Statutes. The rules address a specific practice by persons engaged in the trade or commerce of selling housing units to the public. The specific practices to be prohibited are: The collection or attempted collection of rent under a recreational services contract, which is unconscionable at common law; the enforcement or attempted enforcement of a lien provided for in a recreational services contract which is unconscionable at common law; and the collection or attempted collection of contract payments under management or maintenance contracts which are unconscionable at common law. Such rules are necessary as a result of developers of housing unit projects conditioning the sale of housing units on the buyers acceptance of the obligations of a recreational services contract and/or a management or maintenance contract.

The proposed rules addressed this practice as it is or may be engaged in by sellers in every segment of the housing market including persons who lease housing units to tenants under leases having terms of five years or longer. Although this practice has occurred and will almost certainly continue to occur in all segments of the housing market it is most prevalent in the sale of condominium units. It is in this segment that, to date, the bulk, although not all, of the controversy, litigation and other private or public actions have occurred. Consequently, it is with respect to the practice as it has occurred in the sale of condominiums that most analytical studies, surveys, analyses, and reports have been prepared.

In preparing these proposed rules the staff of the Department has relied to a great extent on the following source materials in addition to the applicable case law precedents: Condominiums/Their Impact on the Southeast Florida Housing

[93] See Sections 718.115, 718.116, F.S. (1976).
[94] Supra, note 24.
[95] Supra, notes 37, 51 and 85.
[96] Supra, note 51.
[97] Supra, note 67.
[98] Supra, note 16.
[99] Supra, note 11.
[100] Supra, note 87.

Market, a report prepared by William Bosher, 1974 Fellow, Intergovernmental Affairs Fellowship Program, U.S. Civil Service Commission; Housing in Florida 1975 and Housing in Florida 1976, reports prepared by the Florida Department of Community Affairs for Governor Reuben O'D. Askew, pursuant to Legislative mandate; the HUD Condominium/Cooperative Study, a three volume study prepared as a result of congressional directive to the United States Secretary of Housing and Urban Development; the Leasehold Condominium: Problems and Prospects, the Report of the Ontario Task Force on Leasehold Condominiums, issued September 1, 1975; various depositions and sworn statements obtained during prior litigation by the Department; testimony adduced at the seven public hearings conducted by the Department for the Governor and Cabinet, pursuant to § 120.54(3), Florida Statutes, relating to proposed Rule Chapters 2-24, 2-25, and 2-26; and information received by the Department through correspondence and other submitted materials.

Because of the massive volume of these materials it is impossible to fully set forth within the scope of this statement even a summary of all the information contained therein which is relevant to the Department's proposal. Therefore, these source materials shall be deemed to be incorporated herein by reference to the extent that they may be applicable to any issues raised in consideration of the proposed rules.

Sales practices by developers or other persons engaging in the business of selling housing units are of primary concern as this industry by its nature is of unique importance, due to the large expenditures and vital needs involved. Adequate housing for every family is basic to the existence of the social order as we know it and necessary to progress in every area of social development. Additionally, as the population continues to increase and the land suitable for housing construction becomes correspondingly more scarce it is incumbent upon every element of the government to take all proper steps to secure for each individual a fair and open opportunity to obtain adequate housing.

The average new home constructed in Florida in 1975 cost $38,000.00, an increase of 8.5 percent over 1974, and an increase of 38 percent over 1970. A major factor contributing to this substantial rise is the corresponding rise in population. By 1985, Florida is expected to have a population of ten million, resulting in a need of an addition of six hundred thousand units to the present housing stock. These figures when related to income and other demographic data already demonstrate that the vast majority of Florida families cannot afford to purchase homes at these prices. However, since housing is a necessity, a situation is created wherein many hundreds of thousands of families must cope with extremely difficult personal economic circumstances.

"Housing poor" is a term commonly used to describe the situation faced by a large number of Floridians. It must be recognized that when people have to spend more than a certain percentage of their income on housing, the amount of spendable income available for other necessities such as food and clothing is diminished. It is commonly accepted that no more than 25 percent of income should be expended on housing in order to insure adequate income for other needs and that an expenditure of 35 percent of income is the maximum that can be spent without an unacceptability high risk of dire economic consequences. Housing poor describes the situation which occurs when these percentages are exceeded. In 1974, it was estimated that there were over five hundred thousand persons paying more than 35 percent of income for housing and over seven hundred forty three thousand paying more than 25 percent.

The distribution, density, change and rate of change of population, income, and sources of income throughout the state also has a direct effect on the housing market. The "gold coast" (Dade, Broward and Palm Beach counties) has the greatest proportion of population income and money in the state and correspondingly the highest retail sales, manufacturing output and volume of construction. However, examination of the available data clearly shows that the population growth trend is traveling north along Florida's east coast as well as expending outward from the state's other metropolitan, population centers. Concurrent with this trend is an increasingly strong demand for affordable housing. It is obvious that when demand is very strong and where the demand is for a non-discretionary necessity such as housing, those who can control the supply are in a dominant economic position. Further, whatever abuses which may occur as a result of the suppliers market strength will have a direct impact on the health, safety and welfare of the population. The HUD study,

referenced above, reveals that the developers of housing have dictated the patterns of growth, particularly in the northern gold coast region, and that this has been reflected in poor planning and inadequate facilities.

Over the past several years, housing construction in South Florida has been dominated by the condominium developers to the extent that it can be fairly concluded that condominiums are the only form of new housing available to the average family. Where, as in South Florida, the largest population bracket is over 62 years of age and primarily on fixed income, developer control of housing, if abused, can and has caused great hardship to many people. Condominium prices on the average cover the same range as prices of traditional detached housing. However, condominiums do offer a greater variety and greater numbers in the moderate to lower price ranges. Consequently, there is an observable trend towards increased condominium purchases by all Floridians. Nevertheless, all segments of the housing market reflect this strong market position on the part of developers and unless appropriate remedies are available there is no reason to believe that the abuses which are most visible in the condominium segment will not occur with increasing frequency in other segments of the housing market.

Based upon the source materials referenced above, the Department takes the following view of Florida's housing situation. Overall demand will continue to keep developers in a strong market position for the foreseeable future. This strong position creates a potential for a certain number of incompetent or unethical developers to enter the market, and a temptation for even the most competent and most ethical developers to engage in overreaching tactics to the detriment of consumers.

Florida's climate in conjunction with the character of a large portion of its population has also resulted in a strong demand for recreational services and facilities. In response to this demand, there exists a competitive and growing recreational services industry. In general this would include businesses offering golf, tennis, swimming, boating, hiking, arts, crafts and various physical fitness programs. Recreational activities such as these are offered in various combinations with varying levels of supervision and instruction available. What has occurred is a tendency among housing developers to seek to take advantage of the strong demand existing in both industries.

One result of this tendency is an increasing trend by developers to offer, in addition to housing units, recreational property and facilities to be used in common by housing unit owners. This has led to a need, and therefore increased demand, for professional management and maintenance services to operate and maintain these commonly used areas. Through the various types of housing documents such as declarations of condominiums and restrictive covenants developers have made it a mandatory condition of purchase to accept the obligations imposed by recreational services contracts and management and maintenance contracts.

With respect to recreational services contracts it has been typical for developers to impose on the housing unit owners and/or their condominium or home owners associations the obligation to pay all maintenance and operating expenses, taxes, insurance, and all other costs of the recreational facilities, holding the developer or lessor safe from any of these costs, and then, in addition, to require the payment of a certain amount of rent to the developer or lessor. It has also been typical to include in the recreational services contract a requirement that these rental payments escalate from time to time in proportion to increases in the consumer price index or similar conveniently available commodity or price indexes.

In addition, these recreational services contracts are easily enforceable because the developer has included a provision which imposes a lien on the housing unit of the purchaser which can result in a homeowner or housing unit owner losing his residence for failure to pay for recreation, regardless of whether the recreational facilities and services offered are those which the housing unit owner would choose if he had free choice. The ultimate result has been that thousands and thousands of Florida residents are locked into contractual arrangements wherein in order to avoid losing their homes, they must pay continually increasing amounts for recreation which they may not be able to use, or desire to use, to the extent that real economic hardship must be viewed as an imminent if not existing reality.

That this severe problem has been widely recognized can be demonstrated by reviewing the changes that the legislature has made to the Florida Condominium Act, now Chapter 718, Florida Statutes. Changes relating to recreational services contracts, or recreational leases as they are commonly called, are very prominent particularly with respect to the disclosures which are required to be made by developers and a prohibition against the inclusion or enforcement of escalation clauses included therein. Unfortunately these legislative actions have not yet been able to significantly resolve the existing problem. Constitutional impediments such as the prohibition against impairing the obligations of contracts has thus far prevented these new statutes from being applied retroactively.

In proposing these rule chapters, the Department has specifically taken an approach designed to avoid these impediments. The operative provisions of the proposed rules apply only to those contracts which would have been unlawful at time that they were created under the common law doctrine of unconscionability. Therefore, the proposed rules are strictly remedial in nature and do not create any new substantive, rights or duties. Consequently pursuant to the applicable legal precedents and authorities, the rules can be applied to both new and existing contractual arrangements without violating the impairment of contracts clauses of the Federal and Florida constitutions.

Without going into an exhaustive legal analysis more appropriate to other forums, the following cases serve to demonstrate the legal support for the Department's position. In *Palm Beach Mobile Homes, Inc.*, v. *Strong*, 300 So. 2d 881 (Fla. 1974), the retroactive application of a legislative enactment was challenged on the basis of the impairment of contracts clause. The statute in question imposed limitations on the circumstances under which a person could be evicted from a mobile home park. In upholding the statutes the Florida Supreme Court noted the importance of housing and the shortage of spaces for mobile homes. The Court went on to rule on the impairment of contracts issue, saying:

"In determining whether legislation violates the contract clause the question is not whether the legislation affects contracts incidentally, directly or indirectly but whether it is addressed to a legitimate end and the measures taken reasonable and appropriate to that end. The remedial law in force at the time the contract is made enters into and becomes a part thereof but the parties to the contract have no vested right under the contract clause of the Federal Constitution in the particular remedy or mode of procedure than existing. It may be assumed that the parties made their contracts with knowledge of the power of the state to change the remedy or method of enforcing the contract, which may be done by a state without impairing contract obligations. A state may by a legislative enactment modify an existing remedy and substitute others without impairing the obligation of contracts, provided a sufficient remedy is left or another sufficient remedy be provided."

The proposed rules make it specifically clear that a remedy exists under the Deceptive Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, based upon the doctrine of unconscionability. This remedy would exist as an alternative to the remedies available pursuant to common law or the Uniform Commercial Code, which may also be based on the doctrine of unconscionability. In this regard it must be noted that the proposed rules are not absolutely necessary in a strict legal sense, in order to permit housing unit owners or their associations to invoke the doctrine of unconscionability as the basis for relief from these overly burdensome contractual arrangements. Nevertheless, it is submitted that adoption of these rules is very important to maximizing the probabilities that there will ultimately be an overall solution to this severe problem.

The way in which these contractual arrangements are designed and the specific language used in them varies widely from case to case. Therefore, invocation of one remedy as opposed to another will undoubtedly raise various subsidiary legal issues resulting from such things as applicable statutes of limitations and the specific relief available under a particular remedy. The more remedies which are available the more likely it is that housing unit owners or their associations seeking relief from these unconscionable arrangements will be able to select the most appropriate remedy and design their pleadings in a way most likely to lead to a just result.

As to the question of whether the doctrine of unconscionability is a legal theory applicable to the resolution of recreational services contract and management and maintenance contract disputes, recent court decisions make it abundantly clear that this question can be answered in the affirmative. The case of

Fleeman v. *Case*, 342 So. 2d 815 (Fla. 1976), involved a constitutional challenge to the retroactive application of that provision within the Condominium Act which prohibits escalation clauses in recreational leases. The Court ruled that this provision could not be applied retroactively because it lacked the necessary express retroactive intent. In fact the Court went further and stated that even if the required intent were present the provision would be unconstitutional as applied retroactively, because of the contract clause. However, the Court continued, making the following statement:

"Given the narrow issue presented by these appeals we do not decide questions as to the validity of these leases on any other grounds thus although there is reference to the possibility that in some instances lease arrangements for individual unit owners may be unconscionable, inequitable or contain other deficiencies recognized in law as basis for judicial invalidation these matters are not considered or decided here."

In a footnote to this statement, the Court cited Section 672.302, Florida Statutes, which is captioned "Unconscionable Contract or Clause," and which reads:

"If the Court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the Court may refuse to enforce the contract or it may enforce the remainder of the contract without the unconscionable clause or it may so limit the application of any unconscionable clause as to avoid any unconscionable result."

Avilla South Condominium Association, Inc. v. *Kappa Corp.*, a very recent decision of the Florida Supreme Court, wherein the opinion was filed March 31, 1977, involved a challenge to the enforceability of a recreational lease based upon several counts. Without reviewing all of the issues decided by this opinion, it should be noted that one of the counts in the complaint challenges the validity of the recreational lease based upon a provision in the Condominium Act that requires such leases to be "fair and reasonable." With respect to this count the Court stated:

"In affirming the dismissal of the count alleging violations of Section 711.66 (5) (e), we do not preclude the plaintiffs on remand the possibility of stating an amended claim of unconscionability, independent of Section 711.66(5) (e)."

In summary then, it is submitted that an extensive web of private contractual arrangements in the nature of recreational services contracts and management and maintenance contracts has created a severe problem affecting the public interest. Under these arrangements, a substantial portion of the population of the State has been placed in circumstances of severe economic hardship to the extent of facing the possible loss of their homes. Previous attempts by the Legislature to alleviate this problem have met with only limited success as a result of legal and constitutional impediments.

The proposed rules avoid these impediments by being remedial in nature. The remedy provided for in these proposed rules constitutes an important step towards the ultimate resolution of this problem. Since the remedy invokes a legal theory based upon principles of equity and fairness and since the remedy may be employed by both public enforcing agencies and private parties, it represents the greatest hope that the existing disputes involving recreational services contracts and management and maintenance contracts can be resolved in a way that provides substantial justice to both sides.

Economic Impact Statement

Introduction

A preliminary discussion of the housing market, recreational services market, economic effects of recreational services contracts in general, the particular recreational services contracts under study is given below. Similar treatment is given to the management and maintenance services industry and the economic effect of contracts in this area. This introductory material will allow a more concise and informed discussion of the economic impact of the proposed rules.

A caveat is necessary at this point. Most quantitative analysis in this statement are of value only as to a general order of magnitude. Available data does not provide the type of information required to make statistically significant or even unbiased statements of quantitative effects.

Each developer of housing projects has a certain amount of market power with regard to a housing market irrespective of whether the housing units are condominiums, cooperatives, mobile home parks, townhouses, or single family

detached units. The precise nature and extent of this market power is dependent upon the interaction of supply and demand, in consideration of such factors as: the way in which a particular market is defined; price; uniqueness of design and location; and availability of incidental services and facilities.

This interaction can be described as the commercial setting within which housing unit transactions take place. In general, the more limited the supply of available housing within the economic means of the average resident or prospective resident, the more the commercial setting will favor the developer or seller of housing units vis a vis the purchaser.

From this it follows that where the commercial setting favors the developer, he is in a much stronger position than the purchaser in determining the terms and conditions of a housing unit transaction. Given superior bargaining strength it has been a common practice among developers in this state to condition housing unit sales on the purchaser's agreement to accept, as well, the recreational facilities and services or management and maintenance services provided by the developer.

Such practices have been more prevalent in the development and sale of condominiums than with regard to other types of housing units. However, similar practices have been and could easily be used in the development and sale of these other types of units. In certain sections of this state condominiums have been, in recent years, the dominant form of new housing. As a consequence, abuses of the above-described practices have occurred more frequently in the sale of condominiums and much of the data set forth below relates to this area.

Condominiums are the dominant form of new housing in Broward County. In the first six months of 1976, 67 percent of all new housing units sold in Broward County were condominiums.[1] In 1973, 86 percent of all housing units completed in Broward County were condominiums. Total housing units completed in 1973 costing less than $40,000 were 27,436. Of these 23,582 were condominium units. It is significant to note that a 1974 survey reported that four developments in Broward County planned completion of 25,800 units under $40,000. Although the 25,800 units were to be completed over a period of up to three years, the planned completions of these four developments represent 94 percent of total completions in 1974 costing under $40,000.[2] The examination of this statistical information indicates that certain condominium developers may have had substantial market power in Broward County.

The recreational services market is more difficult to measure statistically, as the boundaries of the market are difficult to define. The list of facilities contained in the definition of recreational services contract is adequate for the stated purpose. Absent artificial restraints, the recreational services market should be relatively competitive because of the ease of entry into the market. The easily observable growth in the number of tennis clubs and "health spas" in the country as a whole provides evidence of this fact. The final important observation to be made is that all recreational service competitions are competing for the consumer's discretionary income.

Similarly, the management and maintenance services market is difficult to measure statistically. Nevertheless, it can be stated that there are persons other than developers who engage in the trade or commerce of providing professional management or maintenance services with respect to real property. The required services will vary substantially from case to case. They may consist of managing or maintaining condominium or cooperative property, or of property or facilities owned, leased, or otherwise available for use in common by members of a condominium, cooperative, or home owners association. It has been a common practice, however for developers to designate the entity, often his own company which will provide such services as are deemed necessary for a particular project and to impose such choice on housing unit owners through the relevant housing documents.

The Doctrine of Unconscionability is an equitable doctrine which has historically been part of our common law. More recently, it has been codified by inclusion in the Uniform Commercial Code which has been adopted by Florida as well as many other states. In its simplest terms, this doctrine holds that where a contractual arrangement is so unfair and one-sided that it shocks the conscience of

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[1] Florida Trend. November 1976, at page 50.

[2] William Bosher. Condominiums: Their Impact on the Southeast Florida Housing Market. Note: This source encompasses all of the statistics cited in the paragraph's discussion concerning the years of 1973 and 1974.

a court of equity, the court will not enforce the arrangement. Of course, courts will be guided in applying this doctrine by the case law decisions in which it has been previously applied. It is clear that this doctrine can be applied to recreational services contracts and management and maintenance contracts as well as to contracts in other areas.

Unconscionable agreements may harm competition by excluding competitors from the applicable recreational services or management and maintenance services markets. They also may prevent consumers from making informed choices as to obtaining such services as are desired at the best competitive price available.

The effects of the unconscionable arrangements under study can best be understood by use of a hypothetical example drawn from experience and surveys in Broward County.[3] During certain periods in this decade it appears that some condominium developers had denied meaningful choice to purchasers in the housing market in Broward County. Some of these developers, rather than exploiting their market power in the purchase price of the condominium units, chose to take their unconscionable profits from recreational services contracts which were required as a condition of purchase of the unit. As a result, prices of units were often made at below normal profits or even below costs but the required recreational services contracts often resulted in profits of over 100 percent per annum on investment. The lease then becomes a very valuable item which can be valued many times greater than the value of the underlying facilities. The leases have been sold to investors and used as collateral for loans in some cases.[4]

The damage from the unconscionable arrangements in this instance would result if large numbers of persons are precluded from obtaining recreational services from service competitors. There could be direct injury to recreational service competitors. The existence and extent of this injury are determined by the market power in the housing market and the number of persons who, except for the unconscionable arrangement, would patronize other recreational services.

In addition to the injury which may result to service competition from these unconscionable arrangements, the nature of many of these unconscionable recreational services contracts results in a conceptually different type of injury to the economy as a whole. Many of these leases are extremely longterm, from 50 to 99 years. Because of the time duration of the leases and the number of required payments involved, the owner of the recreational services contract has no incentive to provide the quality, quantity and type of recreational service which may be desired by unit owners in the future. It is reasonable to assume that unit owners, at the time they entered into these long term agreements, could not foresee changes in the recreational services industry or in the nature of recreational services which might take place over the length of the recreational services contract. To this extent, then, these arrangements could induce additional economic inefficiency because of their extremely long-term nature. The long-term nature of the contract could, moreover, exacerbate the damage to competition from the unconscionable arrangement. Since management and maintenance contracts vary much more widely in duration, it is much more difficult to foresee long range damage competition, but the possibility cannot be excluded.

1. A description of the action proposed, the purpose for taking the action, the legal authority for the action, and the plan for implementing such action

Proposed Chapter 2–25 consists of five separate rules, and proposed pursuant to the authority of § 501.205, FS Rule 2–25.01 a statement to clarify and aid in understanding of the subsequent rules. Its primary significance is that it makes clear that the proposed rules are intended to be remedial rather than substantive and therefore are applicable to existing, as well as new recreational service contracts. Rule 2–25.02 provides definitions for terms which are used in the proposed rule chapter. Rules 2–25.03 and 2–25.04 declare it to be an unfair and deceptive trade practice for anyone to collect or attempt to collect rental payments or to foreclose or attempt to foreclose any lien under a recreational services contract which is unconscionable at common law. Rule 2–25.05 is a policy statement intended for adoption by the Governor and Cabinet. The statement was drafted by extracting the material principles of law from the cases applying the doctrine of unconscionability and restating them in the con-

[3] HUD Condominium/Cooperative Study, Volume I: National Evaluation (July, 1975).
[4] For a more detailed discussion, see HUD Report, op. cit., pp. A–48 and A–49.

text of an unconscionable recreational services contract. This rule is for the purpose of providing some guidance to a judicial or administrative body in deciding a case brought pursuant to the rules.

Proposed Chapter 2–26 follows a similar pattern. Rule 2–26.01 again makes it clear that the proposed rules are intended to be remedial. Rule 2–26.02 provides definitions of terms used in the chapter. Rule 2–26.03 declares it to be an unfair or deceptive trade practice to collect or attempt to collect contract payments under a management or maintenance contract which is unconscionable at common law. Rule 2–26.04 is the equivalent of Rule 2–25.05, except that this policy statement is directed to the context of an unconscionable management or maintenance contract. Rule 2–26.05 ties together proposed Chapters 2–25 and 2–26. In cases where someone is subject to both a recreational services contract and a management or maintenance contract, both can be treated together as a set of terms and conditions incident to the ownership of a housing unit. Where the combined terms and conditions would constitute an unconscionable agreement the afore-described remedies would be available.

Both proposed chapters constitute rules pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes. This act provides for enforcement by the Department of Legal Affairs, the various State Attorneys and private parties. It is contemplated that the bulk of litigation under these rules will be initiated by private parties. The Department will initiate a few actions for the purpose of establishing sufficient case law precedent to provide guidance to private litigants. Actions by State Attorneys is left to their discretion.

2. A determination of the least cost method for achieving the stated purpose

The proposed rules provide the least cost method for achieving the stated purpose. The alternative of a total ban on these leases could constitute "overkill" and would possibly be inapplicable to recreational services contracts and management and maintenance contracts presently in existence. The other alternative, that of relying solely on case law precedent, would be likely to place a larger burden on public enforcement, lessening the likelihood of negotiated settlement of disputes.

3. A comparison of the cost benefit relation of the action to nonaction

Losses to the economy as a whole will be minimal to nonexistent, although certain persons will be precluded from gaining windfall profits. This, of course, assumes that some of the recreational service contracts and management and maintenance contracts will be reformed. If there are recreational services contracts and management and maintenance contracts reformed, a more competitive market will result in better allocative efficiency. If none of these agreements are unconscionable, then no costs will be incurred. If the recreational services contracts and management and maintenance contracts do injure competition then inaction would result in continued losses in economic efficiency due to that injury of competition. For further explanation of this type of loss refer to the study by James V. Koch entitled, "Microeconomic Theory and Applications," (Little, Brown and Company: Boston).

4. A determination whether the actions represent the most efficient allocation of public and private resources

This action will encourage private resolution of disputes. In addition, public enforcement action can be limited to only those cases which have major impact on public welfare, as these rules may be enforced by private action. This action, therefore, represents the most efficient allocation of public and private resources.

5. A determination of the effect of this action on competition

The purpose of this rule is to reform unconscionable contracts in the recreational services and management and maintenance markets and to make competition more effective. If the rule results in fewer unconscionable arrangement, this rule may make competition in the housing market more effective by allowing consumers to more accurately evaluate the costs of various housing alternatives.

6. A conclusion as to the impact of the proposed agency action on preserving an open market for employment

This rule should have no detrimental effect on employment and could produce increased employment in the recreational services industry and the management and maintenance services industry.

7. *A conclusion as to the economic impact on all persons directly affected by the action including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly from and indirectly from the action*

If, under this rule, recreational services contracts and management and maintenance contracts entered into under an unconscionable arrangement are reformed there will be substantial economic impact upon persons owning the recreational services contracts and management and maintenance contracts, and unit owners previously subject to them.

The value of the lease is often many times greater than the underlying value of the facilities. Leases have been valued at 100 times the value of the underlying facilities.[1] The leases are owned not only by developers, but also by individual investors and financial institutions. Financial institutions which have accepted these leases will be indirectly affected. Housing unit owners will benefit directly from the reforming of any unconscionable arrangement.

The service competitors will enjoy a much expanded group of potential customers. In the Broward and Palm Beach County area, this could result in thousands of potential new customers. In the Bosher study, seven of the eight condominiums surveyed in Broward County required payments for recreational services in one form or another. These seven developments had combined units of 22,384 planned or built.[2] If the 25.5 percent occupancy rate (HUD Report at p. A23) were used, 16,676 occupied units would be under some form of recreational lease. Using a conservative two persons per occupied unit (median is 1.8, but skewed downward),[3] this would translate into 33,352 persons who are effectively excluded as potential customers of service competitors. This figure is given only to represent an order or magnitude. It is biased downward by the exclusion of a number of units under recreational service contracts. It is biased upwards by using total planned units which is probably greater than actual units. If unconscionable agreements are reformed, service competitors could stand to gain a large number of customers, if recreational and management or maintenance charges at condominiums are not dropped to meet the new competition. Costs of services are often significantly lower on a long term basis at service competitors when compared to recreational services contracts.[4]

Unit owners whose unconscionable recreational services contracts are reformed will be the most direct beneficiaries of this rule. The losses suffered by the owners of the contract are gains to the unit owners in terms of decreased future obligations. This decrease in future obligations should also make the housing unit more readily marketable. Those unit owners wishing to make use of recreational facilities would be able to choose the amount and quality of recreational services which they desire at a competitive price.

(2) DEPARTMENT OF LEGAL AFFAIRS: PROPOSED RULES

CHAPTER 2–25 UNCONSCIONABLE RECREATIONAL SERVICE CONTRACTS

Rule 2–25.01. Application

It is the intent of Chapter 2–25, F.A.C., to prohibit the use or enforcement of unconscionable recreational services contracts. The Chapter provides a remedy for the enforcing authority and for consumers, individually or by proper class action, to gain relief from unconscionable recreational services contracts. The Chapter does not retroactively apply new substantive law as unconscionable contracts have always been unenforceable in Florida. The remedial law in force at

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[1] HUD Condominium/Cooperative Study, Volume I: National Evaluation, (July, 1975), p. A–49.

[2] Condominiums: Their Impact on the Southeast Florida Housing Market. Willia Bosher, pp. 19–38.

[3] Table A–19 at page A–29 of HUD Report.

[4] Compare charges listed for recreational leases at pp. A–71–75 of the HUD Report with the charges enumerated in the depositions given In the Mater of Florida Planned Communities, Inc., et al. and Pine Island Ridge, Inc., et al. by the following individuals: Ann Dafner (P. 10); Peter Gorman (pp. 17–18); and Wayne Upton (P. 14); Docket Nos. 74–10097 and 74–10095.

the time the contract is made enters into and becomes a part thereof, but the parties to the contract have no vested right under the contract clause of the Federal Constitution, in the particular remedy or modes of procedure then existing. It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract. which may be done by a State without impairing contract obligations. Therefore, this rule shall apply to all existing, as well as new, recreational services contracts where such agreements are unconscionable at common law.

Rule 2-25.02. Definitions

For purposes of this Chapter, and unless the context clearly indicates otherwise, the following definitions shall apply:

(1) "Housing unit" means any mobile home lot, single family detached home, townhouse, duplex, condominium or cooperative which is purchased by an individual, or leased by an individual for a period of time exceeding 5 years, to be used primarily for residential, personal, family or household use.

(2) "Recreational services contract" means any lease, contract, restrictive covenant, or other agreement wherein purchasers of housing units are directly or indirectly given the contractual right to use any area or building containing, but not limited to, any of the following in consideration for payment to the holder or assignee of said agreement:

(*a*) swimming pool, or
(*b*) tennis court, or
(*c*) golf course, or
(*d*) sauna bath, or
(*e*) exercise equipment, or
(*f*) auditorium, or
(*g*) game room, or
(*h*) other recreational equipment or facilities.

(3) "Developer" means any person who engages in the trade or commerce of selling housing units.

(4) "Service competitor" means any person who engages in the trade or commerce of providing facilities or services through contract or other agreements wherein individuals are given the contractual right to use any area or building containing, but not limited to, any of the following in consideration for payment to the holder or assignee of said agreement:

(*a*) swimming pool, or
(*b*) tennis court, or
(*c*) golf course, or
(*d*) sauna bath, or
(*e*) exercise equipment, or
(*f*) auditorium, or
(*g*) game room, or
(*h*) other recreational equipment or facilities.

(5) "Association" means any entity which has entered into a recreational services contract on behalf of its members.

(6) "Housing documents" mean declarations of condominium or cooperative, by-laws, articles of incorporation, contracts, leases, declarations of restrictions, or any covenants running with the land which affect the operation or ownership interest of a housing unit.

(7) "Rental or contract payments" means the base and escalated rental payments under the recreational services contract plus those funds or payments which are collected and used to maintain the leased recreational facility including, but not limited to, taxes, maintenance, insurance, personnel and repairs.

Rule 2-25.03. Unconscionable rents

It shall be an unfair and deceptive act or practice for any person to collect or attempt to collect rental payments or portions thereof under a recreational services contract which is unconscionable at common law.

Rule 2-25.04. Unconscionable liens

It shall be an unfair and deceptive act or practice for any person to foreclose or attempt to foreclose any lien under a recreational services contract against an owner of a housing unit when said lien is unconscionable at common law.

Rule 2-25.05. Construction and interpretation

The Governor and Cabinet hereby state that in determining unconscionability under this Chapter the following factors should be considered:

(1) Case law interpreting the provisions of Article 2, Section 302, of the Uniform Commercial Code relating to unconscionable contracts is applicable in defining unconscionability under this Chapter.

(2) A recreational services contract, in relation to an association as a party or lessee of said contract, should be considered unconscionable when: at the time the contract was made the developer controlled the activities of the board of directors of the lessee association; the recreational services contract calls for payments which are in excess of the fair market value of similar recreation offered by service competitors; and during the sale of housing units the developer engaged in the following sales practices:

(*a*) The developer failed to give a conspicuous schedule of projected rental increases to a substantial number of prospective members of the association; or

(*b*) The developer failed to deliver the housing documents to a substantial number of prospective members of the association within a reasonable time before closing, which would have given said prospective members time to review said documents with advice of legal counsel; or

(*c*) The developer failed to gain the specific consent of a substantial number of prospective members allowing profit from rental payments to accrue to the developer or the initial board of directors of the association.

(3) The recreational services contract, in relation to an individual purchaser of a housing unit as a party or lessee of said contract should be considered unconscionable when the recreational service contract calls for payments which are in excess of the fair market value of similar recreation offered by service competitors and the developer engaged in the following sales practices:

(*a*) The developer failed to give a conspicuous schedule of projected rental increases to the prospective purchaser; or

(*b*) The developer failed to deliver the housing documents to the prospective purchaser within a reasonable time before closing, which would have given the prospective purchaser time to review said documents with advice of legal counsel; or

(*c*) The commercial setting was so controlled by the developer that the purchaser was in a manifestly unequal bargaining position in accepting the recreational services contract or had no meaningful choice in determining or accepting the terms of the recreational services contract.

(4) A recreational services contract lien should be considered unconscionable when: the lien attempts to encumber protected homestead property under Article 10, Section 4, Florida Constitution; or, the lien security for the rental payment greatly exceeds the potential loss from default on rental payments and the developer had engaged in the following sales practices:

(*a*) The developer failed to fully and conspicuously disclose the provisions of the lien to the purchaser prior to closing; or

(*b*) The developer failed to deliver the housing documents to the prospective purchaser within a reasonable time before closing, which would have given an average prospective purchaser time to review said documents with advice of legal counsel; or

(*c*) The commercial setting was so controlled by the developer that the purchaser was in a manifestly unequal bargaining position in allowing the imposition of the lien under the recreational services contract or had no meaningful choice in determining or accepting the lien terms of the recreational services contract.

(5) A recreational services contract, in relation to an association or individual purchaser of a housing unit as a party or lessee of said contract, should be considered unconscionable when the combined terms of said contract, in and of themselves, are so one-sided in favor of the developer or lessor because of, but not limited to, the following:

(*a*) The rental payments are grossly excessive in comparison with the fair market value of similar recreation offered by service competitors after giving consideration to the initial purchase price of the housing units; and

(*b*) The lien security for the rental payment greatly exceeds the potential loss from default on rental payments; and

(*c*) Condemnation or casualty losses on the recreational facility are the responsibility of the association or housing unit owners; and

(*d*) Default or indemnification provisions which give remedies to the developer or lessor but no similar remedies to the association or housing unit owners.

(3) DEPARTMENT OF LEGAL AFFAIRS: PROPOSED RULES

CHAPTER 2-26 UNCONSCIONABLE MANAGEMENT AND MAINTENANCE CONTRACTS

Rule 2-26.01. Application

It is the intent of Chapter 2-25, F.A.C., to prohibit the use or enforcement of unconscionable management or maintenance contracts. The Chapter provides a remedy for the enforcing authority and for consumers, individually or by proper class action, to gain relief from unconscionable management and maintenance contracts. The Chapter does not retroactively apply new substantive law as unconscionable contracts have always been unenforceable in Florida. The remedial law in force at the time the contract is made enters into and becomes a part thereof, but the parties to the contract have no vested right under the contract clause of the Federal Constitution, in the particular remedy or modes of procedure then existing. It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract, which may be done by a State without impairing contract obligations. Therefore, this rule shall apply to all existing, as well as new, management and maintenance contracts where such agreements are unconscionable at common law.

Rule 2-26.02. Definitions

For purposes of this Chapter, and unless the context clearly indicates otherwise, the following definitions shall apply:

(1) "Housing unit" means any mobile home lot, single family detached home, townhouse, duplex, condominium or cooperative which is purchased by an individual, or leased by an individual for a period of time exceeding 5 years, to be used primarily for residential, personal, family or household use.

(2) "Management or maintenance contract" means any contract, restrictive convenant, or other agreement:

(*a*) Wherein housing unit owners in a condominium, cooperative, or mobile home park are provided with services or the management, maintenance, operation, repair, or upkeep of their housing units, or of any property or facilities owned, leased, or otherwise used in common by such housing unit owners; or

(*b*) Wherein housing unit owners of single family detached homes, townhouses, or duplexes are collectively, through a home owner's association or otherwise, provided with services for the management, maintenance, operation, repair or upkeep of their housing units, or of any property or facilities owned, leased, or otherwise used in common by such housing unit owners; and

(*c*) Wherein housing unit owners as described in subparagraphs (a) and (b) are required either directly or through an association to make payments under the management or maintenance contract to a developer or other entity for the services provided, as described above.

(3) "Developer" means any person who engages in the trade or commerce of selling housing units.

(4) "Service competitor" means any person who engages in the trade or commerce of providing or performing services for the management, maintenance, operation, repair, or upkeep of housing units or of property leased, owned, or otherwise used in common by housing unit owners, or associations thereof.

(5) "Association" means any entity which has entered into a management or maintenance contract on behalf of its members.

(6) "Housing documents" mean declarations of condominium or cooperative by-laws, articles of incorporation, contracts, leases, declarations of restrictions, or any covenants running with the land which affect the operation or ownership interest of a housing unit.

Rule 2-26.03. Unconscionable management or maintenance contracts

It shall be an unfair and deceptive act or practice for any person to collect or attempt to collect contract payments under a management or maintenance contract which is unconscionable at common law.

Rule 2-26.04. Construction and interpretation

The Governor and Cabinet hereby state that in determining unconscionability under this Chapter the following factors should be considered:

(1) Case law interpreting the provisions of Article 2, Section 302, of the Uniform Commercial Code relating to unconscionable contracts is applicable in defining unconscionability under this Chapter.

(2) A management or maintenance contract, in relation to an association as a party of said contract, should be considered unconscionable when: at the time the contract was made the developer controlled the activities of the board of directors of the association; the management or maintenance contract calls for payments which are in excess of the fair market value of similar management or maintenance services offered by service competitors; and during the sale of housing units the developer engaged in the following sales practices:

(*a*) The developer failed to give a conspicuous schedule of projected payments or payment increases to a substantial number of prospective members of the association; or

(*b*) The developer failed to deliver the housing documents or other documents related to the providing of management and maintenance services to a substantial number of prospective members of the association within a reasonable time before closing, which would have given the prospective purchaser time to review said documents with advice of legal counsel; or

(*c*) The developer failed to gain the specific consent of a substantial number of prospective members allowing profits from contract payments to accrue to the developer or the initial board of directors of the association.

(3) The management or maintenance contract, in relation to an individual purchaser of a housing unit as a party to said contract, should be considered unconscionable when the management or maintenance contract calls for payments which are in excess of the fair market value of similar services offered by service competitors and the developer engaged in the following sales practices:

(*a*) The developer failed to give a conspicuous schedule of projected payments or payment increases to the prospective purchaser; or

(*b*) The developer failed to deliver the housing documents or other documents related to the providing of management and maintenance services to the prospective purchaser within a reasonable time before closing, which would have given the prospective purchaser time to review said documents with the advice of legal counsel; or

(*c*) The commercial setting was so controlled by the developer that the purchaser was in a manifestly unequal bargaining position in accepting the management or maintenance contract or had no meaningful choice in determining or accepting the terms of the management or maintenance contract.

(4) A management maintenance contract, in relation to an association or individual purchaser of a housing unit as a party to said contract, should be considered unconscionable when the combined terms of said contract, in and of themselves, are so one-sided in favor of the developer or provider of the management or maintenance service because of, but not limited to, the following:

(*a*) The contract payments are grossly excessive in comparison with the fair market value of similar services offered by service competitors; and

(*b*) The sum total of the covenants contained in the management or maintenance contract demonstrate that the bargain is so one-sided, by requiring a gross inequity of price, performance, security, and remedies, to the detriment of the housing unit owners, or their association, that the developer, or other entity providing the management or maintenance services would not be entitled to relief in a court of equity.

ITEM 3. NEWSPAPER ARTICLES SUBMITTED BY ABE BENZMAN,[1] WEST PALM BEACH, FLA.

[From the Palm Beach (Fla.) Post-Times, Dec. 22, 1978]

JUDGE STUDYING CENTURY VILLAGE LEASES

Palm Beach County Circuit Court Judge Vaughn Rudnick yesterday was asked to freeze Century Village recreation lease rents at the 1975 level.

Unit owner association lawyer Rod Tennyson urged the judge to prevent Century Village, Inc., from collecting increases averaging 8 percent a year since 1975 when a state law was passed invalidating automatic escalation clauses.

The ban on escalation clauses was incorporated into the Century Village leases by provisions adopting the Florida Condominium Act "as it may be amended from time to time," Tennyson argued. He cited a recent, interim supreme court decision in the case which he said effectively ordered the Condominium Act amendments.

Calling the issue "extremely complex," Judge Rudnick said he will have to study the issues and may not rule "for some time." Century Village attorneys George Bailey and Sam Spector, of Tallahassee, argued the supreme court decision relied on by Tennyson, *Wellington* versus *Century Village*, ordered only that unit owners be allowed to deposit rent monies in escrow while challenging leases in court. The state's high court specifically refused to review a West Palm Beach appellate court decision upholding escalator clauses in similar leases, ruling the statutory ban had not become a part of the lease, Spector said.

Bailey also questioned the standing of newly incorporated unit owners associations to challenge leases made with unincorporated associations.

"The supreme court has already looked at the Century Village documents," Tennyson said. "We have a situation now where the law is being violated. The court has a duty to enforce the law which says that "there can be no price index escalation clauses."

[From the Palm Beach (Fla.) Post-Times, Dec. 25, 1978]

CONDO LAWS DON'T SOLVE THE HASSLES

(By Martha Musgrove)

About 1 million Floridians live in condominiums, a form of homeownership that combines the convenience of apartment living with the tax advantages and security of property ownership.

Many were "pioneers" of what has been packaged and sold as a lifestyle of leisure and is so popular the Department of Housing and Urban Development (HUD) estimates in 2 years half of all new housing starts will be condominiums.

Since 1975 the purchasers, many of them retirees, of new condominiums in the state have enjoyed the protection of strong pro-consumer regulatory acts. The Florida Condominium Act requires full disclosure of the financial obligations buyers incur, prohibits recreation lease escalation clauses, regulates the use of sales deposits, provides access to the courts and sets standards by which courts should judge the fairness of unit owner's contracts.

But for the "pioneers," those who purchased units and signed leases before June 5, 1975, condominium living is still a thicket of legalities. State courts have ruled the pioneers cannot be blessed by the reforms their bad experiences spawned for the protection of others. Lawsuits have become a way of life.

What happened? Why? And where will unit owners find relief?

The Florida condominium boom rode the crest of soaring land and construction costs. At its height, the building industry was strapped by shortages of materials and skilled labor. Housing in general was tight and expensive. The condominium developer entered the picture, offering reasonably priced dwellings tied to leases on often impressive recreational facilities and services.

Assistant Attorney General Thomas Pflaum testified before Senator Lawton Chiles' (D-Fla.) Special Committee on Aging: "In practical economic terms, the leases were devised as an indirect method of financing the sale of the condominium units and perhaps of concealing the actual cost. Accordingly, the recreational and land lease was used to permit the solicitation of sales based on low

[1] See statement, p. 149.

advertised price, thus attracting purchasers without disclosing the actual investment cost would be recovered by means of the leases. So today, the return on the leases seldom reflects the value of the property but "rather the developer's profit on the entire project."

The examples are numerous. Recreational facilities at one Broward condominium were built for $200,000 but returned $300,000 the first year. Based on a 5-percent cost-of-living adjustment, the lease will return some $700 million over its life. In another 100-unit condominium, the recreation facilities, consisting of a swimming pool and shuffleboard court, cost $50,000 to build. The developer realized a 600-percent profit in the first 6 years and at a projected 6.5 percent inflation rate will take $1 million annually within 40 years.

But between 1968 and 1975 purchasers—dazzled by the low sales, mortgage price and the lifestyle, assured by salesmen that maintenance and recreation lease costs would "never be more than a few dollars monthly" and without a crystal ball to predict double-digit and persistent inflation—rushed to sign the sales contracts.

Almost uniformly unit owners say they were not given copies of the leases before closing or were handed 100-page documents which made references to recorded declarations minutes before closing. Many say they didn't learn of the liens on their property or the leases which had been signed for them by then developer-controlled associations until years after purchase.

As inflation became a way of life, the condo owner on a fixed pension found himself with automatically increasing lease payments on property he was obliged to maintain and in some instances, insure, pay all taxes on and return in 99 years in as good or better condition than when received. The lawsuits began.

At first, courts universally upheld the leases and ignored the pleas of unit owners to set them aside. Recently there have been hints courts might be receptive to various types of attacks. Organized and with a common cause the unit-owners also have begun to assert their political clout electing reform-minded law makers and throwing support to state and national candidates receptive to their pleas. But victories have been difficult to come by.

Today a summary of the law finds:

(1) Although statutes make it illegal to tie a recreation or maintenance lease to a consumer or commodity price index, State courts have held the prohibition cannot be applied to leases signed before the statute's (June 5, 1975) effective date. Also invalidated have been administrative rules proposed under the 1973 Little FTC Act to retroactively void the leases. Proponents of Federal legislation now pending argue only Congress has the power to retroactively invalidate leases. Opponents say Congress lacks the power.

(2) While tie-in sales—those in which the purchase of one product is contingent upon the purchase of another—are generally illegal under anti-trust laws, the Florida Supreme Court has upheld the typing of recreational facilities to housing as "the heart of the condominium concept."

The ruling in a landmark case, called Avilla South, effectively ended attempts to invalidate recreation leases through anti-trust actions in State courts. The fifth circuit court of appeals, though, recently told its district courts to open their doors to unit owners seeking to bring antitrust actions.

(3) Unconscionable, or flagrantly unfair, contracts are unenforceable. The Florida Supreme Court recently suggested, in a footnote in one case and as an aside in another, that recreation leases signed by a developer with himself or a corporation under his control on behalf of future unit owners may be unconscionable.

However, courts have never precisely defined unconscionability so whether a control is or isn't depends on a case-by-case analysis. What courts may find to be unconscionable if signed by a widow with an eighth-grade education, dined and flattered by a salesman may not be unconscionable if signed by a retired New York lawyer or real estate broker. The legislature has attempted to establish standards by which leases should be judged, but in *Stuart* the first court challenge of unconscionability to a recreation lease failed. The challenge was based in part on the fact that promised tennis courts and a golf course had never been built. The judge did order the developer to build the additional facilities.

(4) Some leases include language incorporating the Florida Condominium Act "as it may be amended from time to time." A Miami appellate court used the "magic words" to invalidate recreation rent escalation clauses in the lease of the Fifth Moorings Condominium. The Florida Supreme Court seemed to agree:

in a Century Village case but in November refused to review a seemingly conflicting West Palm Beach appellate court decision in which Palm Aire Condominium leases were held not to be automatically amended when the Condominium Act is amended. The two decisions have put the Century Village leases in limbo.

(5) Still pending before the Florida Supreme Court is the question of whether foreclosure of a homestead can be used to enforce an owners' obligation to pay the recreational lease rents. The West Palm Beach appellate court has said it can't cite a State constitution prohibition against foreclosing a homestead except for nonpayment of taxes or mortgages.

Few lawyers in the field believe any stunning new precedents are likely to come. Most hopes are pinned to unconscionability. But "with a single exception our (unit owner advocates) efforts have been noticeably unsuccessful in striking down or reforming a land or recreational lease on a theory which has ready application to developments throughout the State," says Pflaum.

But adds attorney Rod Tennyson who initiated many of the attorney general's original actions, "We created causes of action such as unconscionability and homestead protection. We won some settlements and got some buy-outs. The bottom line is there's not going to be a great judicial fiat or legislative act that solves all the problems. It's going to be a case-by-case resolution over a long time."

"The judiciary has to base its decisions and look at the effect of a law across the board, not just the facts in a specific case," explains developer attorney Brian Sherr, who is chairman of a bar committee on condominium law.

Virtually all involved say the lease and escalation clause issues ultimately will be settled by negotiations leading to the sale of recreational facilities or land leases to unit owners. Lawsuits and legislative action are the tools being used to shove the parties toward agreement.

"A lot of developers feel they've done nothing wrong," Sherr said. "They've put up substantial dollars and sustained a lot of attacks the courts have ruled weren't based on good legal grounds. They feel they sold their units at a good price and the value of the property has increased. The developer develops an animosity toward people he thinks are harassing him while the unit owners think they're being exploited."

But, he adds, "I've seen a lot of negotiating go on while litigation raged. Unit owners gained tremendous leverage when they won the right to put rentals in escrow and as the cases get closer the pressure is to settle."

"Hopefully," Tennyson said, "on a case-by-case basis we can put the unit owners in a position to buy out their recreation leases."

[From the Palm Beach (Fla.) Post-Times, Dec. 30, 1978]

CONDO'S REC FEE UP 9.2 PERCENT

(By Martha Musgrove)

Century Village recreation lease rents will go up 9.2 percent in 1979, developer Irwin Levy said yesterday.

Notices of the increase, based on last year's Consumer Price Index (CPI), are going out to 3,500 residents. Many residents have filed suit challenging the fairness of the leases and are seeking an injunction to prohibit collection of previous years' increases.

Levy said the increase amounts to about $4 per month for each affected unit owner.

"Everyone's been hurt by inflation," Levy said. "Some of these people have been hurt the hardest, but we've been hurt, too. Theoretically, they get a cost-of-living increase in their social security to help pay for the increases caused by inflation."

Currently, residents pay about $45 a month for the recreation facilities.

Rod Tennyson, West Palm Beach attorney for unit owners seeking to invalidate the automatic rent-escalation clause in the leases, called the increase "a further showing of the need to enforce the law prohibiting escalation clauses, which is what we've asked (Circuit Court Judge Vaughn) Rudnick to do. The increased costs of operating those facilities is nowhere near 9 percent."

Suing residents have claimed recent State statutes prohibiting escalation clauses became a part of the Century Villages leases. They say provisions in the

leases incorporate amendments to the Florida Condominium Act. Century Village officials say amendments to the condominium act are not automatically incorporated into the leases. Both sides have cited supreme court decisions and Rudnick is considering the dispute.

The Century Village leases require the developer to pay all costs of maintenance and replacement. Levy disputes contentions that the CPI bears no relation to costs of operating and maintaining the facilities.

"It certainly does and we run a year behind in collecting. We have to absorb all the costs of inflation for a year before making a single adjustment," Levy said. Utility bills were "once so small we carried them as miscellany on our books, but today they're $150,000 yearly," he said. "The janitorial service runs $5,000 a week and they want a 15 percent increase.

"President Carter with his guidelines of 7 percent is very nice, but our contract says the rent is based on the CPI. If he ran the country so the CPI was 4 percent and issued guidelines of 7 percent, we'd still only charge 4 percent," Levy said.

A number of residents getting notices of the increases were angry.

"They think Century Village should be held in contempt of court for trying this while we're in court seeking an injunction against it. They're very mad," said Morris Blumstein, executive vice president of the council of area residents. Blumstein is also president of Salisbury Condominium Association.

"Naturally people are upset," Village Mutual President Kelly Mann said. "I haven't received any official notification, but I think it's going to affect everyone out here."

Appendix 2

Statements Submitted by the Hearing Audience

During the course of the hearing, a form was made available by the committee on those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

Dear Senator Chiles: If there had been time for everyone to speak at the hearing on "Condominiums and the Older Purchaser" in West Palm Beach, Fla., on November 29, 1978, I would have said:

The following replies were received:

Fay and Joseph Appelberg, West Palm Beach, Fla.

We agree wholeheartedly with the testimony of Kelly Mann and Bernard Kantor. In addition to all is the injustice against the condominium unit owner by the developer. As an example, in Century village the unit owner pays an average of $600 a year for recreation services. This amounts to over $4.5 million a year, a profit to the developer of close to $3 million, yet we cannot get a meeting place of any size unless we hire a hall elsewhere. We have pleaded, supplicated, etc., to get a sizeable hall from management at any time they saw fit, but to no avail, unless it suits the profit of management.

We have protested to the Land Sales and Condominium Commission of Florida. The right of assembly is violated, laughed at by the developers. We could go to the courts. That is a fearful alternative because of cost to us.

Hope you will introduce legislation to help ease our situation.

Henrietta and Lewis Arfine, Delray Beach, Fla.

We feel the need for more transportation for the elderly. The need is for rides to medical facilities, shopping, and other care for our seniors.

Also needed are hot meals for the elderly who are not able to care for themselves.

Harold H. Bokar, Delray Beach, Fla.

Please break the unconscionable 99-year lease.

Protect us from liens and foreclosures without due process of law.

Make the developer responsible and reimburse the condo buyer for faulty construction.

Blanche B. Cohen, Lake Worth, Fla.

Misrepresentation: Developers do not live up to promises, both verbal and in writing. We are having problems at Covered Bridge (Lake Worth, Fla.).

Even though we had no speaker today, we are pursuing our problems through Jeff Andrew's office in Tallahassee.

Harvel B. Ehrlich, Tamarac, Fla.

I am president of Bermuda Club Five Association, Inc., and chairman of the Advisory Committee of Bermuda Club Management Council, consisting of a

condominium containing 972 apartments and 1,800 persons. I am a member of the Board of the Condominium Cooperative Executives Council, Inc., representing 400 condominiums and cooperatives, and chairman of its advisory committee.

On their behalf, I urge the enactment, without delay, of the Condominium Act of 1978, with amendments.

The amendments recommended are:

Section 210—Civil Actions—Unconscionable Leases: The inclusion, by definition in section 201, and by direct reference in section 210, of all cooperative housing associations, individual homeowners associations, and mobile home owners associations, who come within the characteristics of section 210 (a), (b) and (c); that is, all homeowners and homeowner associations burdened with long-term, escalated-rental, recreation facility leases.

Section 213—Jurisdiction: The insertion of clarifying language to give the district courts of the United States,. etc., jurisdiction of an "action seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable" if the characteristics and conditions prescribed in Section 210 are present.

Section 223—Effective Date: Removing section 210 from the exceptions to effectiveness upon enactment.

The reasons for the proposed amendments are: There are many planned unit developments, in addition to condominiums, which are encumbered by so-called recreational facility leases. Unless their inclusion is inconsistent with Section 2919 or create passage difficulties, the inclusion of these associations and homeowners would greatly increase the number of persons in support of passage of the bill. Their support may convince congressmen in doubt. Section 213 refers to offenses and violations, suits in equity or law brought to enforce a liability or duty or to suits to enforce rights under sections 205 and 206. There is no reference to an action seeking a judicial determination that a lease is unconscionable.

We are in a period of high inflation. A delay of 1 year in the effective date of section 210 could undoubtedly mean a 10 percent unnecessary and unwarranted increase in recreation facility rent. Once the increase is effected, it means increased payments for the balance of the lease term.

Early enactment and concomitant effectiveness will lead to a reawakening of conscience and reasonableness on the part of developers and many lease "buyouts", so that the increase in federal litigation would be minimal.

In a great number of instances, the individual developers operated through a series of corporations; to wit: developer corporation; management corporation; recreation facility corporation; sales corporation and condominium association in each of which the individual developer and his spouse, agents, servants, or employees were sole stockholders, agents, and officers.

Prior to the sale of apartments in the condominium, the developer, through his corporate alter egos, contracted on behalf of the condominium association with the other corporations or some of them for the lease of recreation facilities owned by the developer individually or through the recreation facility corporation.

Such leases of recreation facilities were for long terms, and obligated the condominium association and the apartment owners therein to pay rent for such facilities, often for as long as 99 years.

Such leases gave to the developer or his recreation facility corporation a lien on the apartments of each of the apartment owners in such condominium association as security for the payment of such rentals for such 99-year period.

Such leases obligated such apartment owners of the condominium and the condominium association to pay all taxes, insurance premiums, repairs, replacements, furnishings and maintenance expenses of such recreation facilities, so that the rentals required to be paid to the developer or his recreation facility corporation were free of deductions of any kind whatsoever.

The rentals imposed by the developer and the developer's alter ego corporations were arbitrarily fixed by them and are greatly disproportionate to the value or extent of the facilities so leased.

The net-net rentals so imposed upon such apartment owners were made subject to any and all increases in the national cost of living index, despite the fact that the developer and/or his corporate alter ego had no disbursements therefor subject to inflation or any change in the cost of living index.

Such leases entered into under such circumstances, are unconscionable and cry out for remedy and relief for those upon whom they were imposed.

The public and the governmental bodies are awakened to the unconscionability of the recreation leases and the cost-of-living escalation clause, and legislatures in some areas here prescribed such leases.

Federal agencies have contemplated, and may have by now, rejected loans on planned unit developments subject to long-term leases.

The burden of such existing leases and the prohibition of such leases in newer planned unit developments and the denial of financing to sales of such units, has depreciated and will further depreciate the value of all such housing units still subject to such leases.

Inasmuch as most owners of housing units in condominiums and other planned unit developments are widows and retirees, the relief promised in the Condominium Act of 1978 is very urgently needed.

FRED ENGEL, LAUDERDALE LAKES, FLA.

Murry Hills, Lake Worth, has the usual 99-year lease with 5-year adjustment tied into cost of living. It started out returning $90,000. Now, after first 5 years, it amounts to $125,000. With present cost-of-living increases, we are going to have another increase next year which will be greater than the first one.

Our management contract was declared null and void after a 2½-year legal battle. Thus, it would appear the entire condo declaration could be found illegal. But this all costs money. The majority can't afford all these legal fees.

Our land lease percent figures were not arrived at from any standard basis. We have four apartments with the starting figures of $10, $14, $17, $20. This ties into nothing: square feet of area, sale price, or any other basis. Thus, the percent figure is based on total land lease income divided by the charge originally assessed.

For example, my share of ownership of the land my apartment building sets on is 5.9 (24 percent). Thus, although I can only use one space in the auditorium, pool, or shuffleboard courts, I have to pay almost twice as much as the owner of a one bedroom.

Senator Chiles, you asked one of the attorneys if they knew of condos sold below cost. My condo building must have sold below cost as the savings and loan foreclosed and claimed they had taken a fall to the tune of over $1,250,000 to $1,750,000; in fact, the S & L now received all release (?) money from our place, one-half of another, and the total of still another.

Unconscionable contract as drawn up by State of Florida—we meet every point—but the legal cost and time involved makes me wonder if its worth while.

NORMAN FEINBERG, WEST PALM BEACH, FLA.

Thank you Senator Chiles for coming to West Palm Beach to address yourself to the condo problems, we are faced with. Listening is a lost art in today's society and you evidenced that you still have that art. Your summation of the hearings and your forthright explanation of effecting congressional approval was taken by me as an honest statement of fact.

I had the opportunity to ask Governor Askew why he didn't campaign as hard for the condo owners as he did to defeat the casino issue. The retirees brought more income and services to Florida, superceded only by tourism. He pointed out the original bill was passed before he took office. I did not dispute this with him since he added that contracts were a constitutional issue.

Mr. Poliakoff's presentation addressed itself to the fact that the evil still persists and must be dealt with, especially since the condo concept will grow nationally because of the high cost of housing. The retirees have worked hard to save those who followed (1975) as condo buyers from the injustices we are still living with. Florida legislators should alert other congressional leaders to support your bill to control abuses that could befall their constitutents and not be deterred by their lack of understanding.

There is nothing like good communication from the "top to the bottom and back again." You conducted the hearing in such a fashion for which I wish to commend you.

Best wishes for the holidays to you and yours.

ROSE AND SOL FELLER, DELRAY BEACH, FLA.

We are in favor of transportation for the senior citizens at all times, and for meals-on-wheels for the sick and disabled citizens.

SAM FRANKEL, WEST PALM BEACH, FLA.

Our developer (the Cenville Corp. and Century Village) has said "We will continue to cause you (the owners) tremendous court costs and attorney fees until you no longer can afford to fight us." Our court cases have been stretched out until our entire village is of feeling that the courts, judges and, yes, even our attorneys are all cooperating to continue litigation until we go broke. Our developer gives campaign donations to both sides and our people are just losing confidence in government, which to my mind is worse than even losing our home. What do we have left, if we can't trust our government?

DORIS AND SIDNEY H. GREENE, WEST PALM BEACH, FLA.

The statements given here today are true. I cannot add much more, other than to say that corrections in the condominium must be made quickly. Our time is running out.

Thank you, sir.

SHIRLEY GUTCHIN, DELRAY BEACH, FLA.

I purchased a resale condo in 1974. I knew nothing about a 99-year lease and feel now that I was taken. It is beyond my scope of imagination that a lien can be placed upon my condo if I don't pay any assessment fostered upon me by the board of directors. It makes me sick to be forced to pay an assessment which I feel is illegal, without being taken to a court of law. It seems to be unconstitutional.

MURRAY H. IKE, DELRAY BEACH, FLA.

Keep up the good work.

Something should be done about raising the homestead exemptions and senior citizen exemptions which are literally wiped out when additional yearly appraisals raise assessments. These exemptions become almost meaningless under such laws and regulations.

MR. AND MRS. A. ITZKAWITZ, DELRAY BEACH, FLA.

Break the unconscionable 99-year lease.

Protect us from liens and foreclosures without due process of law.

Make the developer responsible for faulty constitution, and reimburse the condo owner.

H. AND J. KAGEL, DELRAY BEACH, FLA.

We are residents of Kings Point. When we bought our condo we knew nothing of a 99-year lease. I think this is a violation, and we hope this will be changed.

MARY KATZ, DELRAY BEACH, FLA.

Please try to alleviate the mistake of the 99-year lease that we have here at Kings Point.

Please, Senator, do something about the continuous escalation of the maintenance fees. It is difficult to keep up with it.

MOLLIE KOGOS, DELRAY BEACH, FLA.

Please try to alleviate the mistake of the 99-year lease that we have here at Kings Point.

Please, Senator, do something about the continuous escalation of the maintenance fees. It is difficult to keep up.

MORRIS KRAVITZ, WEST PALM BEACH, FLA.

Everything that was said was the truth.

ADA AND MILTON KRUBLIT, DELRAY BEACH, FLA.

Try to abolish the 99-year condo leases, which are unconscionable and detrimental to the welfare of senior citizens.

We need senior citizen food assistance in Palm Beach County, Fla.

Improvement of public transportation in Palm Beach County.

Prevent cutting back of social security benefits and income tax deductions for senior citizens.

SAMUEL LAMPERT, DELRAY BEACH, FLA.

Please enact legislation to abolish the 99-year lease on condos.

We need assistance for senior citizens who are homebound and require meals-on-wheels.

Better transportation on buses in Palm Beach County.

NATHAN MAKLER, DELRAY BEACH, FLA.

Your concern in all areas for senior citizens is most gratifying. I would like you to also check cost of food in Delray area. Public shaffery stores. Grocery prices have suddenly risen the second week in November 1978 in most all items, from 12 percent, practically overnight; 90 percent of all shopping is done in these stores by senior citizens of fixed incomes. This is outrageous. And surely your people in this locality will bear out the true fact.

Please continue your good concern, including the ripoff of quality and cost of condos to senior citizens. God bless you.

MILDRED MARGOLIN, WEST PALM BEACH, FLA.

If we can't have the law rolled back before 1974, at least please make every effort to freeze it as of now. We'll bless you.

BERTHA AND JOSEPH MENCHER, DELRAY BEACH, FLA.

We have no rec. lease but even though we have a written guarantee of no increase until January 1, 1982, we just received a notice from Kings Point Realty of an increase of approximately $3 per month for "recreation."

Even though they have no legal leg to stand on, they are trying to circumvent their own provisions when they sold us our unit.

We wish to bring this to your attention that a written contract seems to have no value in Florida.

We have just taken over our unit on December 20. It is our understanding that a building be turned over complete. Our unit had no lighting fixture, our air conditioner was not in working order, and our electric system was incomplete.

RUTH MOSKOWITZ, DELRAY BEACH, FLA.

Please try to alleviate the mistake of the 99-year lease that we have here at Kings Point.

Please, Senator, do something about the continuous escalation of the maintenance fees. It's difficult to keep up with it.

ANNE R. NATHAN, DELRAY BEACH, FLA.

I would like to to see public transportation; also, a hospital for the residents of Delray Beach.

MARY NUDELMAN, WEST PALM BEACH, FLA.

I never believed that I would retire and work harder now than I ever did before I retired because of the fact that I cannot stand injustice of any kind and we surely have plenty of it in Century Village. Because of the fact that I cannot sit back idly, and do care about people and the future of our senior citizens, I am in the fight against the unscrupulous developers all over the State of Florida. I never believed that a democratic country like ours could allow developers to keep us in a state of serfdom in the last years of our lives.

LOUIS REITER, DELRAY BEACH, FLA.

We definately need transportation to doctor's offices and hospitals.

We are saddled with a 99-year lease. We are all senior citizens at Kings Point and we desperately need some relief and hot meals for the incapacitated.

BETTY AND BEN SHERMAN, WEST PALM BEACH, FLA.

Speaking of buses, many people who do have cars, who never use the trains and buses as provided, still have to pay for community services. I appreciate the time, effort, and interest shown by you and Senator Stone, as well as your committee. I pray and hope that when you too reach the age of many citizens who live here in Century Village, you will have and enjoy the peace as well as good health we are all speaking. May God bless all of you in your efforts in our behalf.

HARRY SOLDBERG, DELRAY BEACH, FLA.

Please try to correct the error of the 99-year lease that we here at Kings Point have. Also, please try to get the elderly hot lunches; it would be greatly appreciated.

RAYMOND STACK, BOYNTON BEACH, FLA.

As a cosponsor with Senator Stone of Federal legislation S. 2919, what can we expect in the near future—time being of the essence?

What happened to bill H.R. 12124?

How does the Florida Senate bill 803 benefit condo's (if it does that, as represented)?

The 99-year recreation/land lease on 5 year CPI index of 1973 to 1978, starting at $35 monthly for a land lease, would cost $12¼ million in 99 years for one unit and he also pays all taxes, insurance, and all increased maintenance.

[Attachment]

GULFSTREAM TRUST/NOVO TRUST,
Delray Beach, Fla., April 28, 1978.

Re Long-term lease executed April 28, 1973.

RAYMOND STACK,
President, Gulfstream Condominium Association, Inc.,
Boynton Beach, Fla.

GENTLEMEN: In accordance with paragraph 5(c)(1) of the long-term lease executed on April 28, 1973, between Joseph Novotny, as trustee of the Novo Trust and as Trustee of Gulfstream Irrevocable Trust (landlord), and Gulfstream Condominium Association, Inc. (tenant), you are hereby notified of at adjustment in the "basic rental" based on the cost of living. The adjusted rental date is May 15, 1978, and the date on which the adjustment shall take effect is May 15, 1978.

Here is a computation of the tentative revised rent. The reason why this adjustment is tentative is that the rental as adjusted shall be in effect commencing from May 15, 1978; however, the Consumer Price Index figure for May 1978 will not be published before July 1978. Therefore, this computation is based on the latest available Consumer Price Index figure, namely, March 1978. When the actual figure is available to the undersigned, we will recompute and make the necessary adjustments.

(a) Consumer Price Index, January 1973, all items..... 127.7
(b) Consumer Price Index, March 1978, all items..... 189.7
(c) Based on the formula in the lease, 189.7 is divided by 127.7. This results in a 48.55 percent increase in the monthly payments.

Therefore, the new monthly payment is calculated as follows:

	Individual unit per month	All units per month
Current monthly payment	$35.00	$12,600.00
Multiply to 48.55 percent equals	16.99	6,116.40
New monthly payment	51.99	18,716.40

Note: 99-yr cost per unit, $12,250,000.

For the payment due May 1, 1978, use one-half of the old figure and one-half of the new figure; that is, $6,300 plus $9,358.20, total $15,658.20 ($43.50 per unit).

For the payment due in June and July 1978, the figure will be $18,716.40.

During July 1978, we should be able to determine the actual Consumer Price Index figure for May 1978, and we will resubmit the computations at that time. However, until we so notify you, continue to make payments of $18,716.40 monthly. We are enclosing copies of the index figures to substantiate the calculations. If you have any questions, please do not hesitate to contact this office.

Yours truly,

JOSEPH NOVOTNY,
Trustee, Gulfstream Trust/Novo Trust.

SADIE STERLING, WEST PALM BEACH, FLA.

Why do I feel this hearing is another charade? This issue has been dragging on for years and I'm losing confidence in the fairness of our representatives to legislate with justice and fair play for the general population, but in favor of the real estate development interests.

Dare we hope something will be done now?

FRED TRUDING, WEST PALM BEACH, FLA.

Thank you for visiting West Palm Beach and giving us the opportunity to be heard on the unconscionable 99-year leases on the recreational area.

SAMUEL VOGEL, DELRAY BEACH, FLA.

Delighted to see you carrying the ball for senior citizens.

Legislate to prevent rip-offs from builders, utilities, and the medical community. Provide local medical facilities at nominal fees. Provide local clinics for emergencies.

○

CONDOMINIUMS AND THE OLDER PURCHASER

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 1—HALLANDALE, FLA.

NOVEMBER 28, 1978

Printed for the use of the Special Committee on Aging

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CONTENTS

Page

Opening statement by Senator Lawton Chiles 1

CHRONOLOGICAL LIST OF WITNESSES

Ackerman, Anne, Point East Condominium Association, North Miami Beach, Fla 5
Nerzig, Sid, president, Condominium Co-op Executives Council of Florida, Inc., Fort Lauderdale, Fla 10
Samelsberger, Joseph A., vice president, Condominium Co-op Executives Council of Florida, Inc., Fort Lauderdale, Fla 16
Samuels, Ernest, president, Condominium & Co-op Officers Organization, Miami, Fla 17
Stone, Hon. Richard, a U.S. Senator from the State of Florida, presented by Lnida Brickman, district representative in the south Florida area 30
Rosen, Robert, Miami, Fla., president, south Florida chapter, Community Associations Institute 36
Schoninger, Sam, Miami, Fla., president, Builders Association of South Florida 39
Burrus, Ray C., Hallandale, Fla 49
Linz, Paul, Tamarac, Fla 51
Chaimowitz, Frances, Hollywood, Fla 53
Coslow, Leo J., president, Association of Meadowbrook, Hallandale, Fla 53
Heller, Aaron, council president pro tem, city of Lauderhill, Fla 54
Stevens, Gerard, Fort Lauderdale, Fla 56
Rosenberg, Arthur J., Hallandale, Fla 59
Engel, Fred, Lauderdale Lakes, Fla 60
Ross, Joseph H., Hallandale, Fla 61
Goldstein, Edwin, social service coordinator, Lauderhill, Fla 62

APPENDIXES

Appendix 1. Material submitted by witnesses:
Item 1. Pamphlet excerpts submitted by Robert Rosen, Miami, Fla., president, south Florida chapter, Community Associations Institute 65
Item 2. Court decision submitted by Paul Linz, Tamarac, Fla 67
Item 3. Letter from Fred Engel, Lauderdale Lakes, Fla., to Senator Lawton Chiles, dated January 2, 1979 68
Item 4. Letter from Joseph H. Ross, Hallandale, Fla., to Senator Lawton Chiles, dated December 21, 1978 69
Appendix 2. Material from individuals and organizations:
Item 1. Letter from Samuel Silberberg, Hollywood, Fla., to Senator Lawton Chiles, dated December 1, 1978 70
Item 2. Letter from Maudie E. Blondin, secretary, Hibiscus House Condominium Association, Inc., Pompano Beach, Fla., to Senator Lawton Chiles, dated December 4, 1978 70
Item 3. Resolution adopted by the City Council of Lauderdale Lakes, Fla., November 28, 1978 71
Appendix 3. Statements submitted by the hearing audience:
Kordel, L. E., Detroit, Mich 72
McArthur, E. D., Boynton Beach, Fla 72
Projansky, Mrs. Harry, North Miami Beach, Fla 72
Reszel, Helen M., North Miami Beach, Fla 72

CONDOMINIUMS AND THE OLDER PURCHASER

TUESDAY, NOVEMBER 28, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Hallandale, Fla.

The committee met, pursuant to notice, at 9:45 a.m., in the commission chambers, Hallandale City Hall, Hallandale, Fla., Hon. Lawton Chiles presiding.

Present: Senator Chiles.

Also present: William E. Oriol, staff director; Letitia Chambers, minority staff director; Philip S. Corwin, professional staff member; Richard Farrell, legislative assistant to Senator Chiles; Marjorie J. Finney, operations assistant; and Kaye English, information assistant.

Mr. SPEIGEL. Good morning, Senator Chiles, ladies and gentlemen. I see that some of us are still early risers but the old people are a little slower getting up and they will be here. I know they are coming. A lot of the condominium owners are looking forward to listening to our Senator who is going to help us because they are all concerned with condominiums and have been for years. I have been interested since 1966 and I am looking forward to the Senator pushing through some legislation in Washington and helping us.

Senator Chiles, it is a pleasure to welcome you to our city. There are others interested in this matter and we will bring them up to Palm Beach tomorrow to see you then.

Senator CHILES. Thank you very much. I thank the commissioners for allowing us to use the facilities here. The city and the county have been very cooperative in helping us, and we appreciate that.

Mr. SPEIGEL. Thank you, Senator. The facilities are at your beck and call at anytime you want them.

Senator CHILES. We are delighted to have Representative Dyer here who is going to sit with us this morning. He has been playing a leading role in condominiums and their owners' plight in the State legislature.

Do you have an opening statement that you would like to make today?

Mr. DYER. Thank you very much. I am here to listen and see if we can identify some of the problems and determine some of the solutions to those problems.

OPENING STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. Thank you. Today's hearing on "Condominiums and the Older Purchaser" is undertaken in the belief that condomini-

ums and other new forms of residence ownership will be chosen increasingly by the growing ranks of older Americans. Despite the problems which characterized the early years of Florida's condominium industry, the 1975 HUD condominium-cooperative study found that 96 percent of south Florida unit owners were either satisfied or very satisfied with the condominium lifestyle and that more than 70 percent would again purchase a condominium if they could choose again. Clearly, condominium living can offer good housing, recreational opportunities, and a potential for community self-government and social interaction which is attractive to retirees and well within the means of many people.

If so many older residents are so satisfied, then why are these hearings being held, and why in Florida? I believe that the Florida condominium experience has much to teach us about the pros and cons of condominium living for the elderly and whether there is a need for minimum national standards to protect older purchasers no matter which State they settle in. Florida has been in the forefront of condominium construction and is unique in the percentage of retirees occupying those units. Florida now has one of the Nation's exemplary condominium laws—our State law. However, this body of law was not developed to forestall difficulties, but came as a result of abusive practices carried out by a destructive minority within the development industry, and at one point threatening not only the savings and well-being of purchasers but the entire condominium industry.

Bill Provides for Consumer Protection

In April of this year I cosponsored, with Senator Stone on the Senate side at its introduction, the Condominium Act of 1978. That has been introduced on the House side and Congressman Lehman is the person over there. This bill, drafted by a task force headed by the Department of Housing and Urban Development, would set minimum national standards for consumer protection and disclosure in both new construction and conversion condominiums. It would encourage the individual States to enact strong condominium laws. It would hold redtape and costly regulations for developers to an absolute minimum, while at the same time recognizing that asking this industry to meet basic consumer protection standards is not a large price to pay in exchange for the legitimacy and stability which Federal and State laws have conferred upon the industry.

It should be realized that enactment of this Federal law would not have a major effect upon Florida's condominium statutes, which now offer sufficient protections to be certified in compliance with the proposed minimum national standards. However, in one specific area, the Condominium Act of 1978 would offer substantial relief to tens of thousands of older Floridians who have been unduly victimized. This is in regard to the abusive practice of escalating 99-year leases for recreation facilities, for the bill would authorize the Federal courts to grant the relief which Florida's judiciary has not seen fit to confer.

These contractual arrangements are intolerable.

Purchasers were unaware of them and had no power to negotiate and modify them at the time they were put in the contracts.

They extend far beyond the useful life of these recreational facilities and reimburse developers many times over for their costs.

And, due to escalation clauses tied to the Consumer Price Index, they threaten to rob elderly residents of their dignity and their life savings and even to destroy the fiscal stability of the condominiums they occupy.

I will tell you frankly that enactment of this law will not be easy, afflicted purchasers should not expect immediate relief upon its passage. Neither congressional committee having responsibility for housing held hearings on this bill during 1978 but prospects for action may be better this next year. In addition, condominium activity is limited primarily to a few States, most of which have enacted good "second generation" protection statutes. The Condominium Act may therefore lack the national constituency required for congressional support. Finally, if it is passed, it will probably be tested by several years of litigation—certainly the points dealing with the recreational leases.

Action Needed to Curb Abuses

However, I pledge today that I will take the evidence gathered at these hearings today and tomorrow to tell the Congress about the damage to purchasers and the honest majority of developers in the absence of strong minimum standards to forestall abusive and deceptive practices. The Special Committee on Aging does not have the right to offer legislation itself but we can use the prestige of that committee to try and build a fire under the other committees, in this instance the Banking and Housing Committee, to try to see that we get some action this year out of those committees and that is what we are going to try to do.

Today's hearing has a wider purpose beyond an examination of the need and specific form of Federal condominium legislation. We want to consider such questions as:

How are retirees coping with the self-management responsibilities, often of enormous proportions, in multimillion-dollar projects? How are they doing?

What effect is inflation having upon older residents who have retired on fixed incomes and anticipated relatively stable residential expenses as one of the chief benefits of condominium living?

And, with the conversion of rental units to condominiums on the rise both in Florida and nationwide, is enough being done to protect the interest of both long-term renters and new purchasers?

Finally, we will inquire into whether sufficient thought and planning is being directed to meeting the present and future needs of aging condominium populations.

In our 2 days of hearings we will hear from Floridians who are expert in these matters. We will hear from condominium association leaders, from representatives of developers and management, from attorneys, from State officials, and from those who provide social services to older persons.

We will also hear from the real experts, from the condominium residents themselves, during special town meetings at the conclusion of our scheduled witnesses.

Before calling our first panel I would like to submit into the record a statement from Congressman Bill Lehman. Mr. Lehman is unfortunately unable to be here today and he wanted me to express his regret for the severe emergency that prevents his participation. But there is no doubt about the role that Congressman Lehman has played in this problem and in the general problems of our older citizens over all the period of time that he has been in the Congress.

[The statement of Representative Lehman follows:]

STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

During the 95th Congress, I introduced in the House, as Senator Chiles did in the Senate, the Condominium Act of 1978 in a new effort to end unconscionable recreation leases.

Condominiums are the lifestyle of the future. More than 300,000 residential units have been built in Florida. In my 13th Congressional District there are more than 100 condominium developments housing over 80,000 people. In the past few years condominium construction throughout the Nation has exceeded that of the previous 20 years.

However, condominium living has also brought many complaints. There are exorbitant charges for maintenance and ground leases, poor management and inadequate control by unit owners, shoddy construction and lengthy, complicated purchase contracts which can confound the best of lawyers.

The most serious abuse is the practice of placing long-term leaseholds on the common areas or facilities which serve the unit owners. The majority of these 99-year lease recreation leases are tied to the Consumer Price Index. Ernie Samuels, who will testify today, once gave the example that a $100,000 recreation payment—relatively modest in today's marketplace—in 99 years would net the developer $200 million if the CPI escalated at 5 percent per annum. Yet during the past 5 years the CPI has not risen by 5 percent but at the rate of 47.1 percent—or 8 percent per annum.

INFLATION DWINDLING RETIREMENT CHECKS

When condominium buyers moved from the North to Florida they were enticed by beautiful apartments at modest prices with extras such as well landscaped grounds and recreation facilities. People were swept away to the Sunshine State believing they could retire on their fixed incomes and live comfortably for the remainder of their lives. Instead, inflation has dwindled those retirement checks and the comfortable life has become difficult for some and desperate for others. Now they ask questions such as, "Will there be enough money to pay for food, electricity, telephone?"

Naturally, other extraneous considerations were frequently ignored prior to buying a condominium unit. After all, most people moving southward are reasonably healthy at the time, probably own a car, and think items such as public transportation are not problems. However, the recent referendum on rapid transit in Dade County reflected the fact that many elderly residents of condominiums, especially in North Dade, were frustrated with the public transportation system and voted not so much for the rejection of a rapid transit system but against its failure to service them.

The Condominium Act cannot resolve all of the problems, but it does address four major areas of importance to south Florida condominium unit owners.

First, the problem of 99-year recreation leases is specifically addressed by declaring that by a two-thirds vote of the unit owners a court case could be brought to have the lease declared unconscionable.

Second, the bill would make future automatic recreation lease rent increases unenforceable.

Third, unit owners would be able to terminate long-term "sweetheart" maintenance contracts in 90 days, if two-thirds of the unit owners so voted.

Finally, the bill would void existing lease provisions that require unit owners to pay all attorneys' fees or judgments incurred by the developer in suits between the developer and the unit owners.

Although condominium construction is growing rapidly throughout the Nation, many of the abuses are limited to Florida. Michigan and New York are two States which quickly enacted laws banning recreation leases after learning from experiences in Florida.

Nevertheless, we have lined up support from Members in other States for the Condominium Act in the House. Representative Thomas Ashley, chairman of the Housing and Community Development Subcommittee, agreed to cosponsor the bill and has promised to hold hearings when the 96th Congress convenes.

I will continue to do all that I can to see that the House of Representatives considers this important piece of legislation which we hope will provide a remedy for present condominium recreation lease problems. The hearings today certainly mark the beginning of that process.

Senator CHILES. We will go to our first panel. In our first panel we have Sid Nerzig, Ernest Samuels, and Anne Ackerman. Sid Nerzig is president of the Condominium Co-op Executive Council and as such certainly has been a leader in this field, as have Ernie and Anne. Ernest Samuels is president of the Condominium and Cooperative Officers Association. Anne Ackerman is a leading light in the Point East Condominium Association and many other areas. I know their expertise goes beyond condominiums and into many areas of concern for the elderly. We are delighted to have each of you here.

Anne, I understand you have a time problem and, because of that, you would like to lead off. We will be glad to hear you.

STATEMENT OF ANNE ACKERMAN, POINT EAST CONDOMINIUM ASSOCIATION, NORTH MIAMI BEACH, FLA.

Mrs. ACKERMAN. I am probably described as a citizen activist. I say amen to everything in your statement and everything in Congressman Lehman's statement because, frankly, it sounds exactly like my statement; therefore, I will do it very, very quickly.

I consider it a privilege to testify before this committee on an issue that affects the physical, mental, and social well-being of mature Americans. In order to fully understand the need for good housing within the financial means of middle class older Americans, it is necessary to understand the radical change in lifestyle that has taken place during the past 20 years. Prior to that time and prior to the intense mobility of our society, families were rooted in particular localities and were close knit, caring for their elders and each other. The romance of the old homestead, where families gathered and where the feeling of belonging was strong, made for stability and responsibility. That condition was the norm, sociologically.

"HARD LOOK" AT HOUSING NEEDS

The radical change that has taken place in this generation—due to many factors, including governmental social programs, the affluence in the society, and longevity—makes it essential that we take a hard look at the housing needs of our older Americans.

The advent of the "condominium concept"—cluster housing—that has provided peer group living, home ownership with shared responsibility, recreational and social activities within the framework of these communities, is an answer to these needs.

The State of Florida, particularly south Florida, became the area where this kind of housing developed rapidly. An abundance of retirement communities were created. The response was overwhelming. From every area of the Northeast, Midwest, and other areas of this country, people flocked to this area and purchased condominium homes—apartments. They created a lifestyle to suit their needs. Since the greater number of the people had uprooted themselves from their homes and communities where they had spent a lifetime, their immediate needs were social contacts. Group living provided the answer.

Social, educational, cultural, and recreational needs could be developed very quickly. Friendships could easily be made. Common interest and common problems brought people together. Leaders emerged in every area, since these people spent a lifetime developing a myriad of skills which they were happy to bring into play. Their lives were enriched because they used their skills for the benefit of the community as a whole. People felt wanted and needed and organizations of every kind were formed. These developments were very beneficial. In essence, the "extended family" developed where neighbors manifested a real concern for each other. In this respect the condominium has been very beneficial to older people.

Then came reality. The contracts people had signed for the purchase of their condominiums were filled with clauses that had not been brought to the attention of the buyers. These included, but were not limited to, the following: Management contracts that the developers had made with themselves that tied the purchasers to 25-year management contracts; maintenance costs that were skyrocketing because of these contracts; 99-year leases on the recreational facilities with escalation clauses tied to the rise in the cost of living, which included the cost of food; the cost of complete maintenance was to be borne by the purchasers; the purchasers had to pay all taxes; the purchasers also had the responsibility of reconstructing and putting into proper working order apartment building facilities where the developers originally permitted poor construction, et cetera.

Basic Services Unavailable

Because of the rapid growth of these areas, basic governmental services such as adequate water, sewage, roads, good transportation, streets, and lighting were unavailable. Government services could not keep up with the rapid growth of the condominium communities.

Since the whole concept of condominiums was new, there was no body of law to protect the buyers. As a result, condominium owners banded together in various organizations—you will hear more about this from the experts in this field—and learned to seek aid from their local and State governments. In fact, because of these glaring ripoffs, the people involved became citizen activists. They grew to know their legislators—local, State, and national—and they became concerned voters.

Senator Chiles, we have become an effective voting block and I think every legislator—national, State, and local—knows this at the present time. This development is well known to all levels of government. Condominium leaders emerged to carry on the battle to protect the condominium owners' rights as citizens.

The body of condominium laws created in Florida is extensive and much of it is excellent. Management contracts have been outlawed, full disclosure is now mandatory, and future 99-year leases, as well as escalation clauses, have been outlawed. I urge you, as you have already done from your statement, to study all aspects of Florida's condominium laws. The people who bought before the passage of these laws are in no way aided by them; they carried the battle and those that come after them will benefit, but we don't. Only Federal law can help us.

The pending Federal condominium bill can and must incorporate all that is good in the Florida law and must incorporate provisions for the abolishment of the abominal escalation clauses in the contracts to which we are tied. You already mentioned the Americans on fixed incomes—incomes that mean either pensions or social security, or maybe the kind of income that you might get from dividends. Since these people are tied into this kind of living standard, the escalation clause and the 99-year lease can eventually mean the wiping out, not only of their homes, but of their financial condition. More than that, since this will be the form of future housing throughout America for the great middle class, it is imperative that there be Federal guidelines to protect both buyers and builders. A national standard for condominium housing is imperative.

Purchasers of condominiums, whether young or old, cannot always understand all that is entailed in this form of living. Responsibilities and restrictions come with shared ownership. Self-management must be taught. Again, you are going to hear from several management experts in the field. Volunteers must make themselves available for a myriad of tasks. This is a learning experience and it will enrich the lives of the participants.

Federal Guidelines Needed

Senator, it is my humble opinion that there is no question that most of the future housing will be some form of condominium housing throughout the United States and, therefore, Federal guidelines are absolutely essential. There is no way that the buyer or the builder can understand totally the kind of housing that they are getting into unless they do have Federal guidelines that will cover all Americans. We in Florida have been the guinea pigs. We have been more than willing to be the guinea pigs—we have learned so much through this effort. Nevertheless, we feel that we need protection and that all Americans need protection.

In the letter that you addressed to me you asked if the fact that there is a concentration of older Americans in any one area makes for more social problems or social programs. Yes, there is a problem. We have solved so many of them. On the national level, through the Older Americans Act, so many remarkable programs for older Americans have been implemented—meals on wheels, senior citizen centers, dial-a-ride transportation—I can name a myriad of them. The difficulty is that although they are adopted on the national level and funded on the national level, by the time they are funneled through to the local level so many of these marvelous programs that are geared to the mature American in cluster housing communities is lost.

There is something else I am very hepped-up on, Senator. The middle-class American is forgotten in all major social programs. Almost all the programs are geared to poor America. I don't blame the program for being geared to poor Americans, but it is middle-class America that built this country and have been the productive citizens throughout their lifetimes. We feel that something of these social program should be available to middle-class America, too.

Now I am going to conclude with the most important glaring problem for the older middle-class American. South Florida again is a perfect example for we have a tremendous number of older Americans here. We are concerned because for the most part we thought that we had provided for ourselves for our golden years. Most of us live on fixed incomes—social security, pensions, investments, et cetera. Our incomes have not kept pace with the horrendous inflationary pressures, yet we have managed.

Concern About Catastrophic Illness

Now we are faced with a specter and a fear prevalent in every older middle-class American. We are faced with the specter of lingering, catastrophic illness. Medicare in no way covers custodial care for prolonged home health services or custodial nursing home care. Medicare pays for the poor who qualify, and the rich are not concerned, but the older middle-class American can be wiped out by this kind of illness. Perhaps you are saying, "What has this to do with condominiums?" The answer is that the lifestyle of the older American is seriously affected by social programs, and one of the programs we need desperately is to be able to maintain our dignity in our lifestyle.

Right now we are scared out of our wits of being wiped out because of the kind of catastrophic, lingering illness that might befall all of us. We may lose our homes, we may lose our apartments, we may lose everything that we have built, if the Federal Government does not address itself to this particular problem.

I will not take up more of your time on it. I have written you a six-page report on this particular aspect of the problems that we are faced with socially, but there is no question, Senator Chiles, that addressing yourself to condominiums and to the lifestyle and to the needs for Federal legislation to protect the buyer are essential, for this will be the lifestyle for all Americans for the next generation, not only for Florida.

Thank you.

Senator Chiles. Thank you very much for your statement.

You speak of the lifestyle of the America to come and I think that is very interesting, it rings a bell with me. I am now a double-condominium owner—I have a condominium in Florida and I have a condominium in Virginia now, so my lifestyle hinges very much on the condominium concept.

Mrs. Ackerman. Senator Chiles, may I point out to you that the condominium concept that started with the retirement communities for older Americans is now the answer to middle-year people raising families? There are even condominiums today for the single people.

Senator Chiles. Very much so.

Mrs. ACKERMAN. The reason for it is that the cost of single-family housing has become completely out of the reach of most people, and second, because of a breakdown of family structure, every group in America is seeking peer group living and that is why you are going to have it.

SMALL COMMUNITY CONCEPT

Senator CHILES. On that particular area your statement describes condominium living as in effect creating a new kind of extended family; in other words, the condominium owners may come to care about their neighbors in the same way that residents of small communities so often cared about their particular neighbors. We have seen that community effort over the years, whether there was a barn raising or whether it was taking care of the sick. What we grew up with and saw operating in small communities all across this country has been one of the strengths of the country.

Do you see the possibilities for group action like that in the condominiums? In other words, can neighbors be trained or encouraged to help the homebound with their problems and expect similar help if and when they became homebound?

What I am getting at is that there is no way that we are going to be able to provide State or Federal paid care for every person who is going to need it. An awful lot of this needs to come from within, from somebody caring about someone and taking care of him. Are there ways in which we can encourage that?

Mrs. ACKERMAN. Senator Chiles, this has already been done. For example, we have two excellent representatives of leadership in condominiums right here on this panel. Let me point out a specific example.

I live in Point East and we have some, 2,200 people. I don't think any of the people knew each other before they came to take up their lifestyle. I think we are more concerned for each other than any families can possibly be. We are in such close contact with our neighbors that we note immediately if there is a concern on the part of our neighbors. There is no question that we care for each other.

There are some forms of health care that you are going to have to come up with and I will give you one example—custodial nursing home care which is not covered either by private insurance or through medicare. It has wiped out financially three or four families in our own condominium within the last year because there was no place where they could turn.

"DIVORCE"—A DEMEANING RESPONSE

May I say to you that the most demeaning thing that can happen to an individual is to have a social service person say to them, "Divorce your husband," or "Divorce your wife and then we can help you." You are talking to people who have been married 45 years, 50 years, 55 years, and you will find this kind of demeaning response. All I am saying to you is that there must come a time when we will address ourselves to the health care for middle-class America who are faced with a long-term, lingering, custodial-care type of illness.

There is no question that the extended family exists in the condominium. We do care for our neighbors. We have organized every conceivable kind of organization. No one who lives alone is ever without a contact daily. These are the things that we have found we can do for ourselves and for our neighbors.

Senator CHILES. Thank you.

I notice that during the boom years of 1970 to 1973 that some 70 percent of Florida purchasers of condominiums paid for their units in cash. How large a percentage of life savings would you estimate that that took from the average family coming down and buying that unit for cash?

Mrs. ACKERMAN. I don't think we are buying for cash today. I do think many people bought for cash, say, 10 or 11 years ago and it took a good portion of their savings. I am not in any way talking about the fact that middle-class America is pauperized; it is not.

Senator CHILES. I understand that.

Mrs. ACKERMAN. Most of the people came down and bought, whether they bought with mortgages or whether they bought with cash outlays. I assume that they had taken care of themselves for their golden years, but you know the pressures of the society in the last 10 years, Senator, and you know the escalation and inflation that has taken place, especially in the health field, and this is the most frightening thing that we face today.

Senator CHILES. Thank you very, very much. I know your time is short so we are going to excuse you at any time that you have to leave.

Sid, do you have a statement that you want to start off with?

STATEMENT OF SID NERZIG, PRESIDENT, CONDOMINIUM CO-OP EXECUTIVES COUNCIL OF FLORIDA, INC., FORT LAUDERDALE, FLA.

Mr. NERZIG. Yes, Senator. First I want to thank you for inviting me to take part in this hearing this morning; it is a great pleasure for me to do so.

For the record, my name is Sid Nerzig and I reside in Pompano Beach, Fla.

I am the president of the Condominium Co-op Executives Council of Florida, Inc., located in Fort Lauderdale, Fla. This is an organization consisting of many hundreds of condominium cooperative associations throughout the State of Florida. I should like to point out, in passing, that we are strictly a volunteer organization and none of us are paid for our services.

We are respectfully urging legislation on a Federal, nationwide level to meet some terribly distressing problems affecting the aged in the United States, especially insofar as they relate to housing and shelter. Particularly I address myself to planned unit developments, including condominiums, encumbered by 99-year recreational leases. This has become a terrible abuse running rampant throughout various areas of the United States where retirees have been settling, especially in Florida.

Federal legislation is required because standards and degrees of protection for condominium purchasers, as well as the potential for abuse and exploitation, vary amongst the various States. For instance, New York State does not allow these now infamous and notorious recreational leases, with their even more notorious escapation clauses, while in a number of Sun belt retirement areas like Florida such arrangements are still legally permitted.

Many Unable To Use Facilities

I shall primarily address this pervasive lease problem, especially insofar as it applies to vast numbers of uninitiated and untutored fixed-income retirees with marginal means and attainments and with very limited bargaining power. We are dealing with hundreds of thousands of purchasers in their so-called golden years, and often physically disabled as well, who have unwittingly become subject to these 99-year leases for recreational facilities that they can never use, such as tennis courts, or which they don't need or want. Among these purchasers, too, are thousands of disabled American veterans who similarly are unable to use such facilities.

This committee should know something about these 99-year leases that are usually executed by the developers with themselves. They wholly own and control the developer corporation, which is the landlord, and also the condo association which is the tenant. The leases are invariably entered into before the project is even started up and before there is even a single-unit owner in existence. Upon subsequent purchase of an apartment, the unit owner automatically becomes a member of the condo association and automatically becomes bound by the 99-year lease.

Invariably the lease requires the condo association—that is, the unit owners—to pay all operational costs and expenses of the leased facilities such as taxes, insurance, and maintenance, including repairs and wages, and so forth. In other words, the fixed rental is on a net basis to the developer.

No Justification for Rental Escalation

The developer is thus completely unaffected by any increased costs. All costs and expenses, including increases, are borne solely and exclusively by the unit owners and their condo association. Nevertheless, the leases provide for regular rental escalations based upon increases in the Consumers Price Index. But, under the circumstances described, there is absolutely no justification or morality for the unit owners to be saddled with any such rental escalations or, conversely, for the developer-landlord to keep getting escalated rentals based upon cost increases which he does not pay, but which are paid solely and exclusively by the unit owners.

These vicious escalations, over the 99-year term of the lease, are like illegal or usurious rates of interest compounded each year which will mount astronomically and which these elderly, or disabled, fixed-income retirees will be utterly unable to pay, especially during these inflated periods. Moreover, under the contracts, the unpaid lease rentals constitute a foreclosable lien upon the apartment so that thousands

upon thousands of these exploited unit owners will lose their homes and hard-earned investments.

Senator, this is all that I am presenting now. I noticed that the record is open until the 15th. I have further information for the committee and for the Senators that I will forward to you.

Senator CHILES. We would be delighted to receive that.

[Subsequent to the hearing, the following statement was received from Mr. Nerzig:]

SUPPLEMENTAL STATEMENT OF SIDNEY P. NERZIG

Superimposed upon all of the physical limitations and debilities suffered by our aging population during the past several years are the financial difficulties caused by inflation. Inflation has increased the costs of all of the essentials in the life of our elderly population.

The significant way in which the problems of the aging differ from those of our citizenry generally is that the assets and income of the aging does not increase as the cost of essentials increase in cost.

In almost all of the inflated costs to the aged, as to all of our citizens, a cogent reason for the increase in costs is the fact that the supplier of the essential needs suffers from inflated costs in the production, supply, and service of these essential items. Increased cost of production necessarily results in increased cost of the item.

The upward rise of prices caused directly or indirectly by the upward rise in cost of production and distribution, although detrimental to the aging, can be understood as a natural phenomenon—an understandable cause and effect—a justifiable result following upon unavoidable stimuli.

AGED TARGET OF UNCONSCIONABLE DEVELOPERS

However, one facet of the inflationary increase in the cost of the essentials of the aging is the very sizable increase in the cost of shelter. This increase is not based upon inflated costs of production and distribution. This inflationary increase in the cost of shelter of hundreds of thousands of the aged is brought about by the unconscionable manipulation by developers of housing for the aged constructed during these past several years. This unconscionable greed of housing developers was aimed at the aging—aimed at people who were retired from income-producing employment or who were about to retire. At a time in their lives where they believed they could spend their last few years in peace in places where they could relax reasonably free from the turmoil of their working years and reasonably free from overbearing financial burdens, retirees found themselves enmeshed in the escalated rentals of condominium recreation facilities.

One may brush aside, as innocuous, the discussion of a rental for a recreational facility—that is, until the bitter facts are made known.

The investigators of your committee may be able to learn how many elderly purchased apartments or little homes for their retirement—particularly, here in Florida. They will learn:

(1) That for several years one could not purchase such an apartment or home or even a mobile home without the encumbrance of a lease for so-called recreational facilities;

(2) That men and women in their 70's and 80's, who did not have the desire or the physical capacity to participate in any of the so-called recreational facilities, found that they could not purchase a housing unit free from that facility. Tennis courts and saunas may seem desirable, but not for octogenarians, nor for the elderly with limited capacities;

(3) That almost all of these unit purchasers were not represented by counsel at the time of contract and purchase or were conducted by mail between the purchasers in one State and developers in another State;

(4) That those who did have counsel were told by the developers that the deal was "take it as written or don't buy";

(5) That the documentation of these condominiums would consist of well over 100 closely written pages, providing little or no opportunity for reading or understanding the legalese in which they were written;

(6) That an 8½ x 11 printed sheet may have 60 lines of little print on each of its 100 pages of documentation;

(7) That the length of these leases—99 years—was obscured in the lengthy document;

(8) That the fact that the rental would be increased periodically was also buried in some lengthy paragraph in the middle of the document, or near its end, when even an astute student would be groggy; and

(9) That all, or almost all, of the purchasers were not aware of such provisions.

That is not all that your investigators will find, Senator. They will find that there is no provision for decrease in rent, even though prices were to drop to dizzying lows.

Senator, shocking as all these facts may be, two facts stand out and cry for action!

UNIT OWNERS BEAR ALL COSTS

First, all of the cost of maintenance of the recreation facility—all of the cost of insurance and taxes—all of the cost of repair are to be borne by the unit owners. All of the cost of collection of the ever-increasing rental—even the cost of litigation—is to be borne by the unit owners. Moreover, after 99 years, the facility is to be returned to the developer or his great-grandchildren in the condition it was in 99 years before. Your investigators will find that inability to pay the escalated rentals by the impoverished elderly may result in foreclosure of liens imposed by the developers.

Second, one would ask: "Who, in his right mind, would enter into such an arrangement?" The answer is that the developer entered into so shocking a lease with a corporate or trustee alter ego acting solely upon behalf of the developer and in the interest of the developer.

The investigators will find that these leases were entered into long before a single unit or single apartment had been sold.

No unit owner signed such a lease. It was hung around the unit owner's throat by operation of the documentation prepared by the developer's attorneys. Your investigators will find, Senator, that in many, many instances the documentation was not made available until the very time of closing of title or even after that time.

We speak for the several hundreds of thousands of elderly citizens and their families who are now saddled, or who may in the future be saddled, with so-called recreational leases, which burden their apartments and their homes—and they need and request your help.

We implore you to initiate and enact legislation (1) to freeze rentals on recreational facilities of condominium cooperatives, homeowner associations, and mobile homeowner cooperatives; and (2) to declare unconscionable and unenforcible all such leases of recreational facilities which:

(a) Were made in connection with a condominium, homeowners, or mobile homeowners associations;

(b) Were entered into before termination of developer control of the condominium, homeowners, or mobile homeowners associations;

(c) The acceptance or ratification by purchasers (or through the owners associations) was a condition of purchase of a unit in a condominium, or other planned unit project;

(d) They are for a period of more than 21 years; and

(e) Contain provision requiring the lessees to assume all or substantially all obligations and liabilities associated with maintenance and use of the leased property.

We respectfully submit that the following changes be made in the 1988 bill for filing in 1979:

(1) (Section 210)—Inclusion of all planned unit developments which are saddled with long-term leases of recreational facilities, including individual homeowners associations and mobile homeowners cooperatives. They too need the relief proposed in the 1978 bill and their inclusion will assure support of a great many persons.

(2) (Section 213)—Making clear that an action pursuant to section 210 may be brought in a Federal district court.

(3) (Section 223)—Making the effective date for section 210 the date of enactment or, at most, 60 days after enactment.

The recreation facility rents increase periodically. In this inflationary period, a delay of a year may mean a 10 percent additional increase.

Thank you for your concern over these serious problems faced by the aging. We have confidence that this congress will provide the relief required.

Senator CHILES. I would like to mention to the members of the audience that the record will be open and if there are other exhibits or statements that people wish to make, we would be happy to have those for the record.

Mr. NERZIG. Senator, may I say something else, please?

Senator CHILES. Yes.

Mr. NERZIG. I don't know if the Senator is aware or if, Congressman Lehman is aware of the number of retired veterans that are now living in the State of Florida. There are better than 1¼ million retired veterans in the State of Florida and in Broward County alone—if I am correct, I believe there is something like 25,000 to 30,000 disabled American veterans. Practically one out of every three unit owners are veterans, and many of them are living on just the pension that Uncle Sam is giving them for their disability and whatever social security money they may happen to gather. We know that with the way things are going now they are going to be amongst the first who will be hit unless inflation stops spiraling the way it is.

Senator CHILES. Absolutely. I know that is true. Also, it has been called to our attention this morning that Sid Polly of the Plantation chapter presented a resolution to the State Disabled American Veterans organization which was passed on this subject, and I think Joe Samelsberger has brought us a copy of that resolution this morning.

Mr. NERZIG. That is right, he did.

Senator CHILES. Joe, we are delighted to have that resolution. We will make that a part of the record.

[The resolution follows:]

RESOLUTION ADOPTED AT THE ANNUAL CONVENTION OF THE DISABLED AMERICAN VETERANS, DEPARTMENT OF FLORIDA, AT MIAMI, FLA., JUNE 10, 1978

Whereas it has been called to the attention of the annual convention of the Department of Florida, Disabled American Veterans, assembled in annual convention at Miami, Florida, the plight of many thousands of our fellow disabled veterans who have purchased condominium with unconscionable so called "recreation leases" and,

Whereas many of these leases have cost-of-living escalation clauses which slowly but surely are eroding the annual cost of living increases awarded the service connected disabled veterans by the Congress and,

Whereas all veterans who have purchased apartments with these unconscionable clauses are encountering great financial difficulty in keeping up their apartment lease payments out of their compensation, pension or Social Security benefits, with the help of the annual increases given them by the Congress and,

Whereas the cancerous growth of the Florida type of condominium purchase with a recreation lease tied into the contract of purchase is now in danger of seriously spreading to other States, as evidenced by the recent action of the National Conference of Commissioners on Uniform State Laws and,

Whereas, in order to eliminate the abuse attendant on this type of homeownership, there has been introduced in the Congress two companion bills, H.R. 12124 in the House of Representatives and S. 2919 in the Senate, which are designed to: "encourage broader utilization of the condominium form of home ownership, to provide minimum national standards for disclosure and consumer protection for condominium purchasers and owners and tenants in condominium conversions, to encourage States to establish similar standards, to correct abusive use of long-term leasing of recreation and other condominium-related facilities, and for other purposes."

Whereas the factual analysis of the seriousness of this problem is set forth in the Condo Co-op Mobile Courier (vol. 3, No. 4, May 1978) beginning on page 1 thereof and is attached hereto as "Exhibit A" and,

Whereas the Congress is even now in the process of increasing compensation, pension, and social security benefits which will be in substantial part benefit these rapacious holders of escalating recreation leases in case wherein the veteran or disabled veteran, many of whom are permanently and totally disabled, have bought one of these condominium apartment homes, with an unconscionable recreation lease "tied in" to the purchase and,

Now, therefore, be it resolved By the department of Florida, disabled American Veterans, that by these present we do endorse the just relief afforded our disabled comrades and other of our citizenry in the provisions of the two aforemention bills (S. 2919 and H.R. 12124) and that we mandate our DAV/legislative representatives in Tallahassee and in Washington to lend their good offices to the end that these measures be enacted into law and,

Be it further resolved, That copies hereof be sent to the national, state, and the Honorable Richard Stone and Lawton Chiles, as well as the entire Florida delegation in the U.S. House of Representatives commending them on their action in this matter to date and urging their continued effort to enact passage of this legislation.

Be it further resolved, That copies hereof be sent to the national, state, and local press, TV and radio chains, and local stations and other media.

Done at Miami Beach, Fla. this 10th day of June 1978.

[Attachment]

[From the Condo Co-Op Mobile Courier, May 1978]

LONG AWAITED FED CONDO LAW UNVEILED—BILL AIMED AT UNCONSCIONABLE REC LEASE AND OTHER ABUSES

After waiting since President Carter's election for Federal action to protect condominium owners from the unconscionable leases made by the developer and his own controlled owners' association, a bill entitled "Condominium Act of 1978" was introduced in both houses of Congress last month.

This proposed bill is the result of President Carter's campaign promise to aid suffering condo owners made while campaigning in Florida. At the insistence of the Condominium Co-op Executive Council headed by its president, Sid Nerzig, and after many CCEC visits to the Whilte House and Federal agencies, a bill modelled after our Florida Condo Law finally emerged.

State Representative John Adams, long a proponent of State legislation to aid condo owners, has been in the forefront in the battle to have Federal Government protection for the harried condo owners. He accompanied Nerzig and other CCEC leaders during their trips to Washington.

The bill has been introduced in the Senate by both Florida Senators, Lawton Chiles and Richard Stone, and in the House of Representatives by Congressmen William Lehman, Paul Rogers, and Dante Fascell.

It, essentially, is designed to eliminate abuses associated with sale and ownership of condominium, including the onerous escalation clauses and "sweetheart" management contracts.

It would establish national standards for consumer protection and has been hailed by CCEC President Nerzig as "the greatest achievement we have accomplished in our fight to protect condoowners against this rip-off imposed upon unit purchasers."

Planned to complement the Florida condominium law, chapter 718, Florida statutes, the bill provides that long-term leases containing automatic rent increases (escalation) clauses tied to the Department of Labor cost-of-living index that require the lessees (unit owners) to assume all liability for the operation and maintenance of the leased facilities, entered into by the developer while in control of the owners' association and which had to be accepted by the purchasers as a condition of purchase, may be found unconscionable in a court action brought by a two-third vote of the unit owners.

Similar to our State law the bill provides certain standards for the court to consider in making a decision as to "unconscionability." In such cases the court, using its equity powers could grant relief such as recission or reformation of all or the offending portions of the lease to achieve a fair result.

The court could declare future escalation clauses unenforceable where the automatic rent increase clause is tied to a cost-of-living index which has no relationship to the developer's obligations under the lease. Thus, where the developer receives a net rental and does not pay out any moneys toward the maintenance of the recreational facilities the cost of living index has no relationship to his obligation the escalation clause is an abusive practice.

Where long-term management contracts are entered into by the developer with himself or an affiliate while in control of the owners association, on a two-third vote of the unit owners such management contract can be terminated after the owners assume control of the association.

This proposed legislation would supersede the local State laws in those States whose condominium laws do not provide substantially equivalent or greater consumer protection.

Court action could be brought either in Federal or State courts and investigations could be conducted as to violations by either Federal or State agencies.

During a discussion on the bill with Condo Co-op Executive Counscil officials, Senator Stone said that "This bill is designed to boost faith in condominium ownership to the benefit of unit owners and developers alike, by putting an end to the most common abuses.

"Recreation lease problems in Florida are long standing," Stone continued. "This bill, if enacted, would provide immediate relief from some major problems, such as future automatic increases in recreation lease charges, and set up remedies for other serious abuses."

In addition to the new Federal proposals and the strong Florida Condominium Act the National Conference of Commissioners on Uniform State Laws has adopted a proposed Uniform Condominium Act for submission to all the State legislatures.

Senator CHILES. Any statement that you want to give us about that resolution we would be delighted to receive from you this morning.

STATEMENT OF JOSEPH A. SAMELSBERGER, VICE PRESIDENT, CONDOMINIUM CO-OP EXECUTIVES COUNCIL OF FLORIDA, INC., FORT LAUDERDALE, FLA.

Mr. SAMELSBERGER. Senator, there is not too much beyond the basic resolution—it speaks eloquently for the position of the veteran. Beyond the resolution itself and just to speak in ordinary language without the whereases and the wherefores, we are sure that when the Congress gave these recent increases for cost of living to the veterans that the Congress didn't expect that they would have to turn a good portion of this over to rapacious leaseholders.

Senator CHILES. That is right.

Mr. SAMELSBERGER. Rapacious is the word, too, because they are really after the escalated lease money and this has hurt as our esteemed president of the Condominium Co-op organization has pointed out. This is hurting a third of the veteran population on the increase which the Congress so graciously awarded us. We are grateful for what the Congress did, we appreciate it, but when it starts to filter through in the form of a Government check and it goes in a little checking account and then they find they have to double up on their rent, this is a horrible situation.

Senator CHILES. I am sure it is.

Mr. SAMELSBERGER. As one of my comrades pointed out, these fellows don't play tennis; a lot of them are 100 percent disabled. Maybe they will use the swimming pool, sometimes they go to a recreation room, but the benefits that they have received from these alleged

recreation facilities is so minuscule that they don't have any bearing with the dollar charge.

Senator CHILES. I am sure that is correct.

While I won't read the whereases, I do want to read the resolved clause of the resolution. The resolution in whole will be put in the record. It does say:

Now, therefore, be it resolved by the Department of Florida, Disabled American Veterans, that by these presents we do endorse the just relief afforded our disabled comrades and other of our citizenry in the provisions of the two aforementioned bills (S. 2919 and H.R. 12124) and that we mandate our DAV/ legislative representatives in Tallahassee and in Washington to lend their good offices to the end that these measures be enacted into law and,

Be it further resolved that we communicate this action to our U.S. Senators, the Honorable Richard Stone and Lawton Chiles, as well as the entire Florida delegation in the U.S. House of Representatives, commending them on their action in this matter to date and urging their continued efforts to enact passage of this legislation.

We certainly accept that resolution and we certainly will try to see in every way that we can that we get those bills passed.

Mr. SAMELSBERGER. Thank you very much, Senator.

Senator CHILES. Ernie, have you got a statement? Then I will question you and Sid together.

STATEMENT OF ERNEST SAMUELS, PRESIDENT, CONDOMINIUM AND CO-OP OFFICERS ORGANIZATION, INC., MIAMI, FLA.

Mr. SAMUELS. Thank you, Senator. My name is Ernest Samuels. I live in North Miami Beach, Fla. I am the president of the Point East Condominium Owners Association in North Miami Beach, a condominium of 1,266 apartments. I am also the president of the Condominium and Co-op Officers Organization which organization has 150 member associations having approximately 50,000 condominium units.

I, too, have presented a statement but I will not read it.

Senator CHILES. Your statement in full will be in the record.

[The prepared statement of Mr. Samuels follows:]

PREPARED STATEMENT OF ERNEST SAMUELS

My name is Ernest Samuels. I reside in North Miami Beach, Fla. I am the president of the Point East Condominium Owners Association in North Miami Beach, a condominium of 1,266 apartments. I am also the president of the Condominium and Co-op Officers Organization, which organization has 150 member associations, having approximately 50,000 condominium units.

For the past 10 years, I have been actively involved in the problems of condominium ownership and have testified before congressional and State legislative committees in connection with proposed legislation toward alleviating some of the major abuses prevalent in the development and sales of condominiums.

It is generally recognized that condominiums are the most desirable forms of housing developments. The cost of individual homes is way out of the reach of the average buyer. Property values have skyrocketed to the point where a private one-family home is only available to the wealthy.

There is much to be said in favor of condominium living. Firstly, a good percentage of retirees coming into Florida are of the medium and fixed income class. They put a major portion of their life savings to a retirement home in anticipation of living there for the remaining years of their lives in a secured atmosphere. They anticipate no increase in the cost of operating their newly acquired home. They assume no problems of maintenance, operation of the building, or the

repair of any of its facilities. Living in close proximity with their neighbors of the same age group and more or less of the same interest makes for a more desirable atmosphere, as well as a greater sense of security in their new surroundings.

There are many other reasons why condominium living is desirable to the retirees. They may, if they wish, join many organizations and clubs right in their own surroundings and thereby enjoy community life; make use of the common facilities, such as cardrooms, saunas, swimming pools, club house, etc.; attend social functions and, in some larger condominiums, regular weekly shows right in their premises at extremely reasonable charges; all of this without any of the responsibilities connected with private homeownership.

CONDOMINIUM MARKET EXPANDING RAPIDLY

There are over 600,000 condominium units in the State of Florida and the present market is expanding at a rapid pace. Without question, condominiums are the future of the housing industry because of the rapidly rising cost of land values and the fast disappearing land for individual home construction. This type of ownership probably accounts for 60 to 70 percent of the total housing market.

Back in the years of 1965 to 1974, during the initial stages of the development of condominiums, many abuses have occurred both in the development and in the sales areas. Let me list some of the outstanding problems encountered in those years.

Management.—Developers initially entered into management agreements with the associations controlled by them prior to the sale of the apartments. Some of these management agreements were 25 years or longer at fees out of proportion of the normal management fees charged by others. Some developers had absolutely no experience in managing the complex affairs of a condominium or the knowledge of dealing with people. This resulted in dissatisfaction and resulted in costly litigations. Some developers neither had the time nor the patience to devote themselves to the management of the property and have delegated their duties to incompetent, inexperienced managers—again causing much dissatisfaction and litigation.

Shoddy workmanship, in many instances, resulted in additional litigations. No warranties were given to the buyers and the developers disappeared immediately after the delivery of the last unit sold, leaving the unit owners with the complex problems of restoring the buildings into usable condition.

One of the greatest abuses perpetrated upon unsuspecting buyers was a 99-year lease, also entered into prior to the sale of a single apartment by the developer with himself, on common recreational facilities. Most buyers believed that these common areas were part of their purchase and that they owned an undivided interest therein. These leases provided for the lessee unit owners to pay all taxes, maintenance, replacement, repair, while the rental paid to the developer on a net basis without any offsets. In addition, they contained a clause whereby the rental escalated with the Government's recognized cost-of-living index of all commodities, including food. To secure the payment of this obligation, a lien was placed on each apartment, subordinate only to the banks first mortgage.

INDIVIDUAL BUYER CANNOT UNDERSTAND COMPLEX DOCUMENTS

These, and other covenants, were contained in a document of 100 pages or more. These complex documents could never be understood by the average individual buyer and even a lawyer could not immediately determine their meaning or the results that may flow from them. Let me illustrate the result of a lease in our complex.

Our initial annual rental in 1967 was $221,000. In 1975, with the escalation clause, this was increased to $357,000. It is calculated that the next increase, which comes into being in 1980, will bring the rental to $475,000. You can imagine what this will mean in another 5 or 10 years, not alone for 99 years. Surely this homestead will be confiscated for nonpayment of this exhorbitant rental. Furthermore, how can anyone imagine a swimming pool, a sauna, or, for that matter, the entire recreation building itself to stand for 99 years and the use of which to be conditioned upon the sale of a home to an unsuspecting retiree 70 years of age or older. Anyone can see that a person on a fixed income will lose his home in a few more years, for it will not be economically feasible for him to carry it at this escalated rental. For the past 10 years, we have worked with our State legis-

lators and called their attention to these and many other abuses. Many laws have been passed each and every year correcting some of them. Finally in 1975, the Florida condominium law, chapter 718, was passed which addresses itself to most of the problems, other than these leases.

(1) No more long-term management agreements are allowed.

(2) There is a full disclosure law requiring that all conditions of the sale must be clearly spelled out.

(3) There are warranty provisions in the law.

(4) Leases are permitted, but escalation clauses in the leases are no longer permitted.

(5) Specific provisions and guidelines are laid down for the unit owners to assume control of their own associations.

The above are but a few of the more important laws. The department of business regulations is charged with the enforcement of the condominium law. The developers are required to file their documents with the department prior to the sale of a single unit in the condominium. The documents must conform to the requirements of State statute 718.

It is generally recognized both by the legislators, as well as the developers and condominium buyers, that the present Florida statutes fairly adequately protect future buyers of condominiums and that the State's regulatory agency can enforce the laws. Presently, unit owners contribute 50 cents annually toward funding this State agency.

The problem is for the more than 400,000 people who purchased their apartments prior to these protective laws. These are mostly retirees on fixed incomes and on social security and they are locked into this 99-year recreational lease with its onerous escalation clause. They are the victims who have not been helped, either by the courts, where hundreds of suits are pending for the cancellation or modification of these leases, or by the State legislature. The courts refuse to cancel or modify them while the legislatures' attempt to retroactively modify or cancel them was declared by the courts to be unconstitutional. The one avenue open to these owners is litigation on the question of unconscionability.

NEW LAW WOULD PROHIBIT ESCALATION CLAUSES

Senate bill (S. 2919) is a very comprehensive bill which, if passed, will certainly set up adequate minimum national standards for the protection of condominium buyers. Most of the provisions contained in the bill are on the statutes in the State of Florida. It is noteworthy, however, that section 209 of S. 2919 lays down the conditions under which a lease on a recreational facility is deemed unconscionable and gives the condominium association the right to ask a Federal court for either the cancellation or modification of the terms of the lease. Section 210 of S. 2919 outlaws future escalation clauses in leases and specifically prohibits these escalations in any lease regardless of when it was entered into. Obviously this section is retroactive to all leases.

There are two problems which I see with this law. One, that the law will not be effective until 1 year after it's passage. This may mean 2 or 3 years' delay and more escalation. And while litigation on unconscionability is permitted, unfortunately it might take perhaps 10 years before the constitutionality of this law is tested in the Federal courts. People living in condominiums who will be affected by this bill are mostly retirees who were probably 65 years old or older in 1967 to 1974, during which years they purchased their apartments. Accordingly, most of them are now well past their 70's. Unfortunately they, or most of them, will not be around to test this law or get any benefit from it unless something can be done to expedite the resolution of this serious outstanding problem.

As a possible solution, I respectfully submit the following:

(1) The law, if passed, should become effective either immediately or 90 days after passage. Certainly not 1 year after, which is too long a period of time.

(2) Some provision should be made whereby, after the constitutionality of the law is tested in court, the case may be submitted from the trial court directly to the Supreme Court of the United States for determination. Perhaps in this way years of litigation might be saved.

(3) Add to section 210 the following: "No lease on common recreational facilities in a residential condominium may be entered into for a longer period than 21 years. It is the express intent of Congress that this provision shall apply to all future, as well as existing, leases regardless of their execution date. This provision applies to leases which contain the same characteristics as outlined in

section 210, paragraphs F 1, 2, and 3, and with the same exceptions as contained in paragraphs G 1 and 2."

MORE REASONABLE LEASING ARRANGEMENT?

I feel that to make this law effective and really helpful to condominium owners with their 99-year recreational leases, we must limit their term. No building or facility will ever endure for 99 years. It is totally unrealistic for a contract to require the return of the leased facilities in the same condition as when received. How can a court of law expect the return of these facilities in 99 years? This kind of contract is made on land, but never on buildings. It is totally unrealistic. A 21-year term will bring about a more reasonable leasing arrangement. Land has always been leased in the past for long periods, but swimming pools, saunas, cardrooms or bowling alleys—never. They will not last even as long as 21 years. Much of it will have to be rebuilt to be usable.

I liken this kind of contract to the inconceivable supposition that all car manufacturers could offer their cars for sale, retaining title and leasing the transmission of the car for 25 years at $100 per year, with an escalating clause, and with the proviso that buyers return the transmission in its original condition to the seller after the expiration of the term of the lease.

Would such a contract be permitted by law?

Should not such contract, even if legal, be not reformed to the lifespan of the car of say 5 years?

Would such contract be deemed reasonable and stand the test of fairness?

Only Congress can right this wrong.

As a further suggestion, the law should provide that the purchase price after the 21 years shall be the appraised value of the property by the county for tax purposes at the time of the construction of the facilities. Nothing less than some reasonable guideline for the rescission or modification of the 99-year lease can solve this problem.

It is the hope of the thousands of condominium owners that Congress will correct these abuses of the past, free these senior citizen retirees from the onerous agreements and bring about a just and honorable resolution to the problem—otherwise they face the eventual loss of their homes. They have been crying out for justice for 10 years. Now is the time to help them—before it is too late.

Mr. SAMUELS. I would like to address myself to some of the points at issue which you have raised to me. The first will be the one that you are asking me: Why was an organization needed in the State of Florida consisting of condominium owners and what did they do initially when they were organized? Well, I moved into the State 11 years ago and quite frankly I recognize that I didn't even know the meaning of the word "condominium" when I first moved in, and neither did some of my people who moved into the same condominium with me. We had a 110-page document submitted to us after we had purchased and 90 percent of the people, I don't think, ever read any portion of it or, if they did read it, could not understand it.

Senator CHILES. I am a lawyer and I will have to tell you I have not read all of the documents of either one of the condominiums that I have purchased.

"TAKE IT OR LEAVE IT" OPTION

Mr. SAMUELS. Well, neither did I. I would say that there were any number of attorneys moving into our condominium who never looked at these and if they did look at it, it would not help any because either you took the apartment exactly the way it was with these documents or you didn't take it at all and that was the choice.

Senator CHILES. Confucius had a saying that a lawyer who represents himself has a fool for a client.

Mr. SAMUELS. Right.

We recognized early in our residency in this condominium that there were many pitfalls; then we started to read the documents and begin to discuss it among ourselves to understand what we were in for. Of course one of them, as has already been pointed out to you by the previous speakers, was the management agreement, and the second one was the 99-year lease which tied us for 99 years to a recreational facility—whether or not we used it—at a very seriously high level, escalating with the cost-of-living index. Now we didn't know what that meant and certainly didn't know the results that would flow from that kind of escalation clause.

We started to organize, and after we organized we recognized that even the management agreement was so basically unfair and unconscionable that we determined that that was one of the agreements that we must break first. The developer was getting about $80,000 a year for managing, with the understanding that he can hire help to his own choosing. He did hire a manager for $21,000 to $25,000 annually, put him in there, and all he did was peer around the outside, coming once a week to sign the checks for the employees. We realized that that put us out to about $100,000 annually between the management.

The second thing was that we have been given a medical building which they said was for the benefit of the condominium owners. The doctors who were in the medical building were paid for by us with a salary of $24,000 each, annually. We were all retired people and we didn't have to contribute to a doctor because most of them, or at least, I would say, 95 percent of them, were on medicare. Nevertheless, this medical building costs in the area of $75,000 to $100,000 annually because we also paid for the doctors' nurses, and there were three of them plus other employees.

Saddled With Unfair Contracts

So you see, we had determined that we have to do something and this is what caused the organization to be formed because we recognized, having discussed this with other condominium executives and leaders, that many of them were saddled with similar agreements. Maybe not all of them were this kind of management agreement, but most of them were saddled with many of these unfair and unconscionable contracts.

We litigated through the courts for 10 years. The only thing that we have been able to gain is a settlement agreement because in the Federal court prior to trial the developer stepped out of the management after we had paid him at least $1 million for the prior years for managing or not managing.

In 1970, we took over management and I have undertaken to manage the condominium myself without any extra help for management services. I have had some experiences in that area. We were fortunate enough to save not only the $100,000 which we had paid out for management services and resident manager but also with our careful purchases and cutting down on costs generally.

In addition to that, since we are a large organization of 1,266 apartments, we have been able to institute our own maintenance program and in some way or another we have been able to do our own work for the maintenance of the total complex without having to hire any outside

contractors for doing any kind of work whatsoever. We do our own electrical work, our own plumbing, our own painting. We paint our own buildings. We purchased equipment for roofing.

In other words, the key to our setup was no outside contractor to the extent that we can afford to do it with our own help. We have a substantial number of help so that we have been able to use our force so that in 8 years of management, Senator, we have not had one single increase in the maintenance.

Senator CHILES. My understanding is that Point East is negotiating a fairly good management agreement with the present manager now. What are they paying the present manager?

Mr. SAMUELS. The present manager gets zero salary. I think the price is right there.

Senator CHILES. I think by congressional edict today I am going to double that salary. As of now, Ernie, we will double that to two zeros rather than one.

Mr. SAMUELS. Yes.

Additionally, my policy was that anybody who wants to help out in the office in any area of the organization also is without any salary or any compensation whatsoever. We do have a policy that no condominium owner will do any actual work for condominium unit owners. We don't allow that. We strictly are doing it by paid employees. Anybody who is a paid employee is the only one who can do any work in the condominium.

Senator CHILES. Do you have an arrangement like the hunting camp cook where, if you don't like the food, you get to be cook? If somebody does not like the way you are managing, they can take over under the same zero salary.

Mr. SAMUELS. That is right.

PEOPLE CONCERNED ABOUT EACH OTHER

Now we are able to handle our affairs very successfully in this way. We have many service and general organizations. We have 32 clubs in our condominium, Senator. Of course, as Anne so well brought out, the people are concerned about each other and they are trying to help each other when the need arises. In addition to that, we are very charitable. We have five or six charitable drives and we have been able to help all the charities locally and others very substantially in the past.

Now addressing myself to the organization itself and the reason for which it was formed, I can readily understand that everybody knows now why an organization of that kind was needed when the legislators had to be told exactly what the problems in condominiums were and they had to be told how to try to correct them. For the last 10 years we have been discussing these things with our legislators jointly and severally and we have been able, Senator, I believe, to pass laws and to pass laws right up to last year which substantially protect the condominium owners.

I believe that the Florida condominium law can be really an outstanding contribution to the whole country as a model of condominium law which is protecting the buyer in all of the areas that we felt needed protection, such as the management agreement, and even in the area of the recreational lease. Now of course we recognized that the

State supreme court said that once you enter into a contract it becomes a contract and there is nothing that we can do to change it. Last year the supreme court denied any litigation which would try to alter an existing recreational lease. All they have permitted was that the legislature having passed the law that no more escalation clauses will be permitted—they will not be permitted on the future leases, but are on the past leases.

The Senate bill which you are trying to put into law is excellent insofar as cutting both escalation clauses on leases, no matter when entered into. It is an excellent law and I am sure it will benefit many condominium owners, excepting those who have already been into these leases for the last 10 years and who have suffered already with the many escalation clauses.

Senator CHILES. Ernie, I think we have to continue to make it very clear to people that this is a bill which we hope would give the Federal courts jurisdiction in this area, but it still would have to be tested and we could not guarantee by the passage of this act that it would cut off all these future leases.

Mr. SAMUELS. That is the area which I am a little bit worried about.

COURTS MUST EXAMINE LEASES

Senator CHILES. I just want to make sure that people fully understand that the day that law is passed that does not mean all these things are gone, it means the beginning of another series of tests in the courts to see if we can get the courts to determine that these are unconscionable leases, that they should not be continued. We feel like the court would grant some relief there, but it is a future thing; it is not something that the law itself says.

Mr. SAMUELS. Of course not. You don't decide whether the law will be held constitutional or otherwise; that is for future generations to find out and that is what I am afraid of. I think that this generation will never come to the end of the litigation which might follow this law, if and when it is passed into being. In my paper I have suggested to you that you include in this law, since you are including the cutting off of the escalation as of the date of the enactment of the bill, that perhaps that could be changed to maybe 90 days thereafter, if it is possible to change it. Of course a year is, again, adding another year to the already lengthy litigations that have been in the hopper and will follow.

I would also suggest, if that can be added, that you limit any lease to 21 years instead of 99, and you say that no lease may be entered into for more than 21 years. Even if a lease was entered into, the limitation of the lease should be 21 years on past leases.

Now if you can pass a law cutting off the escalation, I think you can also pass a law making a limit on the lease 21 years. The reason I make that statement is because we all recognize, Senator, that a swimming pool or a sauna bath or anything that is built, such as even a building, can never last 99 years, and these leases call for the return of the facilities at the end of the 99-year period to the developer in the same condition as when he received them. Now, of course, nobody will be there to return it in the same condition except one or two people whom I am looking at here.

Mr. SPEIGEL. I'll be there.

Mr. SAMUELS. Of course you will.

It is a condition in my opinion which is unconscionable, to say the least. I cannot understand how anybody can lease somebody a swimming pool for 99 years and say to him: "You will return that swimming pool in the same condition to me as when you leased it and, in the meantime, you will be paying a rental on it." That is where the pool would have to be rebuilt 7 or 10 times in the 99 years. The fact is that the recreation building or any building that you put up will never be there in 99 years.

BUILDING HAS EXISTING PROBLEMS

We have a problem now in the 20 buildings that we have where the plumbing is rusting out, and the plumbing runs under the buildings in the center of the six-story structure. Now how are you going to repair those things? So far what we have been doing is, we were digging and tunneling under the buildings to fix some of the leaks that you can hear. If you listen to it with a stethoscope, you can hear the water running.

Now what is going to happen—not in 21 years, Senator, but in 3 or 4 more years? I think that all these buildings will have to be replumbed. So how can you expect a recreational facility to last for 99 years and the use of which you can condition upon the sale of a home to a buyer that is 70 years old already? I think the whole thing is a ridiculous thing and I don't think that the law should permit it, or should have permitted it to begin with. Unfortunately, that is what it is. I mean, the law is the law and the Supreme Court of Florida already said that that is all you can do. If you enter into this lease, you better live up to it.

Now I know that the unconscionability area which you are addressing yourself to also is an excellent one, provided of course, that these leases are really unconscionable. It has not been tested in the State of Florida yet. I know that Florida does have this law also. You know the Florida Legislature addressed itself to this area and said that the lease is unconscionable if it contains all the clauses that these leases do contain. Every one of them does contain a clause that the unit owners will pay all taxes and maintenance and everything. That kind of contract is unconscionable. Well, of course it is, but I hope that the courts will also hold it to be unconscionable and that they will try to reform some of it, at least to the point where these people can live with it.

I mean we are paying from an initial $221,000, next year $500,000 a year for our recreation facility and unless something is done, I think the best thing that any condominium owner can do will be to try to buy these contracts and not permit them to run for 99 years, but try to negotiate a reasonable purchase.

Senator CHILES. That is what many of the associations are doing.

COURT CASES COULD LAST FOR YEARS

Mr. SAMUELS. Many of the associations are doing that, and quite frankly we are doing it. I know that if we finalize our proposed

purchase we are going to be paying about four or five times the original cost of the facility in addition to the moneys that we have already paid for the use of the facilities. I know that many condominiums are doing it in anticipation that no law will actually affect existing contracts and I agree with you 100 percent, Senator, that there will be test cases on this for years to come which will probably end up in the Supreme Court of the United States for a decision. The final decision probably will be in the U.S. Supreme Court maybe 10 years hence. Now where these poor condominium owners will be by then I don't know. I know where I will be.

Senator CHILES. Thank you, sir.

Mr. SAMUELS. Thank you.

Senator CHILES. Both of the organizations that you represent include cooperatives as well as condominiums. Do co-op unit owners have similar concerns?

Mr. SAMUELS. Yes; they do have the same exact conditions that exist in condominiums. In many co-ops, unfortunately, the ground was leased to them only, you see—all the ground, even under the buildings. Of course, ground leases are a little worse to overcome than leases on recreational facilities which are built, because the ground leases have been made for hundreds of years or probably thousands of years—for 99 years or longer. Some of these co-ops have actually the ground under their buildings leased to them.

Senator CHILES. That is a good point. Senator Stone and I are looking at the possibility, and the chances are we are probably going to offer an amendment to the legislation to try to include co-ops.

Mr. SAMUELS. I think the Florida condominium law does include condominiums and co-ops under one heading. They do address the co-op.

WHAT IS HAPPENING NATIONALLY?

Senator CHILES. Sid, as I understand, the Condominium Co-op Executive Council has to exchange information between association executives on matters of common concern. In terms of the national scene, do you believe there is enough information exchange on condominium issues throughout the United States in spite of the fairly recent and welcome surveys by the U.S. Department of Housing in condominiums? Do we really know what is happening in this fast changing part of our housing scene across the country?

Mr. NERZIG. The only thing that we do work through is the CAI. You have Bob Rosen as your witness here today who gathers most of the information throughout the country and disseminates it through its organization to all of us, but we, ourselves, are in touch with a few of the State organizations and we exchange information.

Coming back to a few things that Ernie said here, there is one other thing that I think, Senator, we have to look at in that national piece of legislation, and that is where we have the single-family dweller, the single-family homeowner who is also living in a condominium concept where there are some portions of common ground, common elements, common payments. The bill does not address itself to that and we have to cover that also as we go along with it.

We also wanted to take the opportunity, of course, to thank the Senate for incorporating into it some of our State legislation in our

unconscionability bill—of taking five points from that and forming that into the Federal bill which, of course, you know we have been up there with you trying to move it along and get it going. With all of that, Senator, there is something else, too, that nobody has mentioned. I don't think many people have given thought that sometime in the future, and not too many years from now, we are going to hit a zero base as far as birthrate is concerned.

We have been dropping in our birthrate year after year which poses for the future a smaller working force of people than we have today. Those people will be the ones who will have to carry the brunt of the cost of maintaining whatever programs are then set up for the aging, and that is going to be a very difficult problem because, if we just take a look at England and the debt that England is in, she can never pull herself out of that because she has been on a zero base for quite a number of years. The work force is too small to be bale to produce enough products for sales throughout the world in order to help herself along. I think that we should look a bit to the future along these lines, too, so that we don't find ourselves falling into a trap in the future where any policies that we try to put out today are just going to fall apart and collapse.

Mismanagement Adversely Affects Projects

Senator Chiles. That is a good point.

In 1975 the HUD condominium study forecast that mismanagement was one of the greatest long-run threats to condominiums. Ernie, it looks like Point East is very fortunate because of your experience and background and the team that you have brought together there, but it does not appear that that is the picture everywhere. Are you aware of cases in which faulty management has already adversely affected projects?

Mr. Nerzig. Well, faulty management has been mainly amongst those who have hired outside management firms who have not fully performed what they had contracted for and then they say, well, the owners of the association offices had to break their contracts and get rid of them—some of them at great cost, some at litigation, others just managed to take the money and then fold up and disappear. That was one reason why, I think it was last year, that we passed that piece of legislation where, on appliance services, they had to be licensed and bonded in order to protect our people.

There were firms going around getting up-front money, and then within a few months closing up. We protected them along those lines and we look again to other areas that we can get into also.

Another thing that we, the organization—when I say "we," I mean the CCCE—is working on right now is a mass insurance program for the condominium owners' meaning on their association buildings and properties, casualty and liability, so that instead of going in and getting a price on a piece of property of $2 or $3 million, we are going in asking for prices on one-half a billion. We will also be able to cut out the agents' commissions which, in turn, is also going to serve and save all our members quite a bit of money. We believe that we have got something very good that we have to put to use, and that is mass pur-

chasing. As long as we stay in the organizations that we are in, we can utilize that to the benefit of all our members.

Special Corps of Administrators

Senator Chiles. Well, again one of the points that I am seeking here is that Point East was very fortunate in having some skill there on the part of their retired people who can perform that management role. That is probably not going to happen in every case, and for some it might be that the worst thing they could do is to take over themselves without the skills and ultimately run it into the ground. Have you ever thought of being in touch with the Small Business Administration, for example, to discuss whether some special corps of administrators could offer advice or help to get some skilled people that could provide some of the help that Point East seems to have, and that all of the associations would need?

Mr. Samuels. Let me tell you, Senator, what one of the major problems is when the association tries to take over the management of a condominium. Unfortunately what happens is, maybe 15 or 20 people are directors in the association, and each one of them would like to manage. You and I know, Senator, that no big business can be managed by 20 people when each 1 of the 20 thinks that he knows more than the next one and that he would do better if he was given an opportunity to really do the job.

In my meetings with many of these condominium associations, I try to explain to them that either they have to get one single person who really knows what he has to do and have him manage like a big business is managed, by someone at the top who then delegates to the various areas authority to do things—he is the one who has to be the final judge and the final jury as to what is being done and what is not going to be done. Unless that, in some way, can be brought to the attention of these people, the problems that arise are inner fights, inner battles between the directors themselves and between the so-called volunteers who are trying to do a job that they are not capable of doing or not trained to do; each one trying to outdo the other.

Now in those instances perhaps one single manager would be the solution. Slowly as they learn, I think, they come to the realization as to just what is best for them or how best they can manage. I think eventually they will handle themselves. Of course they slowly come to really know; they teach the others and they try to help themselves properly.

Alternatives to Institutional Care

Senator Chiles. As the population of elderly residents of condominiums continue to rise—of course many of them down here enter condominium life as retirees—there is going to be a growing demand for in-home services as disabilities arise. I have been concerned about this and the Special Committee on Aging has been holding hearings on what are called alternatives to institutional care—home health care, homemakers, day care, and similar services. Do you see any special difficulties or advantages in providing home services in condominiums? I address that to both of you.

Mr. SAMUELS. Are you saying for the Government to provide these in-home services?

Senator CHILES. These would be services to help persons avoid being institutionalized in a hospital or nursing home situation. I am trying to determine what you see as the alternative.

Mr. NERZIG. If something like that could be worked out, I believe that that would be a tremendous boon to us citizens of today who are going to be a lot older in years to come.

Senator CHILES. Right now, as you know, those services are not covered by medicare.

Mr. NERZIG. We know that.

Senator CHILES. But if you institutionalize the person, then it is covered for a period of days.

Mr. NERZIG. Yes.

Senator CHILES. So would we be better off having in-home services as an alternative?

Mr. SAMUELS. Much better.

Mr. NERZIG. We would be much better off because, as we understand from possibly dealing with some members of our own families, that they would much prefer to remain in their own home, regardless of what the problem is with them. How to handle them and how we can attack it is the big problem. That would help.

EFFICIENT MANAGEMENT COMPANY

Also coming back to what you said about management before, Lauderdale West started working with the management company that performed all services for them so that they did not have anybody on their own payroll. They had no payroll taxes to pay, no deductions to have to make, no bookkeeping of their own, and it wound up giving them less problems on management and it was all professionally done. These people even gave the unit owner the service—if he needed a light bulb changed and it was too much for him to climb up there to do it, they did it; if they needed a washer changed in their sink, which is supposedly their problem, they took care of it for them. That was a 100-percent fully management company and with something like that they had no problems.

Before, when Ernie was talking about having 15 and 20 different people with 15 or 20 different thoughts, that is one thing that you usually do run into. We try to start off with our new members by trying to educate them a bit in the respect that they came down here to buy their condominium and to live here, they not only bought what they had behind those doors of their unit, but they had also bought a number of partners that they had to learn to live with and to work with and the sooner they realized that and started to work together, the better off they all were. It is a matter of educating the people.

Mr. SPEIGEL. Senator, may I comment on this management question? The question you raise is very important and is near and dear to my heart. Senator, let me tell you that my good friend Ernie talks about management. They have 1,200 units. We have 100 in our co-op. We cannot afford management; the cost would be prohibitive. We can manage while they cannot. They have 30 board members and we have

5. Each organization will take care of their own problems as far as management is concerned.

Senator, I came down here in 1966. In the co-op I live in I was shocked a few weeks ago when I was told that we had 29 percent widows. These are women who live alone. They came down here with their husbands and, because of the span of life, they lose their mates and they are left alone. This prevails in many, many buildings where I have made inquiries. The percentage of widows we have today is anywhere from 25 to 30 percent. These women are lonesome; they don't know what to do with themselves. They are looking for company and they are looking for assistance when they are not well enough to get out and around. That happens to a person, particularly as we get along in these twilight years.

Health Care Centers

Now we need the health care centers. That is the thing that is most important, Senator, because I just had the experience. The choice was either to stay home for another week or spend $1,500 or $3,000 for the week at the hospital. Because I am not on medicare, they say, "Don't worry about it; the Government pays for it." I said no, I would rather be home. My doctor suggested this home health service that he sent in and they came there the first day after I got home and said, "We will come." Two days later they said it was not necessary. The nurse came in and it was wonderful. The Government saved thousands of dollars, and I was much happier because I was at home.

That is an important point, Senator, in-home health care service and social service. I know we have it for Hutchinson and that group, but they cannot cover enough of it. Maybe it is your fault. When I say "your fault," I mean the U.S. Congress, when they don't provide enough money. Maybe it is Jimmy Carter's fault he cuts the money in the wrong places.

We need bus transportation. I have been appointed by the Governor to serve on the NPO. We worked with that and, thanks to you people, the money is there, but that takes a long, long time.

You said nursing care. We don't want to go to nursing homes; we want to remain at home. This home health care would be the greatest, Senator. If you would lend your efforts—and I am sure you think well enough of it to lend your efforts to see if that can be continued or improved upon—we would all owe you a vote of thanks.

Senator Chiles. Thank you, Jack.

Home health care and home health care legislation and catastrophic health insurance are going to be major issues in the 96th Congress. While the cost of national health insurance for all of our citizens may be prohibitively expensive, amendments are needed to medicare and medicaid that would offer protection against the high cost of care for those with the long-term catastrophic illnesses. I hope that is something that the 96th Congress is going to be able to address itself to.

Our next witness is Linda Brickman, who is going to present a statement from Senator Stone. As I mentioned at the outset, Senator Stone is a cosponsor of the legislation that we are talking about, and certainly one of his major interests has been in the condominium

problem. We are delighted to have Linda here today presenting his statement.

STATEMENT OF HON. RICHARD STONE, A U.S. SENATOR FROM THE STATE OF FLORIDA, PRESENTED BY LINDA BRICKMAN, DISTRICT REPRESENTATIVE IN THE SOUTH FLORIDA AREA

Miss BRICKMAN. Good morning, Senator Chiles, Representative Dyer, Commissioner Speigel.

My name is Linda Brickman and I am Senator Stone's district representative in the Miami and south Florida area. Senator Stone's district office is located in Miami.

Senator Chiles, thank you very much for allowing me to appear at these hearings in order to present Senator Stone's testimony on condominiums and other forms of common residences for older Americans. Senator Stone regrets that he is unable to be here in person this morning and he has asked me to convey to you his deep appreciation for conducting these important hearings. As you know, Senator Stone shares your interest and concern about the quality of older Americans' lives. He intends to join with you and the other members of the Senate Special Committee on Aging in efforts aimed at relieving the problems that trouble many older Florida residents.

I shall now read Senator Stone's statement.

Senator Chiles and members of the Senate Special Committee on Aging, I appreciate this opportunity to present testimony about housing alternatives for older people and specifically about the community living arrangements that are so popular here in Florida—condominiums, cooperatives, homeowner associations—and their impact on the lives of older people who live in them.

Florida offers a wonderful warm climate for retired people which can be enjoyed the year round. This atmosphere is appealing to active individuals who want plenty of outdoor recreation and also to persons who may need a temperate climate for their health.

ATTRACTIVE LIVING ARRANGEMENTS

All Floridians want to live in comfort and have a sense of economic security. Many people purchase a condominium in order to avoid having to pay increasing monthly rents. In addition to the economic advantages of owning a home, including tax benefits and the opportunity for equity appreciation, most Florida condominiums provide amenities such as swimming pools, tennis courts, and other recreation facilities which individual buyers otherwise would be unable to afford. Also the condominium unit owner has fewer maintenance responsibilities than the owner of a conventional home. These factors all contribute to making condominium living extremely attractive for retirees in Florida.

Unfortunately, in their eagerness to settle in this wonderful environment, many people were victims of unfair sales practices. The Federal Trade Commission has received thousands of letters complaining about shoddy condominium construction and the developer's failure to honor the warranty. Public concern about such abuses was

significant enough for Congress to mandate a study by the Department of Housing and Urban Development on condominiums and cooperatives. The study identified the major problems associated with condominiums:

One: Construction was often of poor quality and purchasers were not protected by adequate warranties on their units and the common elements.

Two: Purchasers were unwittingly committed by some developers to long-term recreation leases with extremely high escalation clauses tied to cost-of-living indexes.

Three: Developers failed to pay common expense assessments on their units.

Four: Purchasers' deposits were not escrowed and were often lost if the developer went into bankruptcy.

Five: Condominium documents were too complicated and difficult for the average purchaser to understand.

Six: Tenants were displaced without sufficient notice when the rental units were converted to condominiums.

Seven: Unit owners' associations had major problems because they were not prepared to operate condominium projects.

Condominium Act Introduced

In 1977, in response to the concerns expressed by thousands of Florida condominium owners, President Carter asked the Department of Housing and Urban Development—HUD—to prepare national legislation which would eliminate the most abusive practices associated with the sale and ownership of condominiums. In the course of drafting the bill, HUD consulted with State regulators and condominium associations and developers in order to provide a proper balance. After carefully reviewing the legislation and recommending several necessary changes, the bill, which has been called the Condominium Act, was introduced in the Senate by you, Senator Chiles, and me on April 13, 1978.

I would like to highlight some of the features of the bill.

First, the bill provides for private action in Federal courts. But because we would prefer the States to regulate condominiums, there is a mechanism created that allows the Federal Government to certify State laws which guarantee equivalent or greater protection for condominium buyers. States like Florida, which have strong condominium statutes, would be certified immediately.

The bill would require full disclosure to the purchaser of all documentation and information necessary to make an informed and prudent buying decision. This information includes descriptions of the condominium, statements concerning what the developer is obligated to build, completion schedules, and purchasers' rights. Estimated budget figures for the owners' association would also be disclosed.

While disclosure of important information can help prevent consumer ripoffs, the effect of disclosure depends on the buyer's ability to understand the information and to use it.

In order to insure that buyers have time to review all the information, the bill provides a 15-day right to rescind after the purchaser

signs the sales contract or receives the disclosure information, whichever occurs later. Antifraud provisions would protect purchasers from misstatements in the disclosure, advertising, or promotional material.

The legislation would require the developer to warrant common elements of a condominium for at least 3 years and to give each purchaser a 1-year warranty on the unit. Special provisions would apply to warranties of converted condominiums. Similar disclosure and warranty requirements already are in effect in Florida and the Florida statute served largely as a model for the national legislation.

In order to provide unit owners with an opportunity to gain experience in the operation of the condominium association, the unit owners would elect a minority of directors of the association prior to the transfer of control.

Protection Against "Sweetheart" Contracts

To protect against past abuses that have arisen through the use of long-term management agreements and leases, the proposed law also provides that the association can terminate certain "sweetheart" contracts and leases which are critical to the operation of the condominium and to the unit owners' full enjoyment of their rights of ownership.

The bill also contains some retroactive changes. While the U.S. Constitution explicitly prohibits States from abridging previous contractual rights, there is no such prohibition on the Federal Government. The U.S. Department of Justice reviewed the Condominium Act before it was introduced and concluded that the bill "has no serious constitutional impediments * * *." I request that the letter from the Justice Department be printed after my statement in the hearings record.

Long-term contracts that provide for the operation, maintenance, or management of the association or property serving the unit owners, which are made between the developer, or an affiliate of the developer, and the owners' association, while the developer still controls the association, may be detrimental to the interest of the unit owners. The unit owners could terminate these self-dealing contracts without penalty by two-thirds vote of the association after they assume control of the project.

Recreation leases are the most controversial aspect of condominium ownership in Florida. Long-term recreation leases between the developer and the unit owners are not always bad. Leases often are a reasonable way to provide expensive amenities. But, in some cases, a developer may have retained the ownership of the recreational facilities and leased them to the unit owners—on a noncancelable basis—for periods as long as 99 years. The unit owners are required to pay all, or substantially all, of the operating and maintenance costs of the facilities.

The proposed legislation would make some automatic rent increases unenforceable in the future. When there is a net-net lease, and it is tied to a cost-of-living index which has no relationship to the developer's obligation under the lease, future increases would be void. These leases had to be accepted or ratified by the purchasers as a condition of purchase.

In addition, the unit owners can agree, by two-thirds vote, to seek a judicial determination that such a lease is unconscionable. The bill lists certain characteristics that the lease must have in order to bring this action, such as the fact that it had to be accepted by the purchaser as a condition of purchase. It also sets forth several standards for the court to consider in making a determination of unconscionability. These include any gross disparity between the obligations incurred and the value of the benefit derived.

State Law Challenged

The unconscionability criteria are similar to those provided in the Florida statutes. They are intended to serve as a backup in the event that the State law which is currently being challenged is ruled unconstitutional.

These provisions would apply to a lease in existence at the time the bill is enacted, but any action must be brought within 3 years of enactment.

Senator Chiles, since April when we introduced the Condominium Act, I have received thousands of letters from Floridians expressing strong support for the measure and imploring Congress to act quickly, particularly to ease the burdens of prospective recreation lease-fee increases. I have also received many constructive proposals, as I am sure you have, suggesting ways in which the bill can be improved. I am carefully considering all of these suggestions and would certainly welcome others. For example, in response to requests, I have prepared an amendment which would provide similar protections for purchasers of cooperative units. Prior to the beginning of the 96th Congress in January, I hope to sit down with you and review the Condominium Act in light of these hearings and the suggestions we have received and to make whatever changes are necessary before reintroducing the legislation.

Thank you again for this opportunity. I look forward to continuing to work with you on solutions to housing problems facing the elderly living in Florida condominiums and throughout the United States.

Senator Chiles. Without objection, the letter from the Department of Justice that was referred to will be included in the record.

[The letter follows:]

Department of Justice,
Washington, D.C., November 18, 1977.

Hon. James T. McIntyre, Jr.,
Acting Director, Office of Management and Budget, Washington, D.C.

Dear Mr. McIntyre: This is in response to your request for the views of the Department of Justice on a draft bill prepared by HUD entitled the "Condominium Consumer Protection Act."

The proposed legislation would provide for comprehensive Federal regulation of the condominium industry. The statutory scheme would create certain legal rights in the condominium unit purchaser, regardless of whether the purchase date was before or after the passage of the act. (These rights are enumerated in the "explanation and justification" accompanying the draft bill.) Additionally the bill will alter substantially the nature of the contractual relationships between condominium developers and unit purchasers and will also establish both civil and criminal enforcement powers to assure compliance with the bill's requirements. Because the bill touches upon an area not heretofore subjected to Federal regulation, and because it will affect in many cases important preexisting contractual relationships, we anticipate that its provisions will receive

close scrutiny and that questions will be raised about its constitutionality. For the reasons stated below, it is the Department's judgment that the bill has no serious constitutional impediments and that, with the modifications suggested here, the bill is desirable and should be supported.

Several constitutional questions have been addressed in the course of drafting the bill. The first question is whether Congress has the constitutional power under the commerce clause to deal with the bill's subject matter. On this question we entertain little doubt that Congress does have the requisite power to legislate. The Supreme Court has consistently accorded broad latitude to Congress' power to legislate where the subject of legislation either involves alleged misuse of the channels of interstate commerce or concerns a subject which has some discernible effect or impact upon interstate commerce. See, e.g., *Atlanta Motel* v. *United States*, 379 U.S. 241, 258 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964). For example, in *Perez* v. *United States*, 402 U.S. 146 (1971), the Court sustained the exercise of Federal power to prohibit (by criminal statute) extortionate credit transactions even though those transactions appeared to be entirely local in character. The Court pointed to congressional findings that such credit transactions had an impact on interstate commerce because they supported the operations of organized crime. *Id.* at 154–156.

In order to assure that a proper foundation for Congressional action is demonstrated it would, of course, be advisable to adduce during the hearings and deliberations on this proposed legislation evidence of the impact of condominiums on interstate commerce. To that end the Department's Lands and Natural Resources Division has suggested that:

"* * * it could be noted that advertisements for condominiums often appear in newspapers in States other than the State in which the property is located. The number of sales to persons outside of the States in which the property is located would be an additional indicia of interstate commerce. The financial arrangements for the conversion of a rental unit to a condominium form of ownership can also be explored."

Further, HUD can present evidence on the highly mobile nature of our society and how interstate travel is often critically affected by housing. We are of the opinion that congressional findings of this sort would amply support the exercise of Federal power in this area in light of the foregoing authority supporting Congress' power under the commerce clause.

A second constitutional question may arise due to the fact that several of the bill's provisions will have a retroactive effect upon existing contracts between unit purchasers and condominium developers. For example, the bill would void existing lease provisions that require unit purchasers to pay all attorneys' fees or judgments incurred by the developer in suits between that developer and the unit purchasers—section 203(b). Similarly, the bill will allow unit purchasers to set aside existing long-term contracts in which the developer has agreed to provide management or maintenance services at a time when the developer still controlled the project—section 209.[1]

The argument is frequently made that congressional action having an effect on existing contractual relations is violative of the Constitution. Where, however, Congress is legislating in an area within its appropriate functions, the Supreme Court has repeatedly upheld laws which have had retrospective consequences. The point has been articulated, in a passage from *Fleming* v. *Rhodes*, 331 U.S. 100, 107 (1945) which has often been cited, as follows:

"Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from Federal regulation is not gained through forehanded contracts."

See also *FHA* v. *The Darlington, Inc.*, 358 U.S. 84 (1958). Very recently the Supreme Court has reaffirmed the general proposition that "legislative readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectation." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976). In addition to making the retroactivity argument, opponents of the legislation can be expected to make the related argument that the legislation is violative of the fifth amendment's due process clause because it interferes with the activities of condominium developers in an arbitrary manner. There is at least some indication in the Supreme Court opinions that the standards for withstanding such a

[1] See also section 210 (f) and (g).

challenge may be more demanding where the legislative action has retroactive consequences, e.g., *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. at 17.

On the basis of the information set forth in the "explanation and justification" preceding the draft bill, and based upon our discussions of the bill with its drafters at HUD, it appears quite unlikely that a Court would conclude that any of the measures in this bill lack a rational basis. Of course, as with other possible attacks upon the constitutionality of congressional action, the likelihood of a successful defense against such an attack is heightened by a recorded legislative history which demonstrates the extent of the problems tackled by Congress and which makes plain the reasons why these particular means of resolving those problems have been selected.

We think it is also conceivable that some question might be raised about section 210(c) which states that certain condominium leases will be "presumed" to be unconscionable absent a "clear and convincing" demonstration to the contrary. Where it might be contended that the establishment of such presumptions and evidentiary rules are matters which are to be left to the judiciary, the Supreme Court has repeatedly held both that it is within the province of Congress to promulgate evidentiary rules and legislative presumptions and that those actions will only be overturned by a court if they are found to be "purely arbitrary." See, e.g., *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. at 30, 31–34; *Mobile, J. & K. C. R. Co.* v. *Turnipseed*, 219 U.S. 35, 43 (1910). As with the preceding contentions, we have little doubt that Congress' judgment can withstand constitutional challenge.[2]

In addition to the constitutional arguments there is one matter which the Department of Justice feels must be carefully reconsidered. Section 208(a) allows the Secretary of HUD to bring actions in Federal court to enjoin any activities in violation of the Condominium Act. Similarly, section 208(d) would authorize the Secretary to bring an action to enforce subpenas issued under the act. The Department of Justice feels that it is unwise to vest independent litigating authority in HUD. As you know, the Department serves as the litigating arm of the executive branch in all but a very limited number of circumstances. As you also know the President has directed that further consideration be given to the question of the centralization of litigating authority in the Department of Justice. It is my understanding that the preliminary conclusions of that study support the Department's strongly held view that litigation must be focused in the Department.

With respect to this particular legislative proposal, it should be noted that the Department has already developed considerable expertise in handling litigation arising under the related provisions of the Interstate Land Sales Registration Act, 15 U.S.C. section 1701 *et seq.*

Finally, our Land and Natural Resources Division has also recommended incorporating a provision into the draft bill which would authorize the Secretary of HUD to impose civil penalties after notice and an opportunity for a hearing on the record. Noting the limited nature of injunctive relief, and the severity of criminal sanctions, the Lands Division suggests that this provision for civil penalties could be a useful enforcement tool. This suggestion merits HUD's serious consideration.

Sincerely,

RAYMOND S. CALAMARO,
Acting Assistant Attorney General.

Senator CHILES. Thank you very much, Linda.

Tom Skulac is here representing Senator Pepper. Everybody knows that Senator Pepper has had a long and continuing interest in this area of legislation and today he is holding hearings in Washington on medi-gap, one of the great problems we have of people trying to fleece some of our elderly citizens by selling them inadequate and inap-

[2] Included in the packet of materials presented by HUD to the Department are a series of optional provisions which HUD indicates might be considered for inclusion at a later time. The third option—one which would allow renters to force the conversion of rental property to a condominium format—raises additional constitutional questions which we have discussed preliminarily with HUD but which we have not undertaken to study in detail. We have been informed that HUD does not presently intend to recommend this provision and that if the provision is to be considered the Department will, at that time, be asked to render an opinion on those constitutional questions.

propriate insurance policies. Tom, we are delighted to have you here representing Senator Pepper.

We will excuse you all. Thank you very much for your testimony and your interest in this area. If there is anything further that you have to present to us, as we said, the record will be open. We are delighted to have you here.

Mr. NERZIG. Thank you, Senator.

Mr. SAMUELS. Thank you.

Senator CHILES. I would also like to recognize Garson Meyer in our audience today who has served as a consultant to this committee. He has held many national positions in the field of aging, including the Presidential task force chairmanship. He is on the New York State Advisory Commission, and former president of the National Association of the National Council on Aging. I understand he is a winter resident in Bal Harbour. We are delighted to have him here today and we would like him to stand up so we can recognize him.

Thank you, sir. We hope you will change that winter residence to a permanent residence here in the near future.

Mr. MEYER. Under the condominium law.

Senator CHILES. Well, now that we have shown New York how to start theirs off, we will have to do that for you.

Also, Nan Hutchinson is here. She is the head of the Broward County Area Agency on Aging. She is going to be testifying at our hearing tomorrow. We are delighted to have you present here.

We will ask our next two witnesses to come up together. Bob Rosen, president, South Florida Chapter of the Community Associations Institute; and Sam Schoninger, president, Builders Association of South Florida.

STATEMENT OF ROBERT ROSEN, MIAMI, FLA., PRESIDENT, SOUTH FLORIDA CHAPTER, COMMUNITY ASSOCIATIONS INSTITUTE

Mr. ROSEN. Thank you, Mr. Chairman.

My name is Robert Rosen, president of the South Florida Chapter of Community Associations Institute, located at Dadeland Towers, Miami, Fla. I am also president of Camino Circle Condominium, and serve as secretary-treasurer of Kings Creek Village Association, Inc., a 1,610-unit planned unit development—or PUD as it is called—which is also located in the southwest section of Miami and comprised of two different condominium associations, one being 95 units and the other being 70 units; a townhouse section comprised of 234 units; a single-family home section comprised of 68 units; and 1,067 rental apartment units together with a shopping center. I also operate a management consulting firm, Rosen Management Service, Inc., which specializes in condominium and homeowner association management.

One of the biggest problems facing the purchaser of a condominium or community-type home is an understanding of what it is he is purchasing. The concept of shared amenities found in community associations is the way of our future. No longer can the vast majority of Americans, older or younger, afford to purchase a single-family home together with the upkeep and amenities desired. The only answer is housing that takes into account the conservation of resources of shared

land. Unfortunately, many purchasers have not fully realized that with the condominium and community association concept, there is also an inherent obligation for governing the shared areas. Certain covenants and deed restrictions provide for mandatory rules, regulations, and assessments for the upkeep of these common facilities. Decisionmaking is vested into an elected representative body for the care of the property and the lifestyle of its residents.

Unique Association

As a practitioner, unit owner, association leader, and management agent, I found the educational information, publications, and conferences of CAI—the Community Associations Institute—most helpful. In your letter you asked that I explain about the CAI. The CAI group, based out of Washington, D.C., is unique in that it is the only group in the country to represent all the segments of the condominium, co-op, and homeowner association industry, with membership comprised of community association leaders, builders and developers, association managers and management agents, public officials and association colleagues, including accountants, C.P.A.'s, attorneys, realtors, and other professionals.

Community Associations Institute was organized in 1973 by individuals interested in providing education and communication for those involved in community associations. Assistance was provided by the Urban Land Institute and National Association of Homebuilders with funding support from the U.S. League of Savings Associations, the Veterans' Administration, and the U.S. Department of Housing and Urban Development. Through research and education, CAI assists all automatic membership community associations in condominium and planned developments serve their purpose: To preserve the quality of life and protect property values by maintaining the common elements, operating shared facilities, and delivering community services.

CAI does not represent any one profession or interest group. Rather, it represents the process of creating and operating successful, viable community associations. The board of directors of national CAI, as well as the south Florida chapter, is divided equally among all five membership categories. This helps insure that the institute maintains a broad perspective, encourages communication and cooperation between the different groups, and receives diverse input of information on all aspects of association operation, a problem we talked about in your other panel this morning.

Lack of Understanding and Expertise

The main problem I have experienced in working with community-type associations during the past 6 years is the lack of understanding and expertise necessary in operating condominium and homeowner associations. Oftentimes the retiree who has come to Florida to relax and enjoy his later years gets elected to the board and finds himself embroiled in the day-to-day operations of a multimillion-dollar corporation. The gentleman you heard from previously and Ernie Samuels are to be congratulated in that respect. Everybody wants to put their 2 cents in, and decisions often are made as a result of who speaks the

loudest and endures the longest. Consumer education and association management operation are both necessary for the owners and operators of a condominium.

Two information booklets that would be of great help to the older American condominium purchaser or unit owner are provided at modest cost through the Washington, D.C., office of Community Associations Institute. These booklets entitled "The Homebuyer and the Community Association" and "The Homeowner and the Community Association" discuss the purchase and responsibilities of living in a condominium or planned unit development. Additional material would be helpful if either the local States or Federal Government would provide resource material easily accessible by each association.

I would like to add some additional remarks that are not in the prepared statement. Senator, as an example of you, yourself, living in two separate condominium associations, we find that America is experiencing an explosive growth in residential common interest subdivisions, condominiums, and cluster-housing communities. The extent of this growth and the suddenness with which it has occurred has been remarkable.

Growth of Cluster Housing to Continue

In 1962 there were only 500 to 600 cluster communities nationwide involving property owners' associations, and there were relatively few condominium communities at all. Today—just 16 years later—there are over 24,000 such communities housing more than 7.2 million people with annual budgets exceeding over $2 billion. This growth in condominium and cluster housing going to continue to be a major force in the residential housing market in America today. In fact, the U.S. Department of Housing and Urban Development projects that by the mid-1980's 50 percent of all new residential housing will be of this type. The growth of this form of housing has already reached over the 50-percent level in many larger metropolitan areas, and it seems to be speeding up.

Much of the attention today, however, has focused on addressing immediate needs and solving current problems. There has been little attention to the need for long-range research and analysis that would lead to new substantive directions. The state of the art has not kept up with the growth and the use of the condominium associations. There has been little effort to analytically review the experience today or to evaluate what approaches work better or could work better.

There is a pressing need for research and analysis and more careful consideration of basic association-related issues. This need must be met to assure the continued improvement in growth and techniques, and strategies for making the associations truly serve the needs of their owners and residents.

I wish to thank the members of the U.S. Senate Special Committee on Aging and those who were involved in setting up this hearing on "Condominiums and the Older Purchaser." I would be glad to answer any questions and share with you any of the material that is presently available to assist those in the condominium field.

Thank you.

Senator Chiles. Thank you.

Sam, do you have a statement that you would like to make?

STATEMENT OF SAM SCHONINGER, MIAMI, FLA., PRESIDENT, BUILDERS ASSOCIATION OF SOUTH FLORIDA

Mr. SCHONINGER. Yes, Senator. I have some formal remarks. Initially I had some written remarks but I was not pleased with them and I have not submitted them. In giving a lot of thought to this subject in today's discussion, it seemed to me that we are really concerned with what can be done for the senior citizens in the condominiums. We are agreed upon a number of things. Condominiums are the wave of the future and they are going to increase; they are a new field.

Senator CHILES. Just before you start, let me mention that we had billed, as a part of this meeting, that we were going to have a town hall segment and that would take place as soon as this panel of witnesses is over—for some of you who are wondering about the time.

Excuse me for interrupting.

Mr. SCHONINGER. I said initially I had prepared a statement but I was not pleased with it, so I destroyed it. I have come here today, and I think there are many areas of agreement. I think we are in agreement with the fact that condominiums are the wave of the future. I think this is necessitated by the fact that we are looking to conserve on maintenance. I think we are seeing more working couples today and I think this is the major factor there. I think economics is a major factor, so I think that this is the way we are heading.

I think the issue is really what can we do for the senior citizen? What can we do for the citizens of the country as well? I think the answer to that is that we can lower costs, and I think costs really fall into two categories. I think the one category is the initial purchase costs, and I think the second category is the cost of maintenance and these recreational leases that we have heard so much about today.

If we analyze the initial cost—as the president of the Builders Association, I can maybe share with you some of the thoughts that a builder goes through and that I have gone through on condominiums that I have built. There is really no secret to it. You sit down with pencil and paper and you break it down into categories: No. 1, your cost of land; No. 2, cost of building, or sticks and stones; and No. 3, the soft costs.

Now with respect to land, what can we do to lower the price of land? Well, one of the things we can do to lower the price of land is to try to stem inflation, because inflation causes the prices of land to go up.

INCREDIBLE GOVERNMENTAL REGULATION

Another area that causes prices of land to go up is incredible governmental regulation. Today, before a developer can anticipate a final product, he is maybe looking at 1 year to 2 years of various processing that he must go through with different governmental agencies and there is no way of evaluating what the market may be in 2 years. So this is something that could be done. A lot of these regulations which are on the surface really sound and seem as if we are doing a lot of

good and a lot of justice but really are disastrous because they really do increase land costs.

Another area is sticks and stones. Well, again, I don't know any way of controlling the cost of sticks and stones except by eliminating inflation, and this is a word that continually pops up. It popped up this morning frequently and we are aware of it several times a day.

The other area is the soft costs. The soft costs include such items as points to a lender, interest rates, and when you are looking at interest rates, again, that word "inflation" creeps up. When you talk about points, again the word "inflation" creeps up because these are factors which cause interest rates to go up and cause points for discounts on mortgages to go up.

Another item is legal fees. Now I have been through the Florida condominium statute prior to the last amendment. I did this for a condominium that I personally was developing and therefore deeply involved in and I could tell you that the cost of creating these instruments that you don't read is horrendous. You are looking at weeks and weeks and weeks of time if you do it legitimately, and when I say "legitimately," I mean not copying somebody else's papers but sitting down and analyzing what the problems are that are unique to this particular project and working on the papers and trying to eliminate problems that you may really have no way of predicting. They may be problems that may be 2 or 3 years down the pike. One of the ways that soft costs can be helped and lessened is by decreasing regulations instead of increasing regulations.

"Soft Costs" Must Be Figured

Another area that a developer today has to figure in his soft costs—and this is a very, very sad statement—are the costs of defending a lawsuit because there is virtually not a condominium built today that a developer does not end up in litigation. Several years ago I visited my condominium and the building inspector was there and he didn't know who I was. He said, "You know, I have not seen a building built like this in about 20 years; they just don't build this sort of thing." I thanked him but didn't say very much.

This condominium that I was involved with, as well built as it was and as well received as it was, we are involved in two different lawsuits. Now this is a cost factor in construction today and this is one of the reasons why condominium units sell for so much more per unit than a comparable apartment house because this is a factor of doing business. It really is sad.

You have to say I want to do the right thing. I want to be legitimate. I want to do the best job I can, supply the best materials. I have to figure in $500 a unit for defending a lawsuit. It really is just a sad state of affairs.

Another real problem is the paperwork. After you have gotten past the attorneys and past all the papers that are required to establish a condominium, the paperwork that you have to be involved with to satisfy the State of Florida and to satisfy your buyers and your lenders, it is just astronomical.

So these are major cost areas that things can be done with, hopefully.

In the second area of cost, once the buyer has purchased the unit—I heard a lot this morning about leases and acceleration clauses, cost-of-living clauses on leases. Well, Senator, I am here to tell you today that for the past couple of years leases are a dead issue. The buyers of today are sophisticated to the point where they will not buy new buildings with leases on them. I don't know what the statistics are, but it might be very, very interesting to find out just how many condominiums within the past 2 years have had leases on them. I think you would find that the percentage is very, very low.

Another interesting point is the cost of living. Well, we are all concerned about how much money this developer is going to make as prices accelerate because inflation is going up, but the real villain today, the villain that we are really not addressing ourselves to, is the villain of inflation. If we did not have the inflation that we have today, we would not have these problems with accelerating costs and accelerating ground leases and accelerating costs of maintenance. We would not have these problems that are facing people on fixed incomes.

Inflation: Nation's No. 1 Problem

The big problem today, in my opinion, is really inflation, and I hold Government responsible for inflation. I think if Government were to harness themselves and say, gentlemen, we are going to take a legitimate way of looking at things, we are going to look at things knowing that we are only going to spend what we take in and we have all the money for past Federal debt and we will come up with a program to pay it off, I think a lot of problems today would be eliminated and the hearings today would not be necessary if the Government would come to grips with that one problem.

As far as protection, I just would like to give two little examples of personal situations that I have been involved with. I believe, and in some instances I read it, that the proposed Federal bill contains a provision for escrowing the deposits. The Florida statute contains a provision for escrowing deposits. Now you have all heard of the developers that went broke, that took the deposits and disappeared. I can assure you it is a horrible situation to be in when you have given a substantial amount of your worth to somebody to build a building for them and they have gone. But let's not overreact; let's analyze what the problem is.

For example, let me just take my condominium. The condominium that I was involved in had, let's say, an average sales price of $30,000 a unit. At that time we were collecting a 10-percent deposit to build the unit. At that time construction financing was pushing 15 percent, but let's say construction financing is 10 percent, which we all know it is not today with the prime at 11.5 percent. Let's say an average high rise condominium takes a year and a half to build, which is not an unreasonable period of time for a high rise condominium to be built in.

If you take that $3,000 that the developer is holding as a deposit and multiply by 10 percent interest, you get $300 a year, and for 1½ years you get $450. Let's just round that out to $500 since we have come down on several other items. What this type of legislation re-

quires is that anybody who wants to protect their $3,000 deposit, using the low figure, is forced to buy a building in which the developer in essence has to go out and spend another $500 per unit to build. That $500 might be the difference between somebody being able to afford a unit and not being able to afford a unit.

Now, I am a believer that if you want something you should have the right to buy it, but unfortunately, a lot of this legislation does not allow that. I would like people to say: "Yes; I want my $3,000 held in an escrow account. I will pay $500 more for my unit." That gives the people a choice.

Now, let's just analyze from an overall point of view. If we can say that more than one out of six deposits were lost, because I am working on a ratio of $500 to $3,000—if more than one out of six deposits were lost or will be lost, then it is a great insurance, but if less than one out of six deposits will be lost and if the consumer is forced to pay an extra $500 a year, then I suggest to you maybe it is not such a good law. That is one thing I want you to think about.

Need for Legal Consultation

Another area I heard a lot about, you yourself said you were guilty about not reading your condominium instruments. Because I spent most of my time practicing law primarily in this type of area, I have had people come into my office and say, "I am considering buying a condominium and I have not signed the contract yet," which is really great because most people unfortunately will sign contracts before they consult with an attorney. I have had people come in and say: "Here is the contract. I am considering signing this contract. Here are all the instruments; I would like you to go through them." I say, "Fine; I will have it for you in a week."

They come back in a week and we would have a conference and I would tell them: "There is a problem here. In the event the building burns down, you may still be on a lease. There is a problem. If this happens, you may lose all your money." I might go down a list of maybe 12 major problems that could occur. Generally, the response to that is, "Well, you know, a lot of my friends are living there and I realize that I have all these problems, but I really want to live with my friends." This is a story that I have heard over and over again.

Now, let me just give you a little background on leases. A lot of people have come in and condemned recreational leases and leases in general. The way leasing got started was really a very interesting type of situation. This is the way I understand it. One of the original builders of the condominium said, "What I want to do is, I want to provide great living quarters for my buyers." That is as competitive a price as I can afford to build it and sell it for, and I am going to take all my profit out by leasing the land.

What happened was the condominium was built and the unit actually sold for several thousand dollars below what it would have sold for had the land not been leased, so in that sense the original concept of the lease was actually advantageous to the buyer because the buyer, instead of buying, say, a $30,000 unit, would only have to buy a $27,000 unit and was able to finance that $3,000 over 99 years. In a commercial

condominium it makes a tremendous amount of sense because in a commerical development the rent that you pay on the land lease is deductible and the rest of the year it is depreciable, but we are not here today on that.

One other thing. There is another reason why land leases are sort of dead today. There is a very serious attack on land leases by IRS which took the position that what this original fellow is trying to do was really capitalizing income that he should have picked up in the first year. As a result of that it has become a real hardship on the developer today to be involved in the project with the lease because he may be faced with paying profit, he may be faced with paying taxes on a profit that he has never received. For that reason I think that we are kicking around an old horse. I would suggest that the greatest thing that could come out of this committee would be a program which would really benefit the older citizens and that would be to eliminate the escalation problem by eliminating inflation.

Senator CHILES. Thank you.

If I could wave my magic wand and do that, I would be happy to do that.

HUD SPECIAL TASK FORCE APPOINTED

I want to mention several things with regard to your statement. One, I am tremendously concerned, as you are, with the escalating cost of housing. In that connection I serve on the Budget Committee and I held some hearings in regard to escalation of housing costs several years ago. As a result of those hearings, HUD appointed a special task force to look into reasons that housing costs were increasing, and they have recently made their report. For a bureaucratic task force report, it is very innovative and addresses some very gut issues.

As a result of that I recently held a hearing in Tampa, as you may know, to get input from all of the people concerned with supplying housing in Florida as well as buyers or consumers, concerning that report and the recommendations that were made. In addition to that, in this year's HUD authorization bill, I cosponsored, with others, several provisions which became law, one requiring the same set of application forms to be used for HUD, Farmers Home, and VA where there have been duplicatory forms in the past.

In addition, I have had an amendment, which was watered down, but even in the watered down version requires that HUD set the agenda at the beginning of the year of the regulations that they are thinking of proposing during that year and that agenda be made public so that the public will have a chance to comment on those proposed regulations. The President has now taken that proposal and put it into his overall inflation plan for all the agencies to require that annual agenda.

I certainly concur with you that there are many regulations that are duplicative because State, local, and the Federal governments are doing the same thing, and while their purpose is good, by the time the bureaucracy gets through with drawing that regulation, they are creating vast amounts of paperwork. I also have as one of my areas of jurisdiction that of paperwork, and the Paperwork Commission, so I am well involved and concerned with the reams of paperwork that are a

result of Government regulations and are a result of there being more Government activity.

While it is easy to say that if we could solve inflation, we could solve these problems and no one would be here today, I think we have to realize that that is not something we are going to do overnight. I think we also have to be realistic. I am the first to say that I think that Government is one of the great causes for inflation, and Government should live within its means. I have sponsored legislation on the tax bill—the Nunn-Chiles amendment—that would have provided for a cut in the amount of the gross national product that is represented by Federal spending, cutting that down from 22.5 percent to 19 percent within a period of 5 years. We got that adopted finally as a position of national policy but not as law, and there is a great difference there.

Many Factors Contribute to Inflation

Recognizing that and hoping that we are going to be able to balance the budget within the next 3 years, which I think is possible, it is important to remember that the Government is not the only offender in inflation. When you get international oil prices that are controlled by a cartel, that is inflationary. When we have food prices that continue to escalate, that is inflationary. So there are many other factors in addition to the Government that affect inflation.

When the demand for housing goes beyond the supply of materials, as we now see in insulation costs, for example, until the industry can gear up and produce sufficient insulation, that is inflationary. There are many other areas that we can say this, because if you have a shortage of labor supply at the time that you decide you want to build your house, and when the cost of money goes up because of the shortage, all of this is not the Government's fault but much of it is demand fault. There are many other factors that we can point out as being inflationary.

The other matter that I would like to cover with regard to your statement—I agree that much of the additional cost that is going on in building today, and especially, in condominiums, is too bad. But, in some instances, if it were not for the very greedy developers who decided they were going to make unconscionable leases to start with, who were going to take such advantages, there wouldn't be a need for so much litigation.

You get that kind of law because there are some bad eggs. You have a completely free situation, as it was when they first started building condominiums, and you have abuses, and that causes the law to be passed.

Regarding the legislation we are talking about, there are several things I want to point out. First, with regard to paperwork for Florida—I don't see this as causing any additional paperwork for Florida because Florida can be certified under this bill because of our condominium laws being what they are. They certainly cover the minimum that we are talking about in this bill, so there is not going to be additional paperwork for Florida.

Now, in regard to other States, maybe you can say that there will be some paperwork, but it seems to me you could encourage States to adopt a uniform law—and there is now uniform law floating around.

I see this as being a situation where many times we see that a proposed uniform law is very good, but it takes 50 years before all the States adopt it. I see this is a way of stopping some of this litigation because I think if some people get the feeling that they are protected, they won't be suing. I see you nodding your head. That is a judgment question.

Mr. SCHONINGER. There has been a new industry created.

Senator CHILES. Well, you may be right. You and I have been aware of that industry as lawyers, but regardless of that, I think that industry happened because so many people felt and heard that they were not protected. I think conversely if they could get the feeling that they are covered, then they would rely on that more and not be relying on litigating each of the situations. I think once this law is tested or once the uniform law was tested, then the courts are going to be much quicker in the way they handle those lawsuits. Those are just some of the kinds of comments that I have.

I do have some questions I would like to ask all of you.

IMPROVING CONDOMINIUM DESIGN

As a builder, do you have any suggestions as to how we would make condominium design more compatible with the needs of older persons? I am not speaking about such items as grip bars in the bathroom, but the general livability of the condominium units.

Mr. SCHONINGER. Yes; I think that if some committee would want to work with some builder committee and work up some marketing input—builders really are in the position, or anybody else; there is a market. They are very happy to get involved in it. If there were some kind of commitment or some kind of input to a specific market, I don't think there would be any problem getting units built.

Senator CHILES. I noticed in 1976 in the Senate hearings, the HUD Secretary at that time, Hills, testified that the lack of uniform national standards were costing developers $333 per unit in extra filing charges and legal fees to market condominiums out of State. Wouldn't a Federal bill be deflationary in this aspect if you had a requirement of that kind?

Mr. SCHONINGER. The real problem there is you are in another area, which is securities. If you could have a uniform Federal securities law that would usurp all the State securities laws, that would be a great accomplishment, but I don't think that is very likely.

One other thing I would just like to throw out, Senator, and that is you as a lawyer know the real estate law really varies from State to State and it really is a problem to enact Federal law involved in an area of real estate. California does not even have mortgages; they have deeds of trust. We have States that are title States and States that are lein States. This is another reason, talking as a lawyer rather than a builder, that I would suggest that you give some serious consideration to maybe not enacting this legislation.

Senator CHILES. Again, that is why we don't try to spell out in this legislation exactly what the standards would be but to require the certification of meeting minimum requirements so that you would be able to fit into those States. Virginia also has the deed of trust as opposed to mortgages.

Mr. ROSEN. Senator, there is one section of the Condominium Act that you started discussing a moment ago that would be a great benefit to a State like Florida, even though it has and meets many of the provisions of part of the act. There is a section in the Uniform Condominium Act, as I understand, that we provide for 6 months' work of maintenance fee payments to be coming before the first mortgage holder arrives.

What we mean by this is that in the event of a foreclosure, which would seem more and more today, normally the association loses the amount of money that the person has not paid on their maintenance payment to their homeowner association. Under the Condominium Act the rights of the first 6 months' worth of maintenance payments would be retained by the association before the first mortgage holder is paid off. In doing that, we would probably find that most of the mortgage companies—whether they be savings and loans, banks, or other mortgage companies—that would be servicing the accounts for the actual condominium unit would probably be the same as their escrow taxes and the same as they escrow some sort of insurance, in some cases.

What this will do, this will end up providing an opportunity for the association's collection of their maintenance fee payments in an easier manner. It would also provide an opportunity for the association not to lose any of the amounts of money on any of the foreclosed units that seems to be the case so much now. This would be in a Uniform Condominium Act rather than on the national association that you talk about.

FORECLOSURES INCREASING

Senator CHILES. Why are we seeing more and more foreclosures of condominiums today?

Mr. ROSEN. We are finding in some cases that the purchaser who wants to purchase a condominium or purchase a home is almost trying to get in way over his head. There are certain requirements pertaining to the mortgage requirements on approval of the financing, but we are finding more and more, it appears, as you said before, the escalation—the different costs that are involved in homeownership are just skyrocketing. It is even more than the actual tentative inflation in the other areas.

We are finding some families, especially the older American families who are living on fixed incomes, can no longer afford the increased maintenance fees together with the other costs of what we are doing. It should be avoided at all costs. But we are finding more and more in the associations that we do consulting in or the associations that we are serving in management capacities—the board seemed to be more and more faced with those who are late in the maintenance fee and having to go to legal action and tacking on those additional costs of collection for the collection of maintenance fee tenants.

Senator CHILES. Your work with the Community Association Institute leads me to ask whether you think that municipal, State, and county planners are as alert as they should be to the condominium impact. I emphasize that I don't equate condominium retirees with illnesses necessarily. Many persons, I am sure, are living longer lives and having more fun in Florida because they retired down here. And,

because of living in condominiums, they have fewer owner worries than they might have as homeowners, but there is no question that if they stay in that unit very long—and we are seeing more and more who bought their units 8 years ago, 10 years ago—that higher rates of disability are going to occur. Do you think that municipal, State, and local governments are paying the kind of attention they should as planners for that impact?

Mr. ROSEN. Increasingly they are learning what a condominium means and they are learning a lot more what the community association type is to be. This has been a long way in coming. At first I don't think anybody realized that, any of the city planners. We are finding more and more proof of CAI involvement in many of their conferences and so on. We are finding, especially in West Palm Beach where your hearings will be tomorrow, that city is very ill-prepared for the Century Village coming in.

I am sure tomorrow much of your testimony will relate to how a city copes with municipal services, with county services, in fact the State of Florida and statewide services—the impact of a whole community coming in and having to provide these community-related services. One of the members of our board and perhaps two members will be testifying before you tomorrow but one is the regulatory official of the State of Florida.

STATE SERVICES EXPANDING

I don't think that they had any realization on what the problems were and what they would need to be able to function and service the condominiums throughout the State. I think it has only been under the fine leadership of Jeff Anders who will be testifying tomorrow that the State is finally getting into trying to provide certain services to the condominium leaders and the associations of the State.

The department of real estate in California, for example, has a staff of 284 people servicing the needs of each association there. It has only been in the past year, really, that the State of Florida has doubled from their staff of 6 to a staff of 12 to service condominiums here. We have a tremendously long way to go.

In California, for example, each condominium association that is built—every developer must submit, as part of their prospectus before they are permitted to sell a unit, a detailed budget along with certain other documents which the department of real estate in California has to approve before they will even permit that project to be sold. They submit the various documents to the State which the State retains in our file, and it does not necessarily have to give approval of those particular documents.

The budgets in those cases, for example, have to be within 3 percentage points of the California published data of the condominium association. There is really a tremendous amount that could be done on a uniform basis around the country. It would certainly make for ease in understanding what minimum protections are available.

Senator CHILES. Addressing the question of concern for qualified management, what technical assistance does CAI extend to assisting

in this, and what State standards exist for policing the qualification of professional managers?

Booklets Available on Condominiums

Mr. Rosen. At the present time since 1973 CAI on a national basis has really been formed to help operate and provide assistance to those people that are involved in management of condominiums. They publish a number of booklets and I have included some of those brochures [1] in the material. There are other booklets that are provided. This has now gone to 3,000 associations around the country, called Managing a Successful Community Association, with tips on how to properly run your condominium, how to handle it. It also includes in there the different alternatives of management; that is, in the case of Point East, where Ernie mentioned early today, a self-management with a board of directors is completely responsible for the operation of the association. It also spells out the opportunities of hiring either a manager which would be a paid employee or a management agent which would be a firm that could be retained to operate the association.

Another booklet that has come out that has been very valuable is "The Financial Management of Condominiums." In fact, this was authored by one of the people in Virginia who operates many of the condominiums in the Washington, D.C., area. It is an opportunity to assist the condominiums in setting up their budgeting techniques and planning for many of the items of financial affairs.

CAI, Senator, as you are probably aware, has led the way for the congressional passing of the Tax Reform Act of 1976, the section as it pertains to condominium homeowner taxes. We are very grateful to you and Senator Stone for all the fine work done to create section 528 of the IRS Tax Code.

Basically that section 528 realized the problems where the IRS was taxing condominium and homeowner associations in a double taxation bracket; that is, the fees that they collected for maintenance fees, up until 1976 in fact, then had to be taxed on a corporate rate on those amounts that they did not expend during the course of the year. Because of that, many associations were afraid to garner up the required reserves that would be needed for the repairing and the fixing of the associations. Since 1976—and that provision was retroactive to 1973—we have had the opportunity in trying to assist condominium associations so that they do provide the additional dollars for providing for future repairs and replacements.

It will be interesting to find out—and I have not seen anything in writing yet about the bill the President signed this past month pertaining to tax relief—whether or not and how that would affect condominium associations. I am of the opinion that on that section that the President signed 4 weeks ago, if that did away with the surtax exemption rate, the amount of tax that the homeowners and condominium owners have to pay if they do not take advantage of section 528, it may be decreased.

It would be important, I think, for the condominium associations to understand if, in fact, that particular bill did cut out the additional

[1] See appendix 1, item 1, p. 65.

taxes that they had to pay on the reserves that they maintain, they would not choose to file under the 1128H form. This would certainly be a boon to the homeowner associations and the condominium associations in the State of Florida, as well as nationally, to understand those consequences.

Senator CHILES. Thank you.

Sam, as a developer, what steps do you take to assure a smooth operation of the condominium after you relinquish management control?

HOMEOWNER CONTROL OF ASSOCIATIONS

Mr. SCHONINGER. Well, one of the things we are most anxious to do is turn over control of the association to the homeowners, and generally they have their own ideas about who they want writing their insurance and who they want servicing the lawns and things like that. We don't get heavily involved in that. I have never been involved personally in a big, several-hundred-complex situation where I think you really get more into that problem of having to undertake long-term management.

Senator CHILES. I want to thank you both for appearing here today and giving us the benefit of your testimony. We appreciate your appearance.

Mr. SCHONINGER. Thank you.

Senator CHILES. We are now going to go into our town hall meeting, and I want to hear from any of you here who have statements. Before I start that, let me just say that tomorrow we will continue our hearings in West Palm Beach. We will be at the Federal building and courthouse, and we will continue to explore the problems of condominium living, and we will also take testimony on the particular bill we have been dealing with. We are also going to take testimony on the problems and potential rewards of an increasing proportion of elderly persons who live in condominiums in Palm Beach County.

One of our questions will be how the service delivery needs of this population are now being met, and how they will be met in the future when the demand is going to be even greater. Home services for people who need practical help to maintain independent living in their own quarters is also going to receive special attention.

I want to thank all of you who have made this morning's session helpful and informative, and certainly express my thanks to the city for its assistance in giving us these quarters.

We will be delighted to hear from you.

Would you come up, please?

STATEMENT OF RAY C. BURRUS, HALLANDALE, FLA.

Mr. BURRUS. Senator, gentlemen, my name is Ray C. Burrus. I am the president of a condominium association in Hallandale, Fla. Ours is one of the oldest civic associations in the city. Our association is an association of buildings, not of people individually, and therefore we figure that we represent at least a third of the population of the city of Hallandale.

The problems that have been outlined this morning have been very interesting. As I have listened to some of these people talk, I didn't

realize how bad off I've been. Fortunately or unfortunately, I have never lived in a detached house; I have always lived in an apartment, and I find it a very nice place to live and I enjoy it.

Now, some of these problems with boards of directors and internal management are amusing. I remember here a number of years ago I was president of a co-op association and a new director was elected. At the first meeting he wanted to know what my credentials were.

That leads me to another situation, Senator, that has not been touched on here this morning. Government at various levels spends a great deal of time and money to educate us through grammar school, high school, and college—to learn to live, to be useful citizens, to occupy a business, and that sort of thing. But there is no way in which people are educated to become retired. Retiring in itself is a very traumatic experience, and some of these problems that have been introduced to you today go back to the fact that people suffer from this traumatic change in their life. All of a sudden they no longer push a timeclock. They sit around a pool, they gossip, and they become involved in things that are social, without any preparation for it.

Retirement Plans Desirable

Now, fortunately there are, in this country, a number of large corporations who have taken the steps to prepare their employees for retirement, and I am sure you are familiar with some of them. Some of those organizations will call in Joe Doaks when he turns 60, maybe 55, and say: "Joe, you are going to retire in 5 or 10 years. Do you have a retirement plan?" No; they do not have a retirement plan, so they are asked to come back 5 years later.

Now, with these retirement plans, many of these sociological and financial problems that have been outlined here today very likely could be avoided. I am suggesting that we do not need social legislation to do these things, but I am suggesting that there is a possibility at the Federal level that the large corporations—and the large labor unions, as a matter of fact—should be encouraged to help their individual members prepare for this very, very traumatic experience from the day they quit punching the timeclock until they come to Florida or California or Arizona to spend the rest of their lives. It need not be that situation.

I am reminded of the fact that Nan Hutchinson, who was introduced here earlier, some 7 or 8 years ago, I think, was the first one to receive a Federal grant to do something about the aging. One of the first things she discovered was, in this country alone, there were 54 private and public organizations having something to do with the process of aging. That is a terrible waste of time and money—no organization. That can be done at the professional level and help very greatly. I would suggest to you that if you can do this without trying to shove legislation down people's throat—you can do this through the labor unions and business establishments—encourage them to be concerned about educating their employees for that other phase of life, retirement, that many of these problems may not be facing them today.

From a practical point of view, as an officer in the largest apartment house organization in this city, it seems that you legislators are using

the word "condominium" in a generic sense. As Harold Dyer will tell you, we have found here in Florida that after legislation is passed referring to condominiums, we have to urge them to go back and use the word "cooperatives," because in our association of some 70 buildings, approximately probably half of them are condominiums and half of them co-ops.

Senator CHILES. We have been finding that out.

Mr. BURRUS. That is right. So it is all right to us the word "condominium" in its generic sense, but you must realize that it includes the co-ops.

Senator CHILES. Yes.

Mr. BURRUS. Maybe something else would be a better term.

The other thing I would suggest to your committee is to dig out of the files a very interesting report prepared by HUD in 1975 or 1976 entitled "The Cost of Sprawl," which will answer a lot of the questions about the cost of housing. For example, in that report it points out that the cost imposed on Government by reason of housing people—the cost to the Government decreases as the density goes up.

Now in this community here, from the standpoint of people, you have a high-density situation. We have about 48,000 people in 4¼ square miles—over 10,000 people per square mile. There is nothing wrong with that, not a thing. We do know that the cost that Government imposes on housing result in increasing costs by not taking advantage of information that is already available to the Congress in the form of these HUD studies that show exactly the impact of housing on the community. I will suggest that your staff dig out those two little volumes and a bigger volume and see if you can't find ways and means of applying lessons there to the problem that you face.

Those are the things that I would like to mention. I appreciate your courtesy. Thank you very much.

Senator CHILES. Thank you for your appearance here.

STATEMENT OF PAUL LINZ, TAMARAC, FLA.

Mr. LINZ. My name is Paul Linz and I live in the city of Tamarac, Fla. I am a member of the board of directors of the Condominium Co-op Executive Council and past president of the Woodlands Home Owners Association, a member of its board of directors, and a member of the board of the president's council in the city of Tamarac, which represents the 35,000 people who reside there. I am on the citizens advisory committee of the areawide agency on aging, which is Nan Hutchinson's group.

I have a bit of familiarity with the problems that are being addressed here today. Mr. Nerzig made reference to the fact that the single family housing has not been included in this. Single family housing, as outlined by the gentleman from the CAI, is a type of single family housing that could be considered a horizontal condominium, whereas in Tamarac we own our own homes in fee simple.

There was no declaration of condominium. I own nothing in common with anyone, there is no common element. There is simply a deed restriction on my property imposed by the developer that requires me to pay initially $20 a month rent, then $25.66 and, as of January 1,

1979, it will go to $39.80 a month. This is for 50 years and then renewable on a 10-year basis. The same things apply as to replacing or returning the property in the same condition that we got it—certainly not by those of us who are living there because none of us will be alive.

LEASES OUTLIVE PROPERTY

An engineering study has shown that none of the buildings for which we pay rent will be in existence in 40 years because they will have deteriorated beyond repair and will have to be replaced. There is a gross inequity, and although we are not the tail of the dog, we are possibly a flea on the tail of the dog and we certainly don't intend to wag the dog. But we do think that we should be included and we were included in the Florida FTC Act as amended on July 3, 1977, I believe it was, which defined housing units. That is with respect to recreational leases wherever they might be found.

This is true also in mobile homes; that issue has not been addressed at all. People who seek relief from recreational leases with escalation clauses are people who live in condominiums, co-ops, and single-family homes with deed restrictions and also people living in mobile homes who are forced to pay recreational leases which they should not be paying.

There is a wealth of material on the effect of the continuing costs of living, the effect it is having on the citizens of Tamarac. I worked on inputs in determining the people who needed public assistance in the form of meals through the areawide agency on aging. I would not attempt nor am I privy to exact figures, but that information I am sure will be elicited from Dr. Hutchinson tomorrow in Palm Beach. I think that it will open your eyes very wide to know that more than 10 percent of the people in the city of Tamarac came down here and spent their last dollar to buy a house thinking that they would have a roof over their heads for life, but they are not able to maintain it. It is a serious social problem and one that is very saddening to those of us who are concerned with those people.

There is a great deal more that could be added. I don't want to take up any more time of this committee. I thank you for the opportunity to make this known to you. I would suggest that the definition part of both the House and Senate bill be rewritten, perhaps to include the definitions as in the Florida FTC Act and that might in itself correct this unbalance in that everyone who is being abused by rapacious landlords could get relief.

Thank you very much for your time.

Senator CHILES. Thank you for raising that problem. We will certainly look into it. I will just tell you that we will have to look at the legislation and see what that change affected. We also will have to see what effect that will have. We don't have a tremendous constituency for it now and we really only have a few States that have thought enough of condominiums to pass some comprehensive legislation, but I am glad you brought it to our attention.

Mr. LINZ. Recently in Kentucky, the Kentucky FTC Act was invoked and in a situation somewhat similar to that in Tamarac the people prevailed and the Supreme Court of the State of Kentucky did issue a cease and desist order.

Senator CHILES. Please send that information [1] to our committee.
Mr. LINZ. Yes; I will.
Senator CHILES. Yes, ma'am.

STATEMENT OF FRANCES CHAIMOWITZ, HOLLYWOOD, FLA.

Ms. CHAIMOWITZ. Thank you, Senator. My name is Frances Chaimowitz. Today I came to listen, but I have been encouraged to speak.

Aging has so many problems. Basically my job is awareness, telling the people who are aging, who are senior citizens, what it is that they can have that our country provides and, basically, if we cannot provide it for them, then perhaps we can refer them to some service that can. Physical therapy, speech therapy—things like that. Some of us do have some things that we can help deal with sometimes.

Senator CHILES. Tell me something. Is your service a profitmaking service?

Ms. CHAIMOWITZ. No; it is a nonprofit service.

Senator CHILES. Who is the sponsor of it? How is it sponsored?

Ms. CHAIMOWITZ. Would you be a little more specific?

Senator CHILES. Well, what brought it together? What is the ruling for the sponsorship of it?

Ms. CHAIMOWITZ. We have an advisory board.

Senator CHILES. It is a nonprofit corporation.

Ms. CHAIMOWITZ. Nonprofit corporation, yes, to serve the elderly. We have a homemaker service. We have a CETA grant where we provide homemakers at no cost to them. We have hospice, and hospice is to help people and their families get through their dying.

Where we cannot help people, we do our very best to utilize all available agencies so that we can get some help and just to give them something to do. There is one man who comes in to do filing, cards, and things like that. I am really glad to take just a couple of minutes because we do believe in that what you are doing and we are going to get on the mailing list and maybe we can benefit from what you are doing.

Senator CHILES. Thank you.

Yes, sir.

STATEMENT OF LEO J. COSLOW, PRESIDENT, ASSOCIATION OF MEADOWBROOK, HALLANDALE, FLA.

Mr. COSLOW. Senator Chiles, Representative Dyer, Commissioner Speigel, my name is Leo Coslow. I am the president of the Association of Meadowbrook, a complex of 22 buildings in the city of Hallandale, with 1,200 units. We were very fortunate that in June of this year we completed the purchase of a 99-year lease, so I am not here really to speak on just that alone; however, our sympathies are with the people who are still being ripped off by 99-year unconscionable leases.

Senator CHILES. What did you pay for your lease?

Mr. COSLOW. We paid 10 times the preescalated amount. Now 12 of our 22 buildings were escalated, and we worked out a deal where

[1] See app. 1, item 2, p. 67.

we not only got the deal, as I said, but we also got them their money back. We got all the escalation money back. This shows you that if you can get the proper people, the proper board of directors to work with the developers and sit down and talk to them in a reasonable manner, something can be worked out. It did in our case. I just want to encourage the others that there is the chance to buy out leases if you can only sit down with management. Unfortunately, some of the management don't want to sit down and talk to the people.

Senator CHILES. Do you think it encourages management at all that there is a possibility that maybe the Federal act is going to pass?

INFLATION IS MAJOR CONCERN

Mr. COSLOW. There is a possibility of that. Now what I am concerned about and what our people are concerned about is this. We bought out our lease and we are satisfied with that. We have a 30-year payout at a reasonable interest rate and we are paying less money for the purchase than we were paying before on a maintenance lease. The biggest problem that the people tell me—and I know, I am retired living on a fixed income. The biggest problem that is facing us is inflation, and the biggest problem of inflation is the cost of food and the cost of health care—the cost of hospital care and the cost of drugs. That is the biggest item that we are faced with. That is all they talk about, really, every day—the high cost of these items and the fact that very few doctors will accept the medicare assignments.

Now you know and I know—I have read it in the papers—that studies were made and doctors in the State of Florida, and perhaps throughout the United States, but certainly in the State of Florida, are amongst the highest income people in the State. Yet they will definitely refuse to take medicare assignments which means that most of our people who are short of funds have to make those payments. Then you know as well as I that we do not receive from medicare fast payments, or do we get the amount that we really have paid to the doctors. I feel that if you can see some relief in that way before we get a nationalized health law, which may take 10 years from now and, as Ernie said, he does not even know how long we are going to live to see whether any of it is going to be resolved. But the health care problem is really one of the most important things that is hurting the senior citizens.

Thank you very much.

Senator CHILES. Thank you.

I notice that we have Aaron Heller, the council president pro tem of the city of Lauderhill, who has asked to speak. We would be delighted to hear from Councilman Heller.

STATEMENT OF AARON HELLER, COUNCIL PRESIDENT PRO TEM, CITY OF LAUDERHILL, FLA.

Mr. HELLER. Senator Chiles, thank you very much for the opportunity to speak. Many others came forward; apparently their hands rose a little higher than mine. I was waiting my turn.

There is something we have lost sight of completely. Did we forget that there are rentals, that 50 percent of our population have rents to

confront, and have a problem with paying rents? Our city recently enacted legislation asking for stabilization of rent control, but unfortunately, it was turned down by the higher courts. The State law indicates that rent stabilization can apply when the area is affected by tornado or emergency. If we don't have any more housing, then we may have controls. This is what is implied in the State law.

My reason for coming to you is to ask that there be some Federal guidelines with regard to the fact that there are people on fixed incomes who not only own condominiums, but rent. Are these the lost population? We must seek some guideline at the Federal level to have rent stabilization where the renters and the individuals who are actually developers can speak of stabilization of rents. Our city has seen fit to pass this law and will now seek to have it amended on the State level. But we hope we get guidance from the Federal Government as to how to protect people who are renters and who are also affected by inflation.

I will get to another problem. I am generalizing. I happen to be a past president of the civic group, and I have presented papers on the medicare abuses before legislative hearings. I am a member of the Broward County Health Council. I am actually involved in the community in the health field as a consumer activist. I would like to convey and repeat most emphatically a thought that was expressed previously, and that is the question of acceptance of medicare assignments.

"Third Party" Payments

It may interest you to know that over 60 percent—I think it is between 50 and 60 percent—of medicare payments are third-party payments. It has come to my attention that there is no way where the consumer can actually protect the interests of himself, as well as the Government, from charges because there is no way in which he can check the medicare payments. I presented this point to Blue Cross and also at various consumer hearings.

The medicare form that is used and which the consumer gets back from Blue Cross indicates a number. There is no way in which this number can be identified as the procedure that has in fact been done. The consumer does not know what that number represents. If you want to protect the program, at least make certain that this information is readily available to the public so that you will know exactly what the procedure number is so that they can check it themselves.

I have another point of view with regards to the question of health care, and that is, I believe there are millions that have been expended by the Federal Government to make possible health facilities and programs for hospitals. It would appear to me that unless the Federal Government takes cognizance of the fact that the Federal Government is subsidizing private hospitals as well as public hospitals, then these institutions must also recognize its obligation to the public to provide that hospitals should accept medicare assignments and in return have their medical practitioners required to accept acceptable medicare payments.

The privilege of working in the medicare assistance program should be given to those who will accept medicare's "reasonable and acceptable

fee." This is not being done. Private practice, at the present time, has gone far afield in being able to charge fees which the average person cannot afford. So I say if he wants to be in the medicare program, then he should be obligated to accept the medicare fees. If he wants to practice as a private practitioner, then let him choose his patients from the free open sector, outside of the hospital, outside of the medicare program.

The Government should act so that those practitioners who practice in the medicare program will be the only ones permitted as long as they accept the medicare assignments. This is a strong feeling, which I subscribe to.

My last thought, if I may—there is a question of an absence of consumer participation in PSRO's. There is an absence of consumers in these committees. If you want to be able to protect the consumer's point of view, make certain that the peer review groups have consumers and make certain it is done by law and not by voluntary arrangement.

Consumer Representatives Needed

At the present time, even though the Broward County health planning councils are asking for consumer participation in the PSRO committees, none have consumer representatives. This should be done by Federal guidelines. Federal guidelines require a health planning council to consist of 51 percent consumers and 49 percent providers; yet, the peer review panels have no single representation of consumer as watchdogs. I think this is important. If these things are considered, I think you will find that the health costs will be reduced.

I will repeat, we have lost sight of the people who rent. We have instances in our city where 30 and 40 percent increases have been enacted. Every few months, increases are added. These people are lost sheep; nobody can help them, they do not have the luxury of owning their apartment. Can't we find some place where we can actually help them? I appeal to you for some sort of Federal guidelines on rent stabilization. Also, there are retirees in our particular area that can't afford the luxury of a home.

I hope I have not taken too much of your time. Thank you.

Senator Chiles. Thank you.

Our hearings today did address themselves primarily to the Condominium Act, and we are going into other acts tomorrow.

Mr. Heller. I have followed the lead of others who went off on a tangent on health problems, and I thought I might as well make it known because I don't have the luxury of running around to all the committee hearings.

Senator Chiles. Thank you.

Yes, sir.

STATEMENT OF GERARD STEVENS, FORT LAUDERDALE, FLA.

Mr. Stevens. Thank you, Senator Chiles.

My name is Gerry Stevens, and today I am representing a small condominium located in Fort Lauderdale.

I want to get back to the specifics of the tremendous problem that is being faced today by hundreds of thousands of condominium owners

that are living in some of these complexes. I have a written statement that I will be happy to leave with you.

Senator CHILES. We will put your statement in the record.

Mr. STEVENS. I just wanted to make one or two observations. It is true—and I am sure the Senator recognizes that we made tremendous strides within the last 4 years, particularly in the State of Florida, which has outlined some corrective and protective legislation—as many of the people talking here pointed out, there is a tremendous financial hardship placed upon senior citizens living in these complexes today who are living on fixed incomes.

To give you some specifics, we have a condominium of 107 units where initially the people coming down paid an average of $45,000 for their unit. But when we look realistically on the type of an agreement which they entered into, knowingly or unknowingly, they are now obligated because they are burdened with the 99-year recreation lease, of paying over $1.5 million. That is, each unit owner is responsible for a payment of $1.5 million if this escalated lease continues. They had agreed to pay the $45,000 initially, and many of them either paid cash or took out a mortgage.

Senator CHILES. Now, that $1.5 million, is that a jointly and severally held liability that they have? I am trying to understand the figure.

UNREASONABLE FINANCIAL OBLIGATION

Mr. STEVENS. $1.5 million per unit. In fact, I figured it out for my condominium. Assuming only a 5-percent cost-of-living increase, each unit owner must pay over $1.5 million. The breakdown is $1,524,429 per unit. This is their financial obligation. However, there is no way in the world that any of these people in the next few years can live up to this tremendous financial obligation.

I want to make another point here. During the entire term of the lease, the lessor, in this case one developer, will make a net profit of over $163 million on a facility that is right now assessed at $46,000. In fact, when we received our last tax bill for that facility, the condominium association paid a tax of $912 on that facility. As you are well aware, the developer is not obligated to pay any taxes, any maintenance, or to make any improvements on the recreation facility. In other words, it is a net-net lease. The recreation facility includes one small swimming pool and a shuffleboard court.

I think the observation I am making today, as a few people alluded to, is that the Federal Government will be spending thousands and millions of dollars to give to people in terms of social security or supplemental assistance. Now, one thing that we have to recognize is that every time you sit up there in Washington and you say, "Yes; let's help these people; give them an 8-percent social security increase," and you send it down to thousands of people in condominiums like these, where will the money be going? The only thing that is going to happen is that they will have to dig down into their pockets once they cash their checks and turn it over to 100 people down here, a handful of developers. So in a way the people and the Government have been duped and will not be living responsibly.

There is a need for representative government. The American system is one that believes in fairplay. Therefore, I think that a strong

effort must be made to put a law into effect that will be in the best interests of all the people concerned. The passage of Senate bill 2929 would be a good step in solving many of the problems. However, it is needed now.

I want you to recognize one other important thing that was not mentioned here today. The Federal Government does have a police power where it feels that moneys are not being properly spent in the best interests of the people. I think that we should put a halt to these kinds of operations. I want to commend Senator Chiles and his colleagues for looking into this very serious problem.

I don't think that we should hesitate to pass Senate bill 2929, since there is a tremendous need. Later, it may be challenged constitutionally, but I think that the Federal Government has this responsibility. I think the wording of the bill is of utmost importance. The wording should include a matter of public policy or a matter of police action on the part of the Federal Government. The passage of this legislation is imperative; otherwise, all our efforts may have been in vain because every time you give our friends on social security an 8-percent increase, it is just going to go into the pockets of the 100 people or so that I mentioned.

I want to thank you and tell you at this time I will be happy to answer any questions. I do have a prepared statement which I will submit to your committee.

Senator CHILES. We will include the statement in full in the record.

[The statement follows:]

PREPARED STATEMENT OF GERARD STEVENS

UNCONSCIONABLE RECREATION LEASES—BAYSHORE TOWERS, FORT LAUDERDALE, FLA.

Hundreds of thousands of people living in condominiums today are still burdened with long-term,, 99-year leases which are unconscionable. Since more than 50 percent of the American people may be living in condominiums in the next 40 years, the Federal Government should view this as a major national problem.

Many recreation lease contracts are overreaching and provide windfall profits to lessor at the expense of the unit owner. (See Bayshore Towers, Chart, "Incredible Recreation Lease Payments")

These contracts are so unfair and onesided that ultimately unit owners will lose their homes. Many unit owners who cannot afford to make the recreation lease payments are already applying for welfare and food stamps.

A unit owner never has absolute ownership of his unit since it is encumbered by a 99-year lease and all of its implications. Unit owners who fail to make lease payments are subject to a lien and foreclosure of their unit. Unit owners who prepay their lease obligation do not receive any ownership of title to the leased property. The 99-year lease is a net-net lease; unit owners pay all expenses including taxes, insurance, and maintenance on the leased area.

The sale of the condominium apartments were tied in with the recreation lease which violates the Sherman-Clay antitrust laws. These tie-in sales, in many cases, were effectuated through deceptive sales practices, concealments and voluminous documents incapable of fair disclosure to our unit owners. Why doesn't the Federal Government enforce its own laws?

At the beginning, Bayshore Towers Condominium Association was obligated to pay $89,964 base rental every year for the use of a small swimming pool and one shuffleboard court.

Since the lease payment escalates every 5 years, on May 1, 1975, it escalated to $124,037. It will escalate again on May 1, 1980.

The developer has already collected close to $800,000 in lease payments which is approximately 10 times the cost of the leased property, or a 1,000 percent return on his investment. In 1978, the assessed valuation for taxes for the leasehold area was $46,000 and Bayshore Towers paid the tax bill of $912.

The annual lease payment exceeds the total operating budget required to maintain and operate the entire condominium. Vital operating machinery and utility service lines such as water supply, booster pumps, fire pumps, emergency generator, and heating boiler are all located on the leased property.

Governmental action is needed now since these leases have escalation clauses and with inflation cause hardships beyond the economic means of fixed-income people. Hundreds of thousands of senior citizens may soon lose their homes to lien foreclosures caused by these unconscionable leases and contracts.

Protective and corrective Federal legislation is needed now. S. 2919 and H.R. 12124 may be a beginning; however, this legislation should be reviewed carefully by experts to make certain it will provide the needed relief to hundreds of thousands of condominium owners who are still burdened with long-term, 99-year recreation leases.

We trust that you will take immediate and appropriate action.

[Enclosure]

BAYSHORE TOWERS, FORT LAUDERDALE, FLA.—INCREDIBLE RECREATION LEASE PAYMENTS

(107 units)

Date	Annual rent	Total paid to date	Average unit annual rent	Average unit total rent
July 1, 1971	$89,964		$841	
May 1, 1975	124,037	$344,862	1,159	$3,223
May 1, 1980	155,046	965,047	1,449	9,019
May 1, 1985	193,807	1,740,277	1,811	16,264
May 1, 1990	242,259	2,709,312	2,264	25,320
May 1, 1995	302,824	3,920,607	2,830	36,641
May 1, 2000	378,530	5,434,727	3,538	50,792
May 1, 2005	473,162	7,327,377	4,422	68,480
May 1, 2010	591,453	9,693,187	5,528	90,590
May 1, 2015	739,316	12,650,452	6,909	118,228
May 1, 2020	924,145	16,347,032	8,640	152,776
May 1, 2065	6,885,407	135,572,312	64,350	1,267,030
May 1, 2069		163,113,740		1,524,429

NOTES

The 1978 assessed valuation for taxes for the leasehold area was $46,000 (includes 1 small swimming pool and 1 shuffleboard court).

The starting lease payment per unit averaged $69 per month. The total annual rent for 107 units was $89,964. By May 1, 2000, the lease payment per unit would escalate to $295 per month. By May 1, 2020, a unit owner would be obligated to pay $720 per month. In the last 5 years of the lease, the lease payment per unit would escalate to $5,362 per month. During the entire term of the lease (99 years), a unit owner must pay over $1,500,000 ($1,524,429). During the entire term of the lease, the lessor(s) will make a net profit of over $163,000,000 ($163,113,940).

The above moneys are exclusively recreation lease payments and do not include maintenance moneys needed to operate the condominium.

The above figures reflect a cost-of-living escalation of only 5 percent each year.

The above data should substantiate the "unconscionability" of this lease. The facts clearly indicate that this recreation-lease agreement is completely one sided and can never be fulfilled by the condominium association or the unit owners.

STATEMENT OF ARTHUR J. ROSENBERG, HALLANDALE, FLA.

Mr. ROSENBERG. Welcome to Hallandale, Senator.

I am Arthur J. Rosenberg. I am also chairman of the Broward County Council.

Senator CHILES. We thank you for letting us use the hall today.

Mr. ROSENBERG. We are happy to have you here because we realize the importance of your committee.

You are basically speaking of the older citizen in the condominium. I would like to speak about the older citizen outside the condominium. We are putting older citizens in an area which does not have the amenities for the older citizen. I think the Federal Government can be very helpful in planning grants and other grants on roadways so that we can improve the situation of the older residents in these cities of Hallendale and the other areas of south Florida.

We have tremendous road problems and we have to improve them. Once again, the planning of a community in an older condominium area is different than the planning of communities in regular areas. We need more recreational space; we need Federal grants for that, and we hope the Government will be responsible.

One gentleman spoke about rentals. Even though it is not on your program, we have had many fine people move out of the city of Hallandale because they could no longer afford to live here. The public officials, such as myself and Commissioner Speigel—there is really nothing we can do about it. If the Federal Government can do anything which will give us some teeth, or even the State government, we would appreciate it because the people are just faced with these problems. They came down here and they thought they would spend the rest of their lives in these apartments, and they are really at a loss. If there is anything you can do, we would appreciate it.

Thanks once again for coming.

Senator CHILES. Thank you, sir.

Yes, sir.

STATEMENT OF FRED ENGEL, LAUDERDALE LAKES, FLA.

Mr. ENGEL. Thank you, Senator Chiles.

There is a lot to be said about everything but there are just a couple points I want to bring out. I don't come representing any organization. I am just a plain layman, a sucker who was sucked in who wanted to buy in one of these condominiums.

My name is Fred Engel. I am a retired electrical worker. I have spent my years in the building industry and I have a pretty good background as far as building is concerned. Now I am giving that type of ability over to help our condominium out.

We have recognized three-quarters of a million dollars in building violations, but I just give that as background. There is one problem we are faced with there and that is that our developer sold our rec lease to a realty concern before we even moved into our place and we were not aware of it. Now we have already had our rec lease escalated three different times. We pay almost 75 percent more now than when we first moved in.

There is another thing I would like to bring out here. The committee is aware of this new tax district plan that people are setting up now whereby the city has a tax district set up and bonds itself and then after a certain number of years these bonds are paid off. The thing I am trying to avoid now is asking the committee to keep the condominium people, those owners—keep them from going from the frying pan into the fire. We feel this thing is a detriment and we would like to have the committee make everyone aware of that, if you please.

Thank you very much.

Senator CHILES. Thank you, sir. I think maybe that problem may be more in the State area where they have set up the authorizing legislation which allows the tax bonds, I believe, Harold. Even though that has gone under the Internal Revenue Act, I think it is the State enabling act.

Mr. DYER. Yes. Hallendale has looked at it. Sunrise is presently proposing one. It seems to be an area that has a solution depending on

the district, the size and so on, but it is a device well worth looking into.

STATEMENT OF JOSEPH H. ROSS, HALLANDALE, FLA.

Mr. Ross. I want to talk on the subject of recreation leases.

My name is Joseph Ross, I live at the Hemisphere in Hallandale.

When the people became aware that when they bought out the recreation lease they would then become a park district. It was bandied about whether it would become a public park, where everyone could utilize your facilities. Let's call it shuffleboard talk. What happens? Well, you have a board of directors that worked on this thing, we will say, for 1½ years and when people asked for answers, they didn't have them. They went to the Hallandale Council and they postponed any kind of voting on this particular thing because nobody had the answer.

When you become a park district we believe that does allow anybody to come in and use your recreation facilities because you would become a part of the city government. Does that allow anybody to come on to your recreation area and use the facilities? We have had no answer. They are still working on it. The board of directors did not come up with an alternative plan.

What rankles me is that if I buy out this recreation lease you will not have to pay the cost-of-living index increase which is due next year. The last increase was about 33⅓ percent. This increase can be over the past 5 years. Whatever the cost-of-living index is today with all the inflation, who knows—30, 40, 50 percent?

I happen to pay $55 a month for recreation, plus my maintenance fees. There are 1,300 apartments there. What the deal was—and I want to know whether it is a deal or is it a ransom—$5 million if you want us—the recreation lease owners—to eliminate the cost-of-living index increase. Remember, the people that own this lease pay no taxes, no maintenance, no nothing.

Now from a national level, is there going to be some protection or some kind of a way of when you start to dicker around for these things when you want to make a deal? Is there something? Put some people in there—put some retired judges, put some retired lawyers. Put some people in there that you can come before and present your opinion; $5 million ransom to eliminate this thing that is coming up next year. It is held over your heads.

Immediate Assistance Needed

Just one last thing and that is all of the legislation that has been passed so far has done no good. Now on the national level we will pass another law that has to go 1, 2, 3, 4, 5 years to go through the Supreme Court. There will be no people left here; they are all in their seventies. By attrition alone you are making a law that is for the next generation and I don't know whether they will love condominiums.

Thank you.

Senator Chiles. Thank you.

Mr. Speigel. Senator, I would like to clear up the record on one point that the gentleman made because I am very familiar with it when he talked about the taxing district. There is a special taxing district set up for the people who requested it by the legislature. The city authorized them to hold an election.

Now I want the record to show that the board of directors does not have the final say. There will be a regular scheduled election set up by the county board of election commissioners and the people who live in this complex will have to vote whether they want to buy out the lease or not. The power of the board of directors ceases from the day of the election. Incidentally, sir, they have received a request from the board yesterday that they want a new election date set which I put on the agenda. So you come here and express your desires and then from there on it will go back to you people who live there and you will decide whether or not you want it.

Mr. Ross. Thank you, Mr. Speigel. Will you answer as a commissioner?

Mr. SPEIGEL. This is not a national thing.

Mr. Ross. Will the people have a thing where the public or anybody who wants to can come on to the park facility? You can't answer it.

Mr. SPEIGEL. We don't intend to. That is up to the people in the building.

Mr. Ross. That has to come from the city.

Mr. SPEIGEL. That does not come from the city.

Mr. Ross. Is it legal?

Nobody answers. You want to pay $5 million without having an answer?

Mr. DYER. I think public access. There are some legal opinions that should be available to you, I am sure.

Mr. Ross. There is no legal opinion that says yes or no.

Mr. DYER. I think the city attorney should have a copy of one.

Mr. Ross. Yes; if you will provide the city attorney with an answer at that meeting one way or the other.

Mr. SPEIGEL. I am sorry, Senator. We are wasting your time.

That will be duly presented at the public hearing where all you people might come and see and get everything you want. The city commissioners only meet following the request of the people at the Hemispheres. If you want to vote against it, you come to a public hearing and we will take that into consideration.

Mr. Ross. I was just asking for an answer, Commissioner.

Mr. SPEIGEL. You will get the answer at the public hearing.

Mr. Ross. Thank you.

Senator CHILES. Yes, sir.

STATEMENT OF EDWIN GOLDSTEIN, SOCIAL SERVICE COORDINATOR, LAUDERHILL, FLA.

Mr. GOLDSTEIN. Senator Chiles, my name is Edwin Goldstein and I am a social service coordinator for the city of Lauderhill. There are people in the various other cities that hold a similar position to mine in Broward County. Now, as a social service coordinator, the city of Lauderhill has seen fit to purchase a bus and has employed four people, one of whom is paid by the city. The bus itself is paid for by city taxes and it furnishes transportation for all residents of Lauderhill, whether they be elderly or under the age of 60 or any age whatever. We provide them with the following services.

My point is that the service that we provide in Lauderhill for the residents of Lauderhill can be provided for all the residents in the

various other cities of Broward County and the services that we provide are these.

We have a service whereby all residents of Lauderhill are taken shopping on Monday, Wednesday, and Friday in the various places where shopping is necessary for these particular people.

We also provide a service whereby people are taken on Tuesday, Wednesday, and Thursday to doctors and dentists. There is no charge for any of the services that the city of Lauderhill provides for the residents of the city of Lauderhill.

We have a service whereby we take Jewish people to services on Friday night. We take gentile people to services at their request on a Saturday afternoon—that was the time that they requested. We take them every week with the bus to the particular denomination that they belong to.

We have provided all these services for the residents of the city of Lauderhill. Now as I say, I cannot understand why the other cities and the various towns in Broward County cannot provide this very same service to their residents, and it is provided not as an alternative to the areawide agency on aging, but as an assistance to the areawide agency on aging.

Now I am a former employee of the areawide agency on aging prior to becoming a social service coordinator in the city of Lauderhill and I discovered when working for areawide that they do not have the facilities that are necessary to provide these services to the many people that need them. When you call areawide and you ask for a doctor's appointment or you ask to go shopping, there is a delay of a week or two—they just don't have the facilities.

Unique Services Cited

Therefore, the various cities employing the same type of service that is employed in Lauderhill can provide a service for all their residents through the city, taxing the people and purchasing a bus and providing drivers and other facilities for these people. Now to my knowledge, Lauderhill is the only city that provides this complete unique service to the residents.

Now I am not trying to take credit for it, but when I was with areawide I saw the need for this type of service and I saw that each city would have to provide it in some way because, with all the Federal moneys that are available, it is still not possible for areawide agency on aging to provide this service in the depth which is required. Therefore, I suggested this to the city and it was picked up, fortunately, by the council and the mayor.

Rent Controls Questioned

You heard Mr. Heller speak here today. To digress for a moment as far as the rentals are concerned, I am a renter and the amount of raises that these landlords are asking for, $40 and $60 a month, are really unconscionable for people who are living on a fixed income. The decision by the judge in the particular case at the State level was that rent control does not belong in the United States, it belongs in Russia, even there only when people are living out on the street. It is hardly

the decision that a judge in this country should render. That was the decision that was rendered and the 5-percent increase that we attempted to get in Lauderhill was negated.

Now I am open to any questions. I would suggest to the Senator that it would be a good idea to contact all the social service coordinators in the various cities in Broward County and we would certainly get an excellent input into the immediate problems that are presented to the elderly people in the various cities of Broward County, including those who live in the condominiums. Every day, I would venture to say, there are 150 calls to my office alone, and yet with an office staff of four, we service approximately 2,000 people a month.

Senator CHILES. Your office does coordinate and does dovetail in with the areawide agency?

Mr. GOLDSTEIN. I was an outreach worker for a period of 3 months, and then the Federal funding ended and my job ended.

Senator CHILES. But now, as the social coordinator for the city, you still coordinate the city services with the services that are offered by the area?

Mr. GOLDSTEIN. Yes; in any instance that I cannot provide the particular service in the city, then I do not contact areawide, providing the party is over 60 years of age. Under 60, I have to look other places.

Senator CHILES. Those funds are pure city funds; they are not a grant?

Mr. GOLDSTEIN. No, I am a federally granted employee, and my assistance is——

Senator CHILES. Where does your funding come from?

Mr. GOLDSTEIN. Federally funded.

Senator CHILES. Is it CETA?

Mr. GOLDSTEIN. Yes; CETA. My assistant is CETA and the driver is CETA, but the bus and drivers' insurance and everything is paid entirely by the city of Lauderhill.

Senator CHILES. I see. Thank you very much. I appreciate your testimony.

Mr. GOLDSTEIN. You are quite welcome.

Senator CHILES. Are there other witnesses?

Then I think that we will recess our hearing. I certainly want to thank again Mayor Winkel, City Manager Aaron, and Commissioner Jack. Thank you very much for the use of the services and my thanks to the city of Hallandale. We appreciate very much the opportunity to hold our hearing here.

We will recess our hearings until tomorrow morning at 9 when we will be in the Federal Courthouse in West Palm Beach.

Mr. SPEIGEL. Senator, thank you for coming. We were glad to have you, and come again. This is your home base if you want to make it so. You are really a representative of Florida.

[Whereupon, at 1 p.m., the hearing recessed.]

APPENDIXES

APPENDIX 1

MATERIAL SUBMITTED BY WITNESSES

ITEM 1. PAMPHLET EXCERPTS SUBMITTED BY ROBERT ROSEN,[1] MIAMI, FLA., PRESIDENT, SOUTH FLORIDA CHAPTER, COMMUNITY ASSOCIATIONS INSTITUTE

WHAT IS CAI?

CAI was organized in 1973 by the Urban Land Institute and the National Association of Home Builders, with funding support from the United States League of Savings Associations, the Veterans Administration, and the U.S. Department of Housing and Urban Development.

Through research and education, CAI assists all automatic-membership community associations in condominium and planned developments serve their purpose: To preserve the quality of life and protect property values by maintaining the common elements, operating shared facilities, and delivering community services.

CAI's organizers realized that due to the tremendous growth and newness of PUI and condominium housing, there was an urgent need for a balanced, nonprofit, national organization to:

—Serve as a clearinghouse and research center for collecting, testing, and developing new and better techniques of community association organization, operation, and financial management.

—Provide a national forum for discussing the key issues in the association field and exploring new approaches to association problems.

—Focus national attention on the needs and concerns of individuals and professionals involved with community associations, and on the importance and the potential of condominium and PUD forms of home ownership to the future of housing.

CAI does not represent any one profession or interest group. Rather, it represents the process of creating and operating successful, viable community associations.

Because CAI's membership is made up of all the different interest groups in the community association field, the institution maintains a broad perspective, encourages communication and cooperation between the different groups, and receives diverse input of information on all aspects of the association operation.

The explosive proliferation of community associations—more than 24,000 at last count—reflects the economic benefits of clustered association developments in a time of rising construction and energy costs, and the suitability of such developments as an alternative to urban sprawl.

Clearly, the community association is a dimension of home ownership that is going to be around for a long time. CAI is the organization that is helping to make sure community associations today and in the future are successful.

Address: Community Associations Institute, 1832 M Street, NW., Washington, D.C. 20036.

PAMPHLET: MANAGING A SUCCESSFUL COMMUNITY ASSOCIATION: THE ROLE OF THE BOARD

Management of the association is vested in a board of directors, usually composed of five to nine members. The bylaws of the association generally provide the

[1] See statement, p. 36.

board with an opportunity to tailor the operations of the association to meet changing needs as the community grows. The degree of responsibility that must be assumed by the board of directors in a community association is much greater than that required of most volunteer workers. Basically, activities of the board of directors include the following:

(1) Providing effective physical maintenance of common areas and facilities;
(2) Establishing sound financial policy and keeping proper records;
(3) Proposing budgets and assessment rates;
(4) Approving legal action against owners who fail to pay assessments, and all other necessary legal action;
(5) Establishing, publicizing, and enforcing community rules and penalties;
(6) Selecting an auditor and, when necessary, an attorney;
(7) Employing a management agent, independent contractors or employees, and prescribing and supervising their duties;
(8) Enforcing architectural control;
(9) Appointing committees and cooperating with them in their work;
(10) Overseeing the development of recreational, social, cultural, and educational programs to meet the needs and interests of members;
(11) Procuring adequate hazard and liability insurance for common properties;
(12) Sending adequate notice of assessments and meetings requiring votes of members to all members;
(13) Bonding all officers or employees with fiscal responsibilities; and
(14) Adopting policy resolutions.
(15) Dealing with the developer on common area warranty or post-development period disputes between the developer and the association.

The size of the membership of an association will influence organizational structure. In associations with less than 50 members, the board of directors will usually handle the work of the association directly. Responsibilities for architectural control, maintenance, finance, and recreation are assigned to individual board members. The board member may involve other association members as he needs them, but he will rarely establish standing committees.

In larger associations, the development of a strong standing committee structure is essential. Each board member should be assigned the job of liaison with one or more committees. He can help the committee see its work in perspective of the total association, and he can support the committee's recommendations when they come before the board.

A system for responding to complaints is vital. Some boards require that all complaints be made in writing. This requirement decreases the frequency of complaints and increases their validity. The hearing of complaints in open board meetings has a certain therapeutic value, but the real key is prompt action.

Most boards request association members to address complaints directly to the responsible standing committee. Since the liaison board member and the committee report regularly to the board, the board will know whether prompt action is being taken.

The board must recognize problems that are within its province and reject those that are not. The board should make it clear that problems concerning inadequacy of construction or service in the individual homes are matters to be handled between the developer and the individual homeowner.

In one association, in recognition of the exceptional contributions made by the board of directors, each retiring board member is awarded a plaque by a committee within the CA. In several associations, a dinner is held for the retiring and new board members. The board of directors in one large association holds a dinner for all retiring and new committees at which time awards are made to residents who have made significant contributions of time and professional skill. These expressions of appreciation help develop a strong community spirit.

Although it is not possible in the initial organization of the board of directors, most boards soon provide a staggering of board members' terms of office to provide some continuing expertise from year to year. Members of CA boards which have not had staggered terms of office believe that valuable time and energy were lost since the entire new board went through the learning process without the benefit of the experience of at least two or three members.

A newly elected board's first action is to define the responsibilities of its officers and elect members to the office for which they best qualify. The responsibilities of the officers will vary in different community associations.

ITEM 2. COURT DECISION SUBMITTED BY PAUL LINZ,[2] TAMARAC, FLA.

[¶ 61,652] Commonwealth of Kentucky ex rel. Robert F. Stephens, attorney General v. Plainview Farms Development Corp.

State of Kentucky, Jefferson Circuit Court, Division 1. No. 234010. Dated September 6, 1977.

KENTUCKY ANTITRUST LAW

Tying arrangements—real estate development—recreational facilities—consent decree.—A Kentucky real estate developer was enjoined by a consent decree from conditioning the purchase of a residential unit, condominium or similar property upon the use of a recreational facility provided by any particular person. Use of recreational facilities as part of the common elements of a condominium project was not barred by the decree.

For plaintiff: Robert F. Stephens, attorney general, and W. Patrick Stallard, assistant attorney general, Frankfort, Ky. For defendant: Mark B. Davis, Jr., of Brown, Todd & Heyburn, Louisville, Ky.

CONSENT DECREE

McDonald, J.: The complaint having been filed herein on September 2, 1977, the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this consent decree, without trial or adjudication of any issue of fact or law herein and without this consent decree constituting evidence of or an admission by any party hereto with respect to any issue of fact or law herein:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This court has jurisdiction of the subject matter of this action and of the parties consenting hereto.

II. Definitions

As used in this consent decree:

(a) "Plainview subdivision" shall mean the property originally owned and subsequently developed by Plainview Farms Development Corporation described in three deeds which are recorded in the Jefferson County, Kentucky County Court Clerk's office on December 23, 1971, in Deed Book 4482, at pages 58, 79 and 102.

(b) "Residential unit" shall mean any single family residential lot, condominium apartment or similar property.

(c) "Person" shall mean any individual, corporation, partnership, association, firm or other legal entity.

(d) "Recreational facility" shall mean any organization, club or business offering tennis or swimming facilities.

III. Applicability

The provisions of this consent decree shall apply to the defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this consent decree by personal service or otherwise.

IV. Purchases

Upon the entry of this consent decree, the defendant is enjoined and restrained from:

(a) Conditioning, directly or indirectly, the purchase of a residential unit in Plainview subdivision upon any requirement, understanding or agreement to purchase the use of a recreational facility from any particular person, through assessment or otherwise.

[2] See statement, p. 51.

(b) Denying, directly or indirectly, sale of a residential unit in Plainview subdivision to any person by conditioning the sale upon acceptance of the use of a recreational facility provided by any particular person.

The provisions of this consent decree will not prevent the use of any real estate development methods authorized by law, including the use of recreational facilities as part of the common elements of a condominium project.

V. Notification

Within 30 days after entry of this consent decree, the defendant shall mail a copy of this consent decree to each person listed in the October 1976, Greater Louisville yellow pages under the headings "Swimming pools—Private" and "Tennis courts—Private" and shall mail to the Division of Consumer Protection a list of the persons to which a copy of this consent decree is sent.

VI.

(a) For the purpose of determining or securing compliance with this consent decree, and for no other purpose, any duly authorized representative of the department of law shall, upon written request of the attorney general, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

(1) Access, during office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this consent decree; and

(2) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers, directors, agents, partners or employees of defendant, who may have counsel present regarding such matters.

(b) For the purpose of determining or securing compliance with this consent decree, and for no other purpose, upon written request of the attorney general, defendant shall submit such reports in writing with respect to any matters contained in this consent decree as the attorney general may, from tme to time, request.

No information obtained by the means provided in ths secton VI shall be divulged by any representative of the department of law to any person except in the course of legal proceedings to enforce this decree and to which the Commonwealth of Kentucky is a party, or for the purpose of securing compliance with this consent decree, or any otherwise required by law, and no such information shall be used by the Commonwealth of Kentucky for any purpose except as provided in this section VI.

VII. Costs

Defendant shall pay the costs of this proceeding.

VIII. Public Interest

Entry of this consent decree is in the public interest.

ITEM 3.—LETTER FROM FRED ENGEL,[3] LAUDERDALE LAKES, FLA., TO SENATOR LAWTON CHILES, DATED JANUARY 2, 1979

DEAR SENATOR CHILES: I wish to thank you and your committee for sending me a transcript of my statements during the hearings in Hallandale, Fla., on November 28, 1978. I also wish to thank you for allowing me to air my views and problems, as it affects me and so many others in my circumstances.

I am not one versed in public speaking and did not prepare to give any statements, but I became incensed at the statements of the person that spoke for the developers, when he suggested that there were no new laws needed to protect the buying public because, as he stated, "most developers were out to do the right thing." I felt that if I stated my own experiences, it might act as a rebuttal to his claims.

Due to my background and experience in the building field, I was asked by our association directors to join with two others of our condo owners, one, an

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[3] See statement, p. 60.

architect, and the other, a civil engineer (all retired and licensed in other States), to investigate the faults in the constructions of our buildings, and report to them our findings. We also engaged a professional engineer, licensed in the State of Florida, who confirmed most of our findings of poor workmanship and particularly definite violations of the south Florida building code. During the past year we have gone to considerable expense replacing burnt-out electrical feeders and plumbing lines that were installed improperly. This engineer placed a dollar value to correct these defects at almost $1 million. Our suit against our developer is now in the courts for almost 2 years, with the attorneys for the developer using delaying tactics to prevent the case from coming to trial, hoping to wear us out, etc.

As to the "plan" of attempting to "rec lease" problems via the tax district idea: this, to my opinion, is just another legitimatized scheme, brought about by certain investment brokerage firms, whose primary concern is to get their profits out of getting these bonds sold, and again leaving the condo owners stew in a different kind of mess, that of having to share their rec area, which they paid for and are paying for the upkeep of, to persons who have no vested or other expense in.

I am therefore sincerely asking this committee to thoroughly investigate this plan and, as soon as possible, publicize its findings.

Wishing you and your committee continued success, I am

Very truly yours,

FRED ENGEL.

ITEM 4. LETTER FROM JOSEPH H. ROSS,[4] HALLANDALE, FLA., TO SENATOR LAWTON CHILES, DATED DECEMBER 21, 1978

DEAR SIR: Thank you for the privilege of talking before your committee when you held your session at the Hallandale City Hall. After reading my testimony, I believe it is somewhat garbled so I will add these remarks to my previous testimony.

You will agree that a 99-year lease on recreational facilities, with a monthly fee which can be raised after every 5 years using the cost-of-living index as a barometer when the cost-of-living index has no bearing on the recreation facilities use because the owner of the recreation facilities does not spend one red cent on repair or maintenance or any labor charges at all, the above is unconscionable, a ploy used by the developers of the condominiums. Yes, the purchasers of the condominiums signed the documents when they bought the apartments, but never—and I repeat, never—was it explained to the purchaser. It will soon be 10 years that I purchased a condominium. After 5 years we received a 33 percent increase in the recreation fee. Now another 5 years have passed and another increase is due, tied in with cost-of-living index, which could be 50 percent. (1975 through 1979). What was $42 per month became $55, and is now anticipated to be $80 per month.

I want to bring out the one point pertinent to my previous remarks—what happens to your senior citizen on a locked-in income? Should he live an additional 5 years, with inflation on all fronts, including food, health, clothing, and lodging. His lodging is a condominium, his maintenance rises, subject to labor and cooling, heating, light, and electric power. These are things we can see and hear and battle. These all are part of daily living, and our Government in action can and will help, but to add additional costs to the senior citizen with an unconscionable, obnoxious contract for 99 years is unfair. We simply ask our national elected officials to come to our aid. I am sorry to state our State of Florida has failed miserably.

Respectfully yours,

JOSEPH H. ROSS.

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[4] See statement, p. 61.

APPENDIX 2

MATERIAL FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER FROM SAMUEL SILBERBERG, HOLLYWOOD, FLA., TO SENATOR LAWTON CHILES, DATED DECEMBER 1, 1978

DEAR SENATOR CHILES: I have been reading, with considerable interest, about the hearings you have been conducting in our area, relative to the woes, particularly of senior citizens, as concerns the unconscionable 99-year recreation leases, which altogether too many of us are saddled with.

I appreciate the fact that you sympathize with the problem we have, but you indicate that the most reliable source of possible relief could come from the Federal courts. Our own condominium has filed suit in both State and Federal courts.

Our progress in State court has been minimal. and it has been indicated to us it may be several years before the Federal courts act on this matter. You are no doubt aware that many legal minds are of the opinion that the 99-year lease violates a clear-cut position of the Federal Trade Commission, that such leases constitute "tie-in" sales, and therefore are a violation of Federal law.

Why must it take years for the Federal courts to act on this most essential problem? It must be apparent to you and the Federal courts that senior citizens cannot wait years for possible relief. This is a most serious problem, affecting millions of hard-pressed citizens in our land, and the Federal courts should be made aware of this.

May I appeal to you to use your good offices to speed up consideration of this problem in the Federal courts before it is too late to help many of us?

Very respectfully yours,

SAMUEL SILBERBERG.

ITEM 2. LETTER FROM MAUDIE E. BLONDIN, SECRETARY, HIBISCUS HOUSE CONDOMINIUM ASSOCIATION, INC., POMPANO BEACH, FLA., TO SENATOR LAWTON CHILES, DATED DECEMBER 4, 1978

DEAR SENATOR CHILES: We have read with interest about your activities on the part of condominium owners, especially the elimination of recreation and land leases or the escalation clause.

Our 14-unit condominium on three floors has a land and/or recreation lease on approximately 6,000 square feet of land which includes the pool and parking area. In addition, a 10 x 12 foot meeting room is included. For this each apartment paid $39 a month prior to January 1, 1977. Now we are paying $55.16 due to the escalation clause. This is an approximately 42 percent increase. In 1982 we will be faced with another similar increase.

When the payment went up, we contacted the owner for a price to buy up the lease. He stuck to the contract price of $9,928 (15 times the annual rental) per apartment if anyone wanted to buy it on an individual basis or $8,500 each if all owners participated. Needless to say, we have not taken advantage of this offer.

In our judgment we have already paid more in the last six years than a realistic value for the leased property; however, it appears that we have no choice but to continue to pay. This is why we are calling on you to take whatever action is necessary to eliminate land and recreation leases or to force the lease owners to sell at a realistic value.

Respectfully submitted.

MAUDIE E. BLONDIN.

ITEM 3. RESOLUTION ADOPTED BY THE CITY COUNCIL OF LAUDERDALE LAKES, FLA., NOVEMBER 28, 1978

RESOLUTION 562

A resolution authorizing the mayor to make application for a grant of Federal funds to be used for the acquisition of passive park lands; providing that a true copy hereof shall be delivered to the Honorable Lawton Chiles, U.S. Senator; providing an effective date.

Whereas. the city council has determined through investigation and inquiry the construction of a miniwarehouse complex immediately adjacent to condominium homes of Oakland Estates would be detrimental to the safety, welfare, and property values of homeowners, and

Whereas, the proposed construction of said warehouses has caused considerable concern on the part of residents throughout the city of Lauderdale Lakes, and

Whereas, construction of said warehouses is a matter of litigation between the owner of the property and the city, and

Whereas, there exists insufficient land in the city of Lauderdale Lakes for passive park and recreation area needs of the citizenry, and

Whereas, there is an opportunity to apply for Federal funding for the purchase of land for such passive park and recreation areas,

Now, therefore, be it resolved, by the city council of the city of Lauderdale Lakes as follows:

Section 1: The mayor is authorized to make such application and take all steps necessary and proper to apply for and obtain a grant of funding for the purchase and development of lands and facilities to be used for the establishment of a passive park, such property lying adjacent to the north-of-way line of the C–13 Canal and southerly of the Oakland Estates Condominiums.

Section 2: The city clerk is authorized and directed to provide true copies hereof to the Honorable Lawton Chiles, U.S. Senator.

Section 3: This resolution shall become effective immediately upon its passage.

Adopted by the City Council of the City of Lauderdale Lakes at its regular meeting held November 28, 1978.

HOWARD CRAFT, *Mayor.*

APPENDIX 3

STATEMENTS SUBMITTED BY THE HEARING AUDIENCE

During the course of the hearing, a form was made available by the committee to those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

Dear Senator Chiles: If there had been time for everyone to speak at the hearing on "Condominiums and the Older Purchaser" in Hallandale, Fla., on November 28, 1978, I would have said:

The following replies were received:

L. E. KORDEL, DETROIT, MICH.

Thank you for your interest in this sticky subject. We own a condo in Florida and are saddled by the infernal 99-year lease—which, hopefully, can be declared illegal and killed.

E. D. MCARTHUR, BOYNTON BEACH, FLA.

In your investigation of oppressive rentals and recreation leases in condominiums, please do not forget that thousands of us who live in single-family housing developments or PUD's, as they are known, suffer from these same unbearable lease contracts. My home in Leisureville, Boynton Beach, Fla., is typical, there will be 3,000 houses subject to the same lease escalation every 5 years. Most of us signed these contracts without every having seem them and not knowing what we were getting into.

We believe all escalation clauses, no matter how old, should be canceled.

MRS. HARRY PROJANSKY, NORTH MIAMI BEACH, FLA.

(1) Boards of directors of condominiums internally that rip-off condo owners and the inability of people to defend themselves. Misrepresentation, concealment of terms of contracts entered into.

(2) "Cronyism" building up an inner circle of individuals to assure control, and barring others not in accord.

(3) Manipulation of election procedures—Proxies.

(4) Being "assessment happy" for the glory of controlling large sums of money.

Senator Chiles, I had written to you many times, concerning the 99-year recreation lease and the escalation clause.

I am vice president of the Condominium Owners & Co-Op's Association Inc., North Miami Beach, Fla.

It seems that the senior citizens who have not bought their recreation leases as yet have nothing to look forward to regarding having the recreation lease abolished.

Please advise me. I, too, can secure many votes.

HELEN M. RESZEL, NORTH MIAMI BEACH, FLA.

Ninety-nine year leases have been in effect for businesses for many years; however, condominium residences are not businesses so why were developers

allowed to use a business lease for a residence which does not make a dime throughout the years of operation? For instance, a liquor lounge which makes millions of dollars selling booze each year can afford the escalation of rental property and, therefore, one can understand such lease is in effect for money-making businesses—but a residence? No way!

Why doesn't someone in Washington, D.C., explore this avenue and have 99-year leases abolished for condos on this technicality, especially where we pay all expenses on developer's property.

And, not only that, but the purchase of recreation lease property for $3½ million from developers certainly can't be considered common expense but is a capital expenditure and should be divided equally between unit owners. Write that, too, into the law, will you please, Senator?

Thank you for this opportunity to write to you.

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RETIREMENT, WORK, AND LIFELONG LEARNING

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 4—WASHINGTON, D.C.
National Organizations

SEPTEMBER 8, 1978

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Retirement, Work, and Lifelong Learning:
Part 1. Washington, D.C., July 17, 1978.
Part 2. Washington, D.C., July 18, 1978.
Part 3. Washington, D.C., July 19, 1978.
Part 4, Washington, D.C., September 8, 1978.

CONTENTS

Page

Opening statement by Senator Frank Church, chairman 219

CHRONOLOGICAL LIST OF WITNESSES

Ahrens, Robert J., board member, National Council on the Aging, Inc., and director, Mayor's Office for Senior Citizens and Handicapped, Chicago, Ill 221
Brickfield, Cyril F., executive director, National Retired Teachers Association/American Association of Retired Persons, accompanied by Jim Hacking, legislative representative 236
Danstedt, Rudolph T., assistant to the president, National Council of Senior Citizens, accompanied by Betty Dustin and Lou Ravin 279
Forman, Dr. Bernard I., Washington, D.C., representative, National Gray Panthers 288
Lacayo, Carmela G., executive director, Asociacion Nacional Pro Personas Mayores 291
Merin, Charles L., legislative representative, National Association of Retired Federal Employees 293
Seltzer, Dr. Mildred M., president-elect, Association for Gerontology in Higher Education 296
Davis, Dolores, executive director, National Caucus on the Black Aged, Inc 305
Kaskowitz, Ed, executive director, Gerontology Society 317
Blakeley, Anne E., liaison assistant, National Indian Council on Aging 321
Brotman, Herman, consultant, Senate Special Committee on Aging 327

APPENDIXES

Appendix 1. Material related to hearing:
Item 1. History of general revenue financing for a portion of the cost of the social security system; submitted by National Retired Teachers Association/American Association of Retired Persons 335
Item 2. Mandating coverage under social security for employee groups not presently covered; submitted by National Retired Teachers Association/American Association of Retired Persons 337
Item 3. Problems with State constitutional and statutory provisions resulting from mandatory social security coverage of State and local employees; submitted by National Retired Teachers Association/American Association of Retired Persons 340
Item 4. "The Retirement Test in Social Security," by Nelson H. Cruikshank, president, National Council of Senior Citizens, Inc 342
Item 5. Letter and enclosure from Anne E. Blakeley, liaison assistant, National Indian Council on Aging, Inc., to William E. Oriol, staff director, Senate Special Committee on Aging, dated Sept. 1, 1978 348
Item 6. Statement of Larry Curley, liaison specialist, National Indian Council on Aging 352
Item 7. Statement of John F. McClelland, president, National Association of Retired Federal Employees, before the Labor Subcommittee, U.S. Senate Committee on Human Resources, on the elimination of mandatory retirement, July 26, 1977; submitted by Charles L. Merin 355

Item 8. Statement of Robert M. Beers, vice president, National Association of Retired Federal Employees, before the Subcommittee on Retirement Income and Employment, U.S. House Select Committee on Aging, concerning alternatives to retirement, June 15, 1977; submitted by Charles L. Merin ..... Page 357

Item 9. Statement of the National Association of Retired Federal Employees before the Committee on Government Operations, U.S. House of Representatives, on H.R. 12438, May 10, 1978; submitted by Charles L. Merin 358

Appendix 2. Newspaper articles relating to hearing:

Item 1. "Longevity Imperils Early Retirement," from the Idaho Statesman, July 24, 1978 360

Item 2. "A Fast-Growing Population," from the New York Times, July 30, 1978 361

Item 3. " 'Senior Boom' Outlook Considered by Senate," from the National Council of Senior Citizens' Senior Citizens News, September 1978 363

RETIREMENT, WORK, AND LIFELONG LEARNING

FRIDAY, SEPTEMBER 8, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 5110, Dirksen Senate Office Building, Hon. Frank Church (chairman) presiding.

Present: Senator Church.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Garry V. Wenske, assistant counsel for operations; Letitia Chambers, minority staff director; David A. Rust and Jeffrey R. Lewis, minority professional staff members; Marjorie J. Finney, operations assistant; Kaye English, information assistant; and Eugene R. Cummings, printing assistant.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. The hearing will please come to order.

Our hearing today has an unusual format because our committee has an unusual subject, or group of subjects, before it.

We began to look into "Retirement, Work, and Lifelong Learning" in July, with 3 days of hearings at which two Cabinet members and other notable witnesses testified.

As I explained at that time, one of our purposes was to make the point that each of our three major themes is receiving growing attention, but usually on an individual basis.

We hear a great deal, for example, about pension problems, but very little is done in the way of relating them to work force issues.

Another example: This committee has given a great deal of attention over the years to older worker problems of various kinds, and we have been concerned about educational opportunity throughout the lifespan during the later years. But we haven't usually thought of these subjects together, and we should.

At our hearings in July we heard several recurring themes:

That we are ill-prepared, in terms of public policy and private sector response, for the vast changes that can be expected with the increase in the proportions of older persons in our population along with a decrease in the percentage of younger persons within traditional labor force limits.

That we have no real national retirement policy; we have many resources of income for life in the later years, but none—including social security—generally does the entire job. We have to think more clearly about the appropriate "mix" of social security and other sources of retirement income.

That we fail to fully recognize the economic and social consequences of earlier and earlier retirement, now and even more so in the future.

That the forthcoming total abolition of mandatory retirement will cause stubborn work-related questions— such as retraining to combat job skill obsolescence—to emerge with new clarity and urgency.

And that, finally, the challenges ahead, while at times boggling, are nevertheless rich in promise of success, if we keep our heads and if we also challenge past habits of thought and action.

I have several articles which discuss these and other points made at our earlier hearing and these articles will be inserted at an appropriate place in this hearing.[1]

To follow up on our 3 days of theme-setting hearings, we asked representatives of national organizations directly related to aging to be here with us today.

We asked them to comment on past testimony and give new ideas and suggestions. Their statements, presented in advance of this hearing, are rich in information, concern, and I myself assure you all that the committee intends to give them careful consideration. The staff will analyze these statements and the committee will address itself to them as we look for answers to the various questions I have raised.

These statements agree as to the magnitude of the many tasks to be done as our population continues to "age."

They are particularly helpful in providing examples of positive actions and attitudes which are already challenging older patterns.

Minority Group Concerns

Minority group members, so many of whom do not live to traditional retirement age, receive special attention, and deservedly so. No discussion of the issues before this committee would be complete without such attention, at this hearing and in our future sessions and studies.

Fresh thinking abounds in the papers we have received, and each will become part of our hearing record. I would like to thank each organization for once again making a substantial contribution to this committee's work.

To make the most of what we have already received, and to further tap the sources of such help, we will go directly into roundtable discussion this morning with questions prompted by the material which we have received. Our witnesses understand our format and the reasons for it and, I believe, have expressed enthusiasm for this sort of brainstorming approach.

I'll begin by asking a general question or two and I will follow up with other questions, but I would hope that in the morning's discussion we could have a good deal of give and take, and statements made by the panelists would provoke questions from other panelists so that this becomes a real panel discussion rather than an interrogation by the chairman of the committee.

What impact, if any, will the change in the mandatory retirement age from 65 to 70 for most workers in the private sector have on their retirement decisions? Do you believe that this legislation enacted by the Congress during the present session will have the effect of reversing the present trend toward earlier and earlier retirement?

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[1] See appendix 2, page 360.

I would also like to raise one further question which is connected with my general question. How do you explain the seemingly contradictory trends which are now occurring—people are living longer, yet they are retiring earlier?

Those two questions ought to suffice for starters and we will proceed from there.

Those participating this morning are:

Robert J. Ahrens, board member, National Council on the Aging; and director, Chicago Mayor's Office for Senior Citizens and Handicapped.

Anne E. Blakeley, liaison assistant, National Indian Council on Aging.

Cyril F. Brickfield, executive director, National Retired Teachers Association/American Association of Retired Persons; accompanied by Jim Hacking, legislative representative.

Rudolph T. Danstedt, assistant to the President, National Council of Senior Citizens; accompanied by Betty Duskin and Lou Ravin.

Dolores Davis, executive director, National Caucus on the Black Aged, Inc.

Dr. Bernard I. Forman, Washington, D.C., representative for the Gray Panthers.

Ed Kaskowitz, executive director, Gerongological Society.

Carmela G. Lacayo, executive director, Asociacion Nacional Pro Personas Mayores.

Charles L. Merin, legislative representative, National Association of Retired Federal Employees.

Dr. Mildred Seltzer, president-elect, Association for Gerontology in Higher Education.

Before we begin our roundtable discussion, I will ask that each organization represented here to give their prepared statements.

STATEMENT OF ROBERT J. AHRENS, BOARD MEMBER, NATIONAL COUNCIL ON THE AGING, INC., AND DIRECTOR, MAYOR'S OFFICE FOR SENIOR CITIZENS AND HANDICAPPED, CHICAGO, ILL.

Mr. AHRENS. The National Council on the Aging—NCOA—is a private nonprofit organization which provides leadership and guidance in the development of services for older persons in numerous communities across the country. For 28 years, NCOA has been a resource at national, State, and local levels for planning, information and service to those areas affecting older citizens. Through its various programs it reaches one of the largest networks of practitioners in aging outside of the Federal system of State and area agencies on aging. Its membership consists of individuals and organizations throughout the country who serve the elderly.

The largest division within NCOA is the Institute for Age, Work and Retirement. It provides particular services, technical assistance and training to and for business, labor, public and private agencies, Government and universities on the problems and potential of working Americans aged 40 and over. Within the Institute of Age, Work and Retirement there are four main units.

The Senior Community Service Project—SCSP

The largest program, SCSP, was initiated in 1968 as a part-time employment program for economically disadvantaged older people. It has since been expanded several times under title IX of the Older Americans Act. SCSP has given hope to thousands of low-income individuals aged 55 and over who need to supplement an inadequate retirement income. More than 4,000 older men and women are employed by public and private nonprofit agencies in 50 NCOA participating communities.

Through the development of challenging and innovative jobs, SCSP has prepared the way for many older people to reenter the mainstream of the work force. In the first half of 1978, 31 percent of those who terminated from the program obtained unsubsidized employment. SCSP promotes self-help, not dependency.

Another smaller NCOA program similar to SCSP is ESTEEM—expanded services through experienced elderly manpower. In 1976, it was funded by title X of the Economic Development Act to promote job opportunities for older workers trapped in areas with consistently high unemployment. NCOA has continued to operate the program in five States for 300 to 400 older workers. Funding now comes from title III of CETA, but is in danger of being terminated at the end of this quarter, despite ESTEEM's financial benefits to enrollees and its benefit to deprived communities.

The Retirement Planning Program

NCOA, in cooperation with a consortium of nine major corporations and four large unions, initiated the retirement planning project to address the need for effective early retirement planning. The program is developing a comprehensive, innovative approach to encourage and assist employees and their spouses to anticipate and plan for retirement. Consortium members are actively participating in the design, development, and testing of multimedia interactive training modules.

The NCOA industry consortium development program, with its stress on current research, the pooled experience of consortium members and systematic development, seeks to help meet a growing need and to package a new, improved approach to preparing employees for retirement. The training package will be offered to industry, labor, colleges, and community agencies to serve a cross-section of working men and working women as they approach retirement.

Aging and Work, a Journal on Age, and Retirement (Formerly Industrial Gerontology)

As part of its efforts to promote a better understanding of the potential contributions of the middle-aged and older worker, the Institute on Age, Work and Retirement publishes a unique quarterly journal, Aging and Work. During the past 10 years it has examined issues of work, income, age, and covered a wide range of topics: age discrimination in employment, job performance, satisfaction and motivation, pensions, retirement, second careers, women in the work force, etc. Outstanding authorities on those subjects in industry, Government, and the academic community are contributors. The

U.S. Department of Labor recognizes the value and usefulness of Aging and Work. It is a major subscriber, distributing copies to its offices throughout the country, to CETA prime sponsors and title IX programs.

National Association of Older Worker Employment Services

Recognizing the need for specialized employment services and opportunities for older workers, NCOA has pioneered an effort to bring both the public and private agencies serving the 40-plus worker together in a national coordinating effort: The National Association of Older Worker Employment Services. This new NCOA affiliate has several goals:

To draw interested older employment service agencies into the larger network of services for older people.

To gather materials from member agencies, both public and private, which will be of value to other members in initiating or conducting their programs.

To provide backup information and support for newly constituted older worker agencies in establishing broad programs to serve the older worker.

To approach large employers, on a national scale, regarding the utilization of older workers and to seek their support for more flexible employment and retirement practices.

The National Council on the Aging is pleased to be among the participants in this forum to review the role of older workers in a changing, "graying" society. The statistics and demographic predictions set forth by Secretaries Califano and Marshall and by the distinguished experts who preceded NCOA's appearance confirm our belief that society's attitudes toward older workers must change radically if we are to be prepared for the future.

Foreseeable Trends

To review briefly and pessimistically, we may expect within a few decades:

A rapidly increasing older population, expected to constitute about 15 percent of the total U.S. population in the year 2020.

Unless declining labor force participation rates are reversed, an older population more and more dependent on social security, private pensions, or welfare supplements to survive.

A dangerously skewed ratio between the working and retired population which could threaten the stability of social security and other retirement assistance programs which are supported by employee tax revenues.

A fragile public and private pension system which, judging from the current degree of unfunded pension liabilities, may collapse under the pressures of a large retirement population.

We do not state these possibilities in such alarming terms just to despair over the future. We agree with Secretary Marshall that the societal pressures which these factors could trigger would, indeed, reverse our attitudes toward older workers. Within 50 years, it is projected that there will be fewer than two workers for each social

security recipient. The young then may want to push retirees back to work so that the elderly will be paying into the various retirement systems rather than drawing money out. Society could again force itself between the older person and self-determination—this time to punish the older person for retiring rather than forcing retirement upon him. However, we could avoid such overreactions by acting now to encourage older workers to remain in or return to the labor force.

Focusing on future probabilities helps to define certain problems, but it too often misleads us into waiting for the future to solve itself. We do not have to wait until the turn of the century to see the toll of our "having been so profligate with the talents of older workers," as Senator Church so aptly put it. The consequences of early retirement—whether voluntary or forced by age bias—are with us now.

The economic effects of early retirement can be devastating. The majority of persons who leave the labor force prior to age 65 have no private pensions to protect their future financial security. Of men retiring in the first half of 1975, half had no private pensions. Early retirement—before age 65—requires older persons to apply for social security benefits at reduced levels. The ensuing consequence is actuarially reduced benefits throughout the remainder of one's life. Yet, in 1970, more than two-thirds of women workers and over half of men claimed reduced benefits.

It is true that many workers look forward to retirement and appreciate company policies that allow early retirement at minimally reduced pension benefit levels. But, it is not true that all older workers enjoy being "put out to pasture," nor should they. Consider the fact that, on the average in 1974, a man reaching his 65th birthday could expect to live 13.4 years longer; a woman, 17.5 years. Over the years, those who retired on seemingly adequate pension and social security benefits will see their purchasing power diminish as the cost of living climbs. Congress wisely tried to compensate for this income erosion by enacting automatic cost-of-living increases in social security benefits, but not all retirees could be protected from poverty. As this committee has noted, in 1975, approximately 3.3 million elderly lived in poverty; many of them impoverished for the first time because of the dramatic one-half to two-thirds reduction in income caused by retirement.

Attitudes Toward Work

Results from the 1974 NCOA/Louis Harris survey of public attitudes toward aging document the older population's desire and economic need to work:

Of the respondents aged 55 to 64, 14 percent of the females and 5 percent of the males considered themselves unemployed. Yet, comparable Government figures for the 55-to-64 group in this same period were reported as only 3 percent for females and slightly over 2 percent for males;

Four million survey respondents over 65 who were unemployed or retired wanted to work; 43 percent of those over 65 with incomes below $3,000 who were not working desired jobs;

Fifty percent of black respondents over 65 who were unemployed wanted to work; older black respondents were most likely to be poor

and to need work: 57 percent had incomes below $3,000 a year compared to only 23 percent of older white respondents; and

Tragically, there was a larger proportion of forced retirements among respondents with low incomes and with less than high school educations—those least likely to have adequate retirement benefits and least likely to be rehired.

Those who are forced to retire early often do so under the worst of circumstances. Work-related problems often become more severe for older adults because of the age discrimination inherent in American society. The recent economic recession severely affected the employment status of older workers; the unemployment rate for those over 55 more than doubled during 1974 and has only very slowly begun to decrease. Once out of a job, the older worker traditionally has a more difficult time finding a new one. Too often, he is forced into early retirement after months and sometimes years of job searching.

This situation is not revealed in the official unemployment statistics which record only those actively seeking work during a certain period. NCOA has stressed a number of times that these figures do not include thousands of "discouraged" workers who give up on finding work, remain unemployed, but are considered to be outside the labor force. It is older workers who are most likely to be hidden in this group. During the first quarter of 1978, for example, workers aged 55 and above constituted 14.7 percent of the civilian labor force and 15.2 percent of the employed, but 32.5 percent of the total number who were classified as discouraged.

The statistics regarding duration of unemployment also support the contention that older workers are likely to become "discouraged workers" once unemployed. The two are interrelated: The long duration of unemployment for the older worker can lead directly to the "discouraged" status. The average mean duration of unemployment in 1977 increased with age: For those aged 16 to 19, it was 8.9 weeks; those 25 to 34, 15.3 weeks; those 45 to 54, 19.3 weeks; those 65 and older, 22.6 weeks.

It is important here to note that in a recent study of the supplemental Federal unemployment insurance benefits, most of the people who had used their maximum benefits and who subsequently dropped out of the labor force were 45 years and over—70 percent were age 45 and over, and 45 percent were 55 and over. It appears from this study that the older the individual, the greater the chance that he/she will have used all entitled employment insurance and still be unemployed or out of the labor force once all benefits have expired. This increases the pressures for many older jobseekers to elect pension and social security benefits prematurely, at reduced levels. Furthermore, the prolonged periods of unemployment which precede this forced early retirement can easily result in the depletion of any accumulated savings.

Regrets About Retirement

Even when early retirement is voluntary, brought on as a result of liberal pension plans, more and more retirees may regret their decision. The overwhelming majority of private pension plans pay fixed retirement benefits, with no provision for adjustment due to inflation.

If inflation averages 7 percent a year, the purchasing power of fixed pensions will be reduced by 50 percent in 10 years. For example, a fixed retirement income of $200 a month will be worth about $100 a month in 10 years and about $50 a month in 20 years if inflation is 7 percent a year.

Employees typically are not informed about the impact that inflation will have on the purchasing power of their private pensions. A pension that seems adequate at the time of retirement may become inadequate as time passes, requiring an ever-increasing downward adjustment in living levels as one grows older. The severity of the impact of inflation is not fully realized until many options for generating supplemental retirement income no longer exist.

Additional evidence to suggest that more workers are not aware of or prepared for the consequences of retirement comes from a recent—1978—survey conducted by NCOA's retirement planning consortium. The survey, based on employees aged 40 and over in nine corporations, was designed to determine what financial and other preparation these workers had made for their retirement. The 458 respondents in the initial sample were relatively well educated—91 percent completed high school; 46 percent had some schooling beyond that—and could expect above-average pensions—the companies have progressive benefit plans and the employee's average tenure with their companies was 15 years.

Yet even this relatively advantaged older group was admittedly unprepared for retirement and had ambiguous or uneasy feelings about it. Sixty-one percent had no plans for retirement, 29 percent had tentative plans, and only 10 percent had any definite plans.

When asked what problems they felt they were most likely to encounter when retired, about 7 in 10 answered problems in maintaining their standard of living. Because the employees sampled are in excellent pension programs, their broad concern with maintaining a standard of living probably reflects an uneasiness due to an inflationary economy and a growing general awareness of the financial straits many retired people are in today. It may also be another sign that early retirement will grow increasingly unpopular in the face of rising inflation.

Retaining Older Workers

Given that pressures for greater employment opportunities for middle-aged and older workers exist now and are likely to increase, but how should public and private employers react? NCOA hopes they will agree with this committee that some challenge must be made to the current trend to earlier and earlier retirement. NCOA would like to offer some positive answers to Senator Church's question: "What more should the United States be doing to promote retention of older persons in the labor force—as a matter of their own choice—instead of retiring them, often without choice?"

Private Incentives to Encourage Older Workers

Mandatory retirement remains one of the most serious barriers to full employment opportunities for middle-aged and older workers, as Congress recognized by enacting the Age Discrimination in Employ-

ment Act Amendments of 1978. As the NCOA/Harris survey concluded:

> The apparent problem for many older Americans is not that they themselves feel that they are too old or too sick to work, but rather that they have been told they are. With frequent discouragement from working, disinterest in employment may well have become a learned response for many older people who might otherwise prefer to work. In short, with over 4 million older unemployed or retired individuals who want to work, there exists among the retired and unemployed public 65 and over an untapped source of manpower.

There are already numerous and diverse examples of private and public employers who have ended mandatory retirement; among them are Tektronix, Inc., United States Steel, Hamrick Mills, Gold Kist Agricultural Cooperative, Paddock Publications, Steinway & Sons, the city of Chicago, the State civil service in Maine, Bankers Life & Casualty Co., and most public and private employers in the State of California, which abolished mandatory retirement.

Bankers Life has been without a compulsory retirement policy for more than 40 years, and reports that its experience has been "consistently favorable throughout a variety of economic cycles and stages of company growth." Older worker participation, spurred by positive hiring practices as well as the absence of mandatory retirement, has remained steady: Employees over age 50 were 24 percent of the total in 1954, 25 percent in 1977; those over age 60, 8 percent in both years. As for the fear that older workers block lives of progression, a Bankers Life spokesman says: "Company growth, organizational structure changes, job posting programs, employee counseling programs, and training programs have all worked to assure that paths of advancement are not blocked by older workers."

Not only have some employers found advantages such as increased dependability in retaining older employees, many companies have taken advantage of rejected skills by hiring retirees almost exclusively. Yet many employers argue that an end to mandatory retirement would lead to a work force filled with workers who have become incompetent but who cannot be fired or moved to other positions. They ignore the advances made in the development of measures of functional ability.

NCOA can testify that accurate measures of functional capacity do exist and have been used successfully. From 1970 to 1975, the council administered a demonstration program in Portland, Maine, that tested a method for measuring physical capacity, called GULHEMP, an acronym for the seven functional areas rated in using this system. They are as follows: General physique, upper extremities, lower extremities, hearing, eyesight, mentality, and personality. Jobs were evaluated according to the minimum requirements under each category. Worker fitness and job profiles were then matched, and the older worker was placed in a job best suited for his or her skills. Over 4,000 individuals were screened by this system for jobs in 150 companies in the Greater Portland area.

Not one of the employees who were employed after being matched for a specific job was involved in an industrial accident or a workman's compensation case. Studies show that absenteeism and costs decreased considerably because of this technique. The fact that workers would find such a screening system acceptable can be surmised from the Portland project's data which showed that the majority of prospective

employees, no matter what their ages, looked for jobs they were functionally capable of performing. It is logical to expect employers to benefit even more than workers from a program that so accurately matches the best qualified worker with each job.

The GULHEMP system has also been used most successfully by an aircraft manufacturing company in Canada for over 20 years. The system has been so effective in determining an individual's capacity to safely perform a job that the Workmens Compensation Board of Ontario now requires all injured employees returning to work from WCB treatment have a GULHEMP profile completed before returning to work. We are pleased that this system is now gaining more acceptance by government and other employers, but we believe that its most effective use is as a preventive tool and one that is used prior to employment and throughout the working career rather than simply as a device for determining functional capacity after accidents occur.

One prominent American company that substitutes functional capacity tests for arbitrary retirement is United States Steel. Approximately 153,000 workers are affected by the company's non-age-related retirement policy which requires employees to pass annual physical examinations closely related to their jobs. Often when a worker seems to be falling short on one job, management joins with the local union to find another, more suitable job.

Tests of functional capacity offer several alternatives to mandatory retirement. They can be used periodically to assess on-the-job performance on an individual basis, thus eliminating one rationale for retirement based solely on age. When a worker begins to falter in one job, such tests can be used to find other suitable positions within the same plant or office. Having objective data with which to assess his or her own performance, a worker can take greater pride in his work and, ultimately, can better determine when retirement or a change in jobs is necessary. At the same time, functional testing allows employers to offer second-career opportunities with confidence to older applicants, knowing that each tested worker has a high physical probability of success on the job.

Flexible Work Arrangements

At the very least, employers should consider systems or phased-in retirement, whereby workers might be encouraged to shift to part-time jobs before entering full retirement. Two workers may be able to share a full-time job where part-time work does not contribute to management's goals. Another suggestion would be to use retired employees as a company's temporary work pool instead of relying on inexperienced outsiders. This gradual schedule of retirement allows the worker to adjust to a smaller income and to enforced leisure. While the workers benefit, management is still able to draw upon skills learned only through years of experience.

In many cases, the employee may prefer to reduce his or her work hours. Though the NCOA/Harris national opinion survey revealed several million "retired" or unemployed older people who wanted to work, Harris made no attempt to determine whether these respondents preferred full or part-time work. However, the fact that a majority of respondents 55 and older said that "money" was the thing they would

miss most after retirement may mean that part-time work opportunities—which would not jeopardize social security benefit levels by producing income above the earned income ceiling—would be preferable for many. The great majority of current workers 65 and older are employed only on a part-time basis.

The permanent part-time work force of America is now the fastest growing segment of the employed. It has increased in the past 15 years by 40 to 50 percent. The concept of part-time employment, which includes work-sharing, has largely been avoided in the general economy because the American system of unemployment insurance excludes those persons from their benefits and because work-sharing is thought to increase employers' cost. However, in the older worker category, work-sharing can become an important alternative to retirement by providing additional income and utilizing talents and skills developed which would be of disservice to the entire society if placed on the shelf.

Models of flexible work schedules exist in a variety of organizations:

The United Bank of Illinois solved a problem of younger work dissatisfaction and high error rates in its check-filing and records department by hiring a three-person unit of retirees. The older employees paid greater attention to detail and were considerably more reliable. The error rate continues to be zero. This successful program relies on both a part-time and flexible work schedule. Since the bank statements are sent out to customers in cycles throughout the month, the unit's workflow varies from periods of peak activity to little activity. Thus, one of the older workers may put in a full work day and only an hour or two the next, or she may work 2 or 3 full days one week and none the next. The work schedule of this older workers' section is extremely flexible, which seems to work well for everyone concerned. The bank's only requirement is that the work get out on time. Part-time work allows the workers to supplement their retirement income and, ironically, does not conflict with the bank's mandatory retirement policy.

According to the directors of older worker employment agencies, a great many of the older persons seeking their service desire only part-time work to augment their social security income, to "keep busy" or to provide some worthwhile contribution to their community. In-home social services where, up to this point, there has been a dearth of manpower, is in an area where these desires can be met. Quite often people released from hospital care do not need a full-time nurse, but do require a drop-in visitor/companion on several days per week. The older worker can be instrumental in seeing that meals are provided, transportation is arranged, necessary housekeeping chores are accomplished and financial matters are taken care of. Often the service in these instances consists of talking, walking, reading, or playing chess. Home services could even consist of minor electrical or plumbing repairs—not extensive enough to require licensured help—or yard work and maintenance. Some agencies place older workers to provide personal care services, supervised by medical personnel. The potential for providing such services to meet the needs of the frail elderly are extensive.

According to a recent report prepared for the Department of Commerce, job-sharing plans are promoted as regular company policy by the Minnesota Abstract and Title Co. for employees who have retired from the regular work force, but who wish to continue to work steadily

at a reduced pace. Certain white collar jobs are filled by pairs of older workers. Each person in the "pair" works full time for a month, then is off for a month while the partner assumes the position. Often flexible hours can be promoted within these jobs, also.

Northrup Manufacturers (California) promotes optimum part-time and job-sharing opportunities for its older workers. Since most of their workers are craftsmen in the aircraft industry, their skills never become obsolete. Retiring workers can continue to work on a part-time basis, especially where there is a lack of availability of younger workers for a particular function. Upon retirement, workers may agree to become part of the "on-call work force." They then may be requested to fill temporary assignments, anywhere in the world, on projects lasting from weeks to several months in duration.

"The Golden Bridge"

Perhaps the most innovative program to bridge the gap from full-time employment to retirement has been undertaken by the Teledyne Continental Motors Co., whose employees are members of the United Auto Workers. Employees are automatically eligible for a program called "The Golden Bridge" if they are 58 years of age or over and have had 30 or more years of credited service with the company. This plan was created in 1977 to reward the worker who stayed beyond the normal retirement age with such benefits as extra vacation, pension payments, and insurance benefits. It is a labor-management cooperative effort designed to "halt the flow of talent out the door and to help the worker who was not quite ready for full retirement." It is in its pilot phases, among other locations, at the Wisconsin Motor Co. (Milwaukee), a firm which makes small gas and diesel engines.

Upon qualifying for the plan, the worker begins to build on the vacation benefits already provided by Wisconsin Motor. Instead of receiving the traditional 5 weeks vacation after 25 years of employment, he receives 4 additional weeks per year in the period from age 58 to 62. From the age of 62 to 68 he receives an additional 2 weeks' vacation, a total of 11 weeks per year in all. The extra vacation benefits can be taken in various ways: (1) Paid time off—throughout the span of employment, (2) a lump sum payment at the end of each year of service, (3) a lump sum payment at the time of retirement—a possible tax advantage, (4) a combination of any of the aforementioned possibilities, or (5) monthly installments at the time of retirement—up to 12 installments total.

In addition to this, life insurance survivors benefits is increased by an additional $1,000 per year and an additional 5 percent spouse's survivor benefit is added. The basic pension benefits of the employee are also increased by one-third each year that the employee remains with the company. In 1977, the plan affected 80 of the Wisconsin Motor Co. employees, but it is expected that several hundred will become eligible over the next few years.

A change in midlife—or in later years—from one job pursuit to a different field should not be considered unusual in our rapidly changing society. For some workers, because of technological displacement or involuntary early retirement, a second career is a necessity. NCOA has long advocated the need for career-oriented educational and train-

ing programs aimed not at the beginning worker, but at those who must transfer from one career track to another.

Findings from the NCOA/Harris study indicate that there are millions of Americans, young and old, who are interested in such programs. Respondents in that study were asked how interested they would personally be in learning some new skills or participating in a job training program so that they could take on a different kind of job from what they were used to doing. Thirty-six percent of those over 40 and 15 percent over 65 responded positively. Thus, over 3 million persons over 65 would be interested in some kind of second career training if such programs were available to them.

An employment program such as the Erie Guild (Erie, Pa.) combines the flexibility of part-time employment with a new career thrust for skilled retired workers. In this program, begun in 1971, highly skilled sheet metal workers, drill press operators, and welders were put to work tutoring, on a one-to-one basis, unemployed and unskilled workers to fill the type job that the retiree once held. An agreement was reached with union leaders whereby trainees—who are paid under CETA—reaching production level would be hired, but not automatically at the level of skill for which they had been trained. After a short period of time, they become members of the union.

7,000 Persons Retrained

The Committee for Economic Development reports that IBM combines two very effective methods that can benefit middle-aged and older workers. Since 1970, IBM has retrained over 7,000 of its employees and relocated about 11,000. The company also makes it a practice to move work to facilities that have surplus people—a practice which has resulted in no employee losing any time through involuntary layoffs during the past 35 years, despite recession and major product shifts. Also, the company makes education grants of $500 per year over 5 years to any preretiree or retiree who wishes to develop a second career or retirement interest.

Older worker employment services represent some of the more positive new solutions to the employment problems of many older workers. Many of the member organizations in the National Association of Older Worker Employment Services exist as entities of other aging services—such as State and area agencies on aging. Others have had long experience in the field of older worker employment and are established as distinct, separate employment agencies geared to securing and maintaining part- and full-time employment for persons who have been either forced out of the mainstream by mandatory retirement or those who, because of health and social conditions, need to reenter the job market at a different level. Some of these programs have unique titles, conveying the renewed spirit and value of the older worker, both to our economy and to the person's self image.

Project EARN, St. Louis, Mo., according to its director, Harry Kaufer, was so named because of the emphasis on the older worker's need to acquire the necessary funds for both financial and psychological survival. Project ABLE, Chicago, Ill., means ability based on long experience, and is viewed as a service that is part and parcel of the lifelong learning continuum—putting acquired knowledge and skill based

on a lifetime of experience to use. Project GROW, Rochester, N.Y., refers to gaining resources through the older worker. In this case, the community gains multiple services to its senior population, particularly in the home care delivery area, through employing its older citizens.

What is the success rate for older worker employment services—those geared mainly at finding productive jobs for those workers over age 50, or those suffering from some kind of physical handicap? Program operators report a broad experience, based on their locale and the personnel involved in the job development process within the local community. All agree that the process of assessing, situating, and providing "recycled experiences" of older workers is a highly individualized operation. Programs such as Project EARN and Project GROW, as well as Senior Jobs, Inc., of Buffalo, N.Y.—sponsored by the AFL–CIO, and funded primarily by Older Americans Act and Comprehensive Employment and Training Act moneys—report a phenomenal success rate with placement in the private sector.

Buffalo says that the approximately 1,000 clients served in a year, 98 percent of these go directly into private sector employment. Some positions filled are in telephone sales/credit collection, recreation in hospitals and nursing homes, restaurant work, and community college teaching/training. A retail clothing firm and the local florists have been an excellent source of private sector employment in that community.

Project GROW says that of approximately 700 persons interviewed in a year, 60 percent are placed directly into paid employment without an extensive training or preparation period. Employers in the area are particularly willing to use the older worker in temporary or permanent part-time occupations, often to replace office and clerical assistance on a seasonal basis. The project director reports that they often have more job listings than they can fill—particularly in the accounting and bookkeeping areas.

At Project EARN, which operates on the premise that there is "a job out there for every person who wants one," particular success is reported in filling the employment requests of department stores—in all clerical/accounting/sales capacities—and the local hospitals. All of the directors acknowledge the painstaking skill and patience required to unearth employment possibilities for their older workers—often a task requiring that they bring to employers' attention the need for a new position or classification that the employer had not yet thought of. As one director puts it, "it is the simple things that everybody knows about where us positive thinkers can find positions for our older workers."

Often, job searches alone will not succeed, but many agencies offer employment assistance will also provide training. The Coordinating Council of Senior Citizens, Durham, N.C., has found that training program to upgrade the skills of older workers in personal care programs help older workers to capitalize on their positive attributes—stability, reliability, accuracy and a large fund of knowledge. At the present time, there is not much competition from the younger worker segment to meet the demands of the sick elderly person in his own home, and is the type of service that can be provided by a series of older workers, none of whom must assume the entire responsibility of a program of care required by the frail elderly.

Grassroots Counseling

A very special kind of employment counseling and training service which developed at the grassroots level and may soon receive more adequate public support in the displaced homemaker center. The Director of the Women's Bureau of the Labor Department, Alexis M. Herman, estimates that 60 to 65 percent of women who hold jobs do so for purely economic reasons, and that many of them must work because they are the only source of economic support for themselves and their families. This is especially true in the case of the "displaced homemaker," a term used to describe the woman who in her middle or aging years, after coming from a lifetime of volunteer work, part-time employment or full-time work as a homemaker and mother is forcibly exiled, through no fault of her own, from the mainstream of society. Rising divorce rates, age and sex discrimination in employment, job training programs targeted at younger workers, lack of social security coverage for workers under 60, and lack of widows' benefits in private pension plan coverage have contributed to this unique problem. Almost universally, this group has had no previous job skill training, has been employed only on a sporadic bassis at best and even has difficulty recognizing that basic skills developed as a homemaker have any applicability to the "outside" working world.

Enabling State legislation has brought into place the Maryland Center for Displaced Homemakers, located in Baltimore. It is one of several programs throughout the United States, established under various public and private auspices, designed to enable the middle-aged and older female to reenter, or enter for the first time, the competitive job market.

Following a job-readiness and counseling period, women can be placed in a range of private and public sector employment. Many of them fill the needs of the aging network in nutrition, outreach, transportation, home repair, health related and legal services, and general welfare counseling programs. And, the program goes further than community service employment. A voucher system to cover tuition, books and supplies has been entered into with a local community or vocational school to encourage further education and training in a desired field. Medical technology is a favored area.

This same voucher plan—to pay for incidental expenses—has enabled a group of "displaced homemakers" to start up their own small business. An operation called "Independent Cleaning Contractors" provides household maintenance for private homes in the Baltimore area. Three months after beginning this service, individuals were averaging $120–$480 weekly income.

On a broader level, the Maryland Center for Displaced Homemakers works extensively with local government and private industry in the area of integrating women into the work world, including such nontraditional jobs as linespersons with the Maryland Gas and Electric Co. The center arranges workshops for industry on how to recruit, screen and provide career mobility for the female worker. "Displaced homemakers" themselves will conduct minicourses with various community groups, businesses and industries around a manual developed on sex bias in the employment world. Such activities are aimed at

increasing opportunities for all women, especially those with a lack of more traditional education and training such as those in mid or later life.

Public Incentives to Encourage Older Workers

NCOA's experience with title IX clearly confirms that older people have much to offer in terms of public service employment and that such work provides them with needed income and personal satisfaction. The need for employment among older workers is great and continues to grow; yet there has been little governmental response to this need with the exception of the SCSP and four similar national programs administered by other organizations. In fiscal year 1978, for example, the appropriation for title IX programs will provide federally subsidized jobs for approximately 47,500 older persons. However, these jobs will provide employment opportunities to less than 1 percent of the 5.4 million older Americans eligible by age and income for enrollment in the program. Most of these could and would work if given an opportunity.

Our experience with the program convinces us that title IX is the only Federal employment assistance program that benefits the older worker. Because of its importance in promoting economic independence and self-esteem, title IX should be continued at an increased appropriation level. Nevertheless, title IX should be just one aspect of a much broader range of public employment services available to older workers. While its value in providing part-time work experience and retraining should not be underestimated, by itself, title IX's ability to affect the severe employment problems faced by older people is limited. Few of these people are interested in receiving a handout. They simply want an opportunity to work, remain independent, and earn their keep; but they cannot depend on the private sector to provide them with that opportunity. Nor can they expect much assistance from the Federal employment and training programs supposedly designed to meet these needs.

An NCOA analysis of 1973 and 1974 data from the Employment Security Automated Reporting System shows that the U.S. Employment Service consistently provided less service to older job seekers. Presumably, older people were considered less likely to be employable. Yet, when referred for a job, the older worker is just as likely to be hired as his younger counterpart. Recent data show this pattern is still likely to be true. In fiscal year 1976, 6 percent of new or renewing Employment Service applicants were 55 or older but only 3.9 percent of those referred to jobs were over 55.

Older workers have also been all but ignored in Federal employment and training programs under the Comprehensive Employment and Training Act—CETA. In fiscal year 1977, persons aged 55 and over were 3.3 percent of service recipients under CETA title I—training—and 5.8 percent and 5.6 percent of recipients under titles II and VI—public service employment. On the average, less than 5 percent of those served by CETA have been older workers. This figure has not changed since the original categorical "manpower" programs of 1965. And, despite the fact that CETA title III specifically designates older workers as a target group, they have not benefited in any significant way under this title.

These statistics and the findings of the U.S. Civil Rights Commission study of age discrimination in federally funded programs demonstrate that older workers seeking public service employment are not proportionately represented in the Federal employment and training programs authorized under CETA. Moreover, these figures confirm that the major Federal employment and training programs do not address the special needs of older workers.

RECOMMENDATIONS

Clearly there needs to be a stronger Federal commitment to promoting employment opportunities for middle-aged and older workers. NCOA is encouraged by some recent congressional initiatives, such as:

Inclusion of older workers as a target population in the Humphrey-Hawkins full employment bill.

Recent amendments to the ADEA which eliminated mandatory retirement for Federal employees and increased the protected age to 70 for non-Federal employees.

Proposed increased authorizations for the title IX senior community service employment program and a new emphasis on the development of more flexible work arrangements.

Emerging legislation to encourage more part-time and shared-job job opportunities.

The special emphasis in the Senate's CETA legislation on training and work experiences for older workers; the greater emphasis on equitable service to targeted groups; and, in both bills, a new, albeit small, program for occupational upgrading and retraining; and

Amendments to strengthen the Age Discrimination Act of 1975 to more forcibly prohibit age bias in programs such as CETA and vocational rehabilitation.

In addition to supporting these efforts, NCOA urges this Congress to consider further amendments to the ADEA to remove the upper age limit of 70 and to remove all exceptions to the 1978 amendments. We hope Congress, through this committee and others, will monitor closely the effects of the transfer of ADEA enforcement authority to the Equal Employment Opportunity Commission, and be willing to increase the size, training, and qualifications of ADEA enforcement staff, regardless of location.

There are executive responsibilities which the Department of Labor should assume to assist middle-aged and older workers:

DOL should undertake a comprehensive review of recent research and development findings regarding the performance of older workers and provide for the dissemination of these findings through the use of appropriate Government and private agencies.

DOL should institute a nationwide public information program which would make employers and the general public more aware of the techniques which have been developed for relating functional abilities of workers to the functional requirements of specific jobs.

Unemployment statistics collected and presented by DOL should include the discouraged worker so that they more accurately reflect the bleak economic picture of the older worker; and

DOL should require that the older worker specialist positions be reinstated as full-time or part-time equivalent positions in the national, regional, and State offices of the U.S. Employment Service/Job

Service, and that suitable training be provided to such specialists to ensure their effectiveness.

NCOA looks forward to continued participation in this committee's examination of retirement, employment, and lifelong learning, and appreciates the opportunity to be of assistance.

STATEMENT OF CYRIL F. BRICKFIELD, EXECUTIVE DIRECTOR, NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS; [1] ACCOMPANIED BY JIM HACKING, LEGISLATIVE REPRESENTATIVE

Mr. BRICKFIELD. The social, economic and public policy implications of the "graying" of America are profound and must force us as a nation to reexamine our policies toward older Americans and ultimately to restructure the Government institutions and programs which serve them. In addition, the expected continuation of a high rate, hard-core inflation spiral dictates that we seek out more adequate ways to insulate from inflation's effects both the elderly's income and the financing of Government programs on which they are extremely dependent.

The demographic trend which clearly indicates that the proportion of the population age 65 and over will expand rapidly, especially after the year 2000, is not alterable. But trends toward declining labor force participation and early retirement by older persons are.

Our associations believe we must begin now to make the changes of the magnitude necessary to reverse these trends. We must allow ourselves sufficient time for sound planning and lengthy transition periods in order to permit an orderly and incremental evolution into a rational policy structure that ends up allocating increasingly scarce resources efficiently.

Our blueprint for this evolution involves restructuring and relating current income support programs, eliminating barriers and disincentives to elderly employment, encouraging and actively creating job opportunities for older persons through the establishment of categorical Government work programs, and providing educational training and retraining programs to back them up.

The elements of our blueprint are as follows. First, the social security system—which is and most likely will remain the cornerstone of elderly income—should be transformed into a national pension program which has earnings replacement as its dominant purpose. The "minimum-floor-of-income-protection" function would be the responsibility of a revamped SSI program. The basic characteristics of this new program include:

A much less weighted—perhaps proportional—benefit formula that awards benefits which are strictly related to contributions and replaces at least 60 percent of preretirement earnings.

A gradual phasing out or deemphasis of current welfare and social adequacy are increased to achieve the desired replacement ratio.

The availability of full benefits at age 65.

The elimination of the earnings test, a severe work disincentive.

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[1] See appendix 1, item 1, page 335; item 2, page 337; and item 3, page 340 for supplemental material submitted by NRTA–AARP.

The introduction of actuarially increased benefits for those electing to work after age 65 and postpone applying for benefits.

Universal coverage of all employees accomplished with respect to those not presently covered via an incentive/disincentive approach; and

Pay-as-you-go financing from payroll taxes with an additional general revenue mechanisms to act as economic safety nets protecting the program from high rates of inflation and unemployment.

The cash and inkind benefit means-tested programs, dominated by SSI, must be reformed and improved so as to be able to take up the present minimum-floor-of-income-protection functions of the social security system and adequately serve those elderly who would otherwise be in poverty because of low benefits. The areas of improvement for SSI include:

Significantly increased payment levels with State supplementation encouraged.

The creation of job opportunities and referral mechanisms specifically for SSI recipients with a more liberal treatment of earned income in determining benefit levels; and

Elimination or at least neutralization of the harsh effect of asset limitations and resource exclusions on eligibility.

The second major component of our blueprint relates to fostering greater labor force participation by the elderly. Government policies and actions which encourage or force early labor force withdrawal are imposing serious and unnecessary costs on our economic system and must be reversed in light of future demographic trends. Employment must be looked to for a larger source of income supplementation for the future elderly who would, in the process, become less dependent on government benefit programs. The older worker employment strategy would include the following public policy elements:

Elimination of major barriers to employment including mandatory retirement at any age.

Elimination of disincentives to employment including the social security earnings limitation.

Creation of employment incentives by all possible means, including benefit restructuring—such as actuarially increased social security benefits—and special tax incentives for employees and employers.

Creation of job training and retraining programs to prevent skill obsolescence and maintain older worker productivity; and

Institutionalize and vastly expand the already successful national older worker program embodied in title IX senior community service employment program.

The third aspect of our blueprint involves improving and expanding lifelong learning programs for the elderly with an emphasis on learning and education as a means of skill development. This objective should be pursued in a multifaceted manner and facilitate the emergence of older persons as a viable component of the work force. It is our firm belief that Congress in cooperation with the Department of Health, Education, and Welfare must assist in the redirection of lifelong learning into the new areas of work, retirement and continuous learning. To do anything less would be to develop policy in a vacuum ignoring the direct impact the economy and work patterns are having upon the education needs of older adults.

I. Accommodating the Trends and "Making Ends Meet"

Just as old age creeps up on an individual, the graying of America, a country which has so highly prized the values of its pioneering youth, has taken the better part of the century. This development to a mature society is manifest by the changing proportion of the population over 65 years of age, although chronologically, 55 years of age better demarcates the change from middle years of life.

At the start of this century, only 1 person out of 25 was age 65 or older, representing only 4.1 percent of the total population. But advances in the control of infectious diseases and the knowledge of nutrition that were made during the first several decades of the century helped change all this. By 1930, 1 out of every 20 persons was 60 years of age or older, a proportion of 5.4 percent. The depression years of the 1930's saw a sharp advance in the proportion of the elderly to 6.8 percent of the population. The Social Security Act, landmark legislation in the treatment of the elderly and the needy, was passed during the middle of the decade—August 14, 1935.

During the first 50 years of the century, the elderly population doubled to nearly 1 out of 12 persons—8.1 percent. The general rise in the number of births through the early 1920's, declines in age-specific death rates, and the heavy volume of immigrants, especially prior to World War I, were all factors contributing to the continuing increase in the elderly population. By 1960, the figure became 9.2 percent increasing to 9.8 percent in 1970. By 1975, 1 out of every 10 persons was 65 years of age or older—10.5 percent.

Life expectancy rates after the age of 65 were also advancing; the elderly population was maturing as a segment of the population. In 1940, at age 65 the average male could expect to live 12.1 more years and the average female 15 more. By 1970, the average male could expect to live 13.1 more years after age 65 and the average female widened her advantage over the male by expecting to live 17.1 more years after that age.

This trend probably will continue. By the year 2050, life expectancy should have increased another 3 years for men and another 4 years for women. Indeed, these figures may prove to be gross underestimates; advances in medicine, preventive medicine, improvements in the living environment, and adoption of more healthful lifestyles may well accomplish more.

The forecasts for the continuing expansion of the 65-years-and-older segment of the population are quite reliable well into the next century, because we are projecting the lives of an existing population. As can be observed from table I, the over-65-years-of-age segment will increase slowly from 10.7 percent of the population at present to 12.1 percent by the year 2000. After the year 2010, the elderly percentage will begin to take wings again as the postwar baby boom is converted into a senior boom. By the year 2030, 18.2 percent of the population will be 65-years-of-age or older, nearly one out of five Americans.

The "older" segment of the elderly population is also continuing to grow. Reference to table II reveals that, by the year 2000, we shall have 14.2 million persons age 75 and over—45 percent of all elderly. The number of elderly of advanced age, 85 years of age and older,

will increase from 2 million today to 3.7 million by the year 2000. In percentage terms, that is a 50-percent increase, from 0.9 percent of the population today to 1.4 percent in the year 2000.

It was remarked earlier that persons 55 years of age and older could also be considered as elderly. As of 1977, the segment of the population aged 55 and older already represented one out of five of the population. By the year 2030, it may well be close to one out of three of the population.

TABLE I.—ELDERLY AGE GROUPS AS A PERCENTAGE OF THE TOTAL PROJECTED POPULATION FOR SELECTED YEARS PERIOD 1977–2050

	1977	1980	1985	1990	1995	2000	2010	2030	2050
Projected population (million)	216.7	222.1	232.8	243.5	252.7	260.3	275.3	300.3	315.6
Percent:									
Over 54	20.0	20.6	21.0	20.6	20.4	21.0	24.5	28.7	29.0
Over 64	10.7	11.1	11.6	12.2	12.3	12.1	12.6	18.2	17.5
Over 84	.9	.9	1.1	1.1	1.3	1.4	1.6	1.9	3.0

Note.—Above information calculated from data contained tables 8 and 11 of the U.S. Department of Commerce reports, "Projections of the Population of the United States, 1977 to 2050," series P–25, No. 704, issued July 1977, tables 8 and 11, series 11, fertility assumptions.

TABLE II.—ANNUAL PROJECTIONS OF THE POPULATION BY SELECTED YEARS AND AGE GROUPS

	1977	1980	1985	1990	1995	2000	2010	2030	2050
Total population (million)	216.7	222.1	232.8	243.5	252.7	260.3	275.3	300.3	315.6
Age groups (percent):									
55 to 59	11.0	11.4	11.1	10.4	10.8	13.1			
60 to 64	9.3	9.7	10.6	10.3	9.7	10.1			
Subtotal	20.3	21.1	21.7	20.7	20.5	23.2	32.9	31.3	36.0
65 to 69	8.4	8.7	9.2	10.0	9.7	9.1	19.7	31.8	28.8
70 to 74	6.1	6.7	7.3	7.7	8.4	8.2			
75 to 79	4.0	4.3	5.1	5.5	5.8	6.3	10.4	17.4	17.1
80 to 84	2.7	2.8	3.0	3.6	3.9	4.2			
85 and over	2.0	2.2	2.5	2.8	3.3	3.7	4.5	5.6	9.5
Subtotal	23.2	24.7	27.1	29.6	31.1	31.5	34.6	54.8	55.4
Total over 54 years of age	43.5	45.8	48.8	50.3	51.6	54.7	67.5	86.1	91.4

Note.—Above information abstracted from U.S. Department of Commerce current population reports "Projections of the Population of the United States, 1977 to 2050," series P–25, No.704, issued July 1977, tables 8 and 11, series 11, fertility assumptions.

The social and economic implications of the maturing of America are profound; unfortunately, they can only be touched upon briefly here. Our social institutions can no longer be oriented toward the younger population. For example, our schools—technical, professional, and those dealing with the humanities—must fully address themselves to the task of continuing the education of the elderly. Indeed, all of our institutions must adapt themselves to our changing society. Because Government has so large a hand in the financing of our institutions, its role in this change must be deeply studied. Our resources are finite, and the strains of stretching our resources have become painfully evident on all sides.

Our remarks will tend to dwell on the economic aspects of a maturing society, a tremendous subject. We must immediately consider whether the elderly as a whole are to be merely consumers in the society of the future, or whether they are to be producers also. If they

are to be productive members of society, what is this role to be, and what will be its limitations?

Prior to the Age Discrimination in Employment Act amendments of this year, the retirement age of 65, which was determined under the original Social Security Act, had become the limiting age for most public and private employment. Indeed, many public and private retirement plans have provided for much earlier retirement. The ADEA amendments will give those who so choose the opportunity to extend their working lives, at least to age 70. However, the characteristics of much private sector employment favor the younger employee; and consequently, many employee retirement systems reflect a marked bias against the retention of older workers, starting with middle-aged workers. As a result, by the age of 65, only 1 man in 5 is in the work force and only one woman in 12.

Those things that foster retirement at an early age tend either to remove the mature worker from productive employment entirely, or promote a second career. In public employment, this often leads to what is called double dipping. Strong incentives to keep workers employed at any age at which they can perform—and choose to perform—their duties need to be built into retirement systems and plans, the tax structures, and other instruments of public policy. Obversely, existing incentives that lure workers into retirement need to be removed. Indeed, disincentives may yet have to be used to discourage workers in the future from accepting early retirement terms.

Private employers have much control over the terms of their employees' retirement. This is as it should be. But the Federal Government gives tax incentives to employers and employees for a large variety of retirement and retirement savings plans. The tax laws and regulations should be revised in these areas so that employment of the elderly is encouraged in the private sector and the termination of employees as they approach middle age is discouraged.

Our associations recognize that there are distinct limitations in trying by legislation to create employment opportunities for the elderly. There is a great deal of outright prejudice against the older worker. Much remains to be done by way of educating both public and private sector employers that this is a prejudice which inhibits raising the general productivity of our society. We shelve too many elderly. There are also important economic considerations, which lead employers to release workers as they approach middle age. For instance, the employer may fear the assumption of increasing liabilities for the eventual retirement of the worker. Many employers believe that the middle-aged and older employee can no longer cope with the strain of carrying out his duties to acceptable standards. Particularly if there is no compensation flexibility in a downward direction, an employer may believe that it is to his economic advantage to replace the older worker with a younger worker—and, indeed, it may well be to his financial advantage.

"Society's Throwaways"

The excessive emphasis on machines and technology in our economic activities and the extremely rapid rates of change have tended to make the older worker into one of society's throwaways. The young worker enters into a world the technology of which is familiar to

him. The employer can train him with the least effort for employment within his frame of technology. Because of the great pressures for economic growth, change is an aspect of our economy with which the worker must cope on a daily basis. Upon reaching middle age, the worker usually finds that he has moved into a new time frame of technology with which he is often unable to cope, particularly in the absence of continuing education which could have and should have been available to help him keep pace with the change.

In our view, we should stop trying to promote spasmodic and explosive rates of growth. The evidence is increasing that these attempts end up generating searingly high rates of inflation.

What we favor is moderate and steady real rates of growth that avoid the intense inflation we have experienced recently and the unnecessarily premature junking of human beings. We must also attempt to reduce the degree of ferocity with which we have attempted to substitute machines for people. We are reaching a point of diminishing returns, particularly when there are no immediate prospects of finding abundant sources of cheap energy to run those machines.

The belief that we could retire our middle aged and elderly, without regard to numbers, dates back to the past when continuing affluence could be counted on as the dividend of the new economics. The solid growth rates of the 1950's and the 1960's seemed as though they would never end, and these growth rates were accomplished with modest rates of price inflation in the range of 1½ to 3 percent a year. Only dimly foreseen in this past was that there might be limits to growth dictated by the growing damage to the environment in which we live. Not too well realized was that we lacked both the knowledge and the mechanisms in our Federal Government to perpetually fine-tune the economy so that inflation would be under control.

Elevated rates of persistent inflation began in the late 1960's. This inflation is a hardcore rate of inflation, which economists distinguish from cyclical demand-pull inflation, because it continues in good times and bad. When it persists during the recession period of the business cycle, we have stagflation. After 10 years of debate over how we are to control persistent inflation, no workable solutions have been found by the Federal Government.

The Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs has recently released its Second Annual Report on Inflation. Although consumer price inflation has now returned to the area of 10 percent annually, the report of the subcommittee only expressed some hope that the present rate might moderate to some degree. No expectations were expressed at all that the rate of inflation might fall back to the levels which prevailed in the 1950's and 1960's.

Elevated rates of persistent inflation hold the gravest consequences for the elderly. Not only do their personal financial arrangements suffer, but the income maintenance and income support arrangements of the Federal, State, and local governments are forced to meet with increasingly severe problems in funding the payments, which must be indexed to offset higher prices. These financing problems are often partly met by throwing the losses of inflation on pensioners. This may be done by ignoring inflation, by partially ignoring inflation in making only partial pension adjustments that do not offset fully the effect of

inflation—a common practice at the State and local level—or by making adjustment for inflation long after the fact. The private sector follows suit; ad hoc adjustment in pension payments are made only irregularly, if at all. Most employers make no provision out of current expenses for meeting the future costs of making such adjustments in pension payments, largely because there is no way that the size and cost of those adjustments can be known in advance.

The foundation of the income support structure that serves the elderly is the social security system. Although our associations shall comment at length on social security later, we would like to observe at this point that this Congress spent much time during 1977 attempting to deal with actuarial deficits projected for the system over both the short and long term. The long-term deficit was created in part by demographic trends, the trend towards earlier retirement, and a technical error in the law for inflation adjustments under the benefit formula. But because we find ourselves again at double-digit rates of price inflation, we should avoid repeating past mistakes and therefore remind ourselves of the prime reason for the short-term deficit in the system.

OASDI trustees, in their 1976 report, blamed the short-term imbalance on:

> Unprecedented and unanticipated inflation in recent years and approximately corresponding increases in benefits (11 percent in 1974, 8 percent in 1975, and 6.4 percent in 1976) and an expectation that inflation will continue at higher levels than formerly anticipated.

Although passage of the 1977 amendments leads us to presume that we have dealt with the short-term financial problems of the social security system, we must remember that a continuation of very high levels of persistent inflation, such as we are experiencing at present, was not anticipated by the system's actuaries in making forecasts. If persistent inflation is not restrained in the short term, we are certain the patient will soon be back in the operating room.

Congress has taken many steps to reduce poverty among the elderly, which have not been without considerable effect. The difficulty is to assess the changing impact of poverty among the elderly of a large number of Federal, State, and local programs which provide a hodgepodge of both cash in-kind benefits. Studies by the Congressional Budget Office during 1977, which took in-kind benefit income into account, came to the conclusion that poverty among the elderly may have dropped to as low as 6 percent. Our associations believe that the poverty rate is much higher, particularly when judged by poverty standards which take into account the disproportionately larger needs of the elderly for medical and other forms of assistance. Also, large numbers of elderly fall into the near-poverty group. Therefore, their economic condition can easily deteriorate rapidly when prices are rising at elevated rates of inflation. In our associations' view, inflation remains the implacable foe of the elderly and our No. 1 economic problem.

Measuring Inflation's Impact

So concerned are we over the ongoing inflationary spiral that we are now working with one of the leading econometric services in order to define the effects of inflation on the elderly, in terms of their wealth, income and expenditure patterns, taking due consideration of the offsetting assistance of various government programs designed to main-

tain and to support their income. It is widely assumed that the elderly suffer severely from the effects of inflation, because their income tends to be fixed and their assets, denominated in inflating dollars, tend to decline in value. On the whole, the elderly have not been successful in protecting their dollar assets by hedging investment techniques. Owning a home remains one of the best means of hedging against inflation. Small amounts of savings deposited with institutions or invested in Government savings bonds return no real interest at recent levels of persistent inflation—6 to 7 percent—indeed, at present levels of inflation, small savings accounts actually lose money for the elderly in terms of purchasing power. As the savings erode away during longer periods of elevated rates of inflation, the elderly increasingly dependent upon the Government, losing their independence and dignity in the process.

As a result of the study undertaken by the associations, we will be able to show the effects of varying inflation rates on assets and income expenditures of the elderly over their life expectancy after retirement. Our associations hope that these studies will jolt the Congress and various Federal departments into an awareness of the nature of the assistance needed by the elderly and the magnitude of the dependency problem created by inflation.

So important is each of the subjects we have raised in these introductory remarks, that we will devote a special section to each in our statement so that the implications for the elderly can be set forth in some detail. The recommendations of the associations on each of the problems foreseen for the growing mature population will be clearly stated.

The thrust of our introductory remarks is that demographic and economic trends dictate a complete restudy of policies and nonpolicies with respect to employment opportunities for the elderly and retirement of the older population from productive employment. The graying of America dictates our encouraging much larger numbers of the elderly into the productive effort as we move into the future, the trend toward making the vast majority of the elderly into idle consumers needs to be reversed. Because the elderly are growing as a segment of our society and because inflation hits them with particular force, the need to restrain persistent inflation is becoming more important.

Finally, our great variety of social institutions need to be reformed so that they better embrace the needs of the elderly. Our constantly changing society and economy impose great responsibilities on our education system. As the individual matures he must be kept in the mainstream. Junking older individuals because they might not understand the changing scene is not only inhumane, but it is—in an economic sense—an enormous waste of national assets.

II. A Blueprint for a New Aging Policy for the Nation

Barring some unforeseen catastrophe, the demographic trend that we have described is inexorable. As time goes on, we are going to have more older people, and with the aging of the baby boom cohort, we are going to have a great many more old people. In terms of public policy, this trend cannot be changed, it can only be accommodated and any such accommodation requires rational advanced planning.

Other trends that we have identfied can, however, be altered or even reversed. We are reasonably optimistic that the declining labor force

participation and early retirement trends on the part of middle-aged and older persons can be slowed appreciably if not indeed reversed in response to changes that can, and should, be made in terms of public policies. Indeed, if the rapid inflationary spiral continues undiminished for much longer, that trend, in and of itself, could act as a counterweight to the early retirement/decreased labor market activity trend as persons begin to recognize that absence from the labor force leaves them increasingly vulnerable to the consequences of inflation. General recognition that wage income tends to keep better pace with inflation than other income forms could cause retirees to seek more wage income—through active employment—and thus help protect themselves against at least some of the erosion in their standard of living that high level inflation must otherwise cause them to suffer.

As far as the inflation trend is concerned, the factors that combine to produce the hard core, 6 to 7 percent per annum rate are strongly embedded in our economic structure and are increasingly intractable. We think the inflation spiral entails horrendous consequences for the elderly and for the programs on which they depend for income support and health care protection. We believe that the inflation trend can still be restrained. However, we are not at all optimistic that the Congress, the Executive, and all the various interests in the private sector have the will to do those things that are necessary to control this trend. Indeed, the legislative history of the effort in this Congress to contain hospital costs—an attempt to which we have given wholehearted support—is a record of a lack of resolve to say no to the special interests that are responsible for much of the inflation hard core. This situation leads us to be less optimistic about prospects for favorably altering the inflationary trend than we are about altering the early retirement and elderly labor market participation trends.

What is critically needed now and what we hope these and future hearings by this committee will foster is a blueprint for a new aging policy for the Nation. Right now, we would like to describe in some detail our thinking on what this blueprint should look like.

The sources of the income stream of the current elderly generation are numerous. Earnings from work, public and private pensions and annuities, private savings, and income-producing assets are just a few. The most important source, of course, is social security.

The relative importance of each of these income sources is very much a function of marital status and income level. Tables III, IV, and V, which were taken from an HEW survey of persons receiving their initial social security benefit awards in 1970, should serve to illustrate this point.

TABLE III.—SHARES OF AGGREGATE INCOME MARRIED MEN AND THEIR WIVES, 1970

[In percent]

Income	Social security	Earnings	Private pensions	Public pensions	Asset income	Other
$500 to $1,499	82	8	1	1	4	3
$1,500 to $2,499	69	16	2	2	6	5
$2,500 to $34.99	57	21	7	3	8	4
$3,500 to $4,499	48	22	12	6	9	4
$4,500 to $5,499	40	25	14	6	10	4
$5,500 to $6,499	34	27	17	6	12	5
$6,500 to $7,499	29	27	18	8	13	4
$7,500 to $8,499	25	31	17	10	13	4
$8,500 to $9,499	23	33	18	8	14	4
$9,500 to $12,499	17	39	15	7	16	5

TABLE IV.—SHARES OF AGGREGATE INCOME NONMARRIED MEN, 1970

[In percent]

Income	Social security	Earnings	Private pensions	Public pensions	Asset income	Other
$500 to $1,499	77	8	(1)	1	4	10
$1,500 to $2,499	62	15	3	3	6	12
$2,500 to $3,499	46	19	10	6	9	11
$3,500 to $4,499	37	18	19	8	9	9
$4,500 to $5,499	29	18	26	9	12	8

(1) Less than 1 pct.

TABLE V.—SHARES OF AGGREGATE INCOME NONMARRIED WOMEN, 1970

[In percent]

Income	Social security	Earnings	Private pensions	Public pensions	Asset income	Other
$500 to $1,499	77	9	1	1	4	7
$1,500 to $2,499	62	16	4	3	8	8
$2,500 to $3,499	45	23	9	5	8	8
$3,500 to $4,499	35	25	14	7	13	6
$4,500 to $5,499	29	23	14	11	17	6
$5,500 to $6,499	23	24	12	14	23	5

Although the weights of the different income components vary depending upon such things as income class and marital status, one thing is clear, social security—more precisely old age and survivors insurance is the cornerstone of the income of the current elderly generation and is likely to remain so for future generations as well. But that does not mean that OASI should not be changed. On the contrary, our associations believe that the existing program must be changed incrementally over time until it becomes much less the social insurance program it is today and much more a national pension program.

We are not suggesting some overnight radical alteration of the existing program but rather a gradual evolution into something markedly different by nature and characteristic. This sort of change is nothing new. OASI today differs radically from what it was originally contemplated to be by Roosevelt's Committee on Economic Security and by the 1935 act itself. Over time, modifications have been made which not only changed the level and nature of the benefits under the program but the essential character of the social security system as well.

Perhaps the most fundamental revision in the system occurred with the 1939 social security amendments. Those amendments marked a turning point in the program's historical development. Whereas the original system stressed the insurance concept and the idea of individual equity—that is, that a person would get back from the system at least as much as he contributed to it—these amendments stressed coverage, welfare, and general "social adequacy" goals. Certain dependents and survivors of workers were brought into the system, payments were scheduled to begin 2 years before they were originally planned—before contributors had built up enough "individual equity"—and, perhaps most importantly, benefits were tied to average earnings over a minimum covered period, thus breaking the link between total lifetime contributions and benefit levels. Other changes

over the years include: Liberalized benefit amounts with proportionately larger increases for wage earners at the bottom of the earnings scale; changes in the tax rates; changes in the nature of the benefits—the addition to medicare, for example; the addition of an automatic benefit escalator; and increases in the covered population to the point where coverage under the combination of programs that we generally refer to as social security is practically universal.

Other Primary Sources

The national pension program that we contemplate would have the following basic characteristics. First, the benefit formula would be much more proportional and less weighted than the existing one in order to relate benefit awards more closely to contributions. Second, the system would, on average, replace not less than 60 percent of preretirement income, in order to give the future elderly a good chance of maintaining in their later years a standard of living comparable to that achieved earlier. Third, two "general revenue" mechanisms would be created that would act as economic "safety nets" for the system, providing it with protection against the consequences of high-level inflation and unemployment. Fourth, the program would continue to be financed from payroll taxes and general revenues on a pay-as-you-go basis with contingency reserve funds. Fifth, incentives that reward work effort would be present—for example, actuarially increased benefits for those who elect to defer applying for benefits until after age 65. Sixth, the earnings limitation, a serious work disincentive, would be eliminated. Seventh, 65 would remain the age for full benefits. Eighth, welfare and social adequacy benefit elements would be phased out and placed elsewhere—or at least be deemphasized and financed in a manner different from that of today—while primary benefits would be increased in order to achieve the earnings replacement goal. Finally, coverage would either be universal or, to the extent that it is not quite so, those employees outside the program would end up subsidizing it.

There are several reasons why we think the current social insurance OASI program ought to be changed over time to more closely resemble a true pension or annuities program. First, there is a need to sort out from OASI—and also from disability insurance [1]—the "minimum-floor-of-income protection" function and use instead the supplemental security income program for that function. Historically, the single instrument of social security has been used to try to accomplish the divergent goals of earnings replacement and minimum-floor-of-income protection, and has thus not fully accomplished either. Since we now have two separate instruments, namely OASI and SSI, the sorting out of these two functions between these two instruments would permit a more effective and less wasteful allocation of limited resources. Our financial resources are not increasing as rapidly as they used to—because of declining productivity—and, in the future, we will be allocating our resources among an elderly population that will have vastly expanded.

[1] We think the DI program ought to remain a social insurance program, although we would have some suggestions for changes to remedy many of its present problems. However, that subject falls outside the scope of this statement and will have to be examined separately at another time.

Second, as should be clear from our discussion below, the addition of economic "safety nets" and the incidental introduction of "general revenues" on a limited basis would provide the OASI program as it evolves into a new pension program with protection against high rates of inflation and unemployment and an expanded tax base. This would be done in a manner less inflationary than that which the addition of still more payroll taxes would entail. Third, removal of the earnings test, a major work disincentive, would pave the way for the addition of incentives to employment and would, in the process, change the nature of the existing OASI program. Fourth, changes in the mix and magnitude of benefits of the existing program to emphasize more individual equity and less social adequacy or welfare would, we hope, alleviate much of the increasing dissatisfaction with the benefit structure that is heard from working women and single persons. Finally, our suggestions for a "carrot and stick" approach to the achievement of universal coverage under a new national pension program would, we believe, end up with our either having achieved that goal, or with our having placed persons electing to remain outside the national program in a position where they end up providing the program with a revenue subsidy. In other words, those groups that are still outside the present OASI program would still have the option of choosing, but would not be to their financial advantage to remain outside the program.

Although we speak of OASI and ultimately a new national pension program as the major component—the cornerstone—of the future income stream of the elderly, we do not wish to ignore the other primary retirement systems that exist, such as the civil service and other retirement systems of the Federal Government and the approximately 6,000 existing State and local public employee systems. Many of these State and local systems, of course, are already integrated with social security and obviously would be changed as social security changes over time. With respect to the nonintegrated, primary State and local pension and annuity systems, there is a movement toward consolidating smaller—and usually financially weaker and/or less generous—State and local systems into larger county, regional, or statewide systems. We would expect that trend to continue. However, we would also expect many of these nonintegrated systems, under the influence of the "carrot and stick" approach to achieving universal coverage under the new national pension system, to be closed off and eventually wither away.

Some problems that are presently with us would disappear automatically if changes we recommend for OASI as part of our concept of a national pension system are adopted. For example, it is possible today for a public employee to earn a pension or annuity under a separate Federal, State, or local system and then work just long enough in social security covered employment to become fully insured. This person contributed the bare minimum during that time, but still ends up with a minimum social security benefit that is totally unrelated to his contributions and that was originally intended for low-income earners or persons having had sporadic attachment to the labor force. These windfalls are a drain on the system. However, if a proportional benefit structure were phased into OASI as part of the new pension program, no one would ever get more than an amount strictly related

to what he contributed. To help the lower income workers or the worker who had only sporadic attachment to the labor market, the SSI program, responsible for performing the minimum-floor-of-income protection function, would provide additional income assistance. SSI would screen out higher income employees from the category of eligibles and eliminate the windfall benefit problem.

Private pension plans, and other savings and retirement income instruments like Keogh plans and IRA's would continue to be looked to in the future as a source for supplementary income during the later years of life. We believe this committee ought to look separately at the problems and issues involved here. The area is enormously broad and complex. We would, however, like to raise one issue at this point. While private pension plans cover around 50 percent of current workers, the rest are not pension plan participants and cannot reasonably count on having a private pension in their future income stream. If there is such a component at all it would, under the present scheme of things, have to come from an IRA or a Keogh plan. To try to fill the gap, our associations have recommended the establishment of a supplementary pension plan program whereby employers who do not have pension plans of their own could contribute on behalf of their employees—and receive certain tax advantages as an inducement to do so—to a central clearinghouse, perhaps administered by SSA. This central clearinghouse could accumulate the pension credits for those workers on whose behalf the contributions are made. This central clearinghouse would also have to have "bridges" to private pension plans and other elements in this income tier to allow transfers of credits that would accommodate worker mobility.

Before leaving the subject of the sources of supplements to the income stream of the future elderly we would like to add a few thoughts that the committee might explore. Some of the components of the future elderly's income we would expect to be the same as some of those of the present generation, as, for example, income from savings and other income-producing assets. There would also be an earned income component and we would hope and expect that that component would actually expand in size and weight among the various components.

We would, however, expect some components to be drastically changed and new ones added. For example, our associations are advocating that limited amounts of inflation-proof bonds be made available to small savers. These bonds would, unlike present ones, guarantee a real rate of return. As a possible new income source, our associations have begun to examine the question of whether it is possible for older persons to turn homes that they own into a steady source of income and still retain those homes during their lifetime. The concept is referred to as reverse mortgage and is one that ought to be explored in detail.

What Must Be Done to Change What Exists Into What Is Desired

Despite the enactment of the Social Security Amendments of 1977, the issue of social security financing is still very much with us.[1] One of the factors motivating the action by the administration and the Congress to cut income taxes now is the economic need to offset the

[1] See appendix 1, item 1, page 335 for historical account.

social security payroll tax increases that occurred this year and the even larger ones that are scheduled for next year. Our associations are opposed, as a matter of public policy, to increasing social insurance payroll taxes on the one hand and cutting income taxes on the other.

First, such a policy will increase the share of Federal Government revenue derived from a tax mechanism that is basically regressive—except to the extent that the regressivity is relieved by devices such as the earned income credit—relative to that derived from more progressive tax mechanisms.

Second, at a time when continued reduction in unemployment is still an economic goal, it makes little sense to discriminate against labor by enacting legislation that schedules enormous increases in payroll taxes for years into the distant future. Higher payroll taxes increase the cost of labor—relative to the cost of capital—and make reducing unemployment that much more difficult.

Third, some households will end up losing more from payroll tax increases than they will gain from income tax cuts; households not subject to payroll tax increases will gain a windfall via those income tax cuts. Finally, and most importantly, payroll tax increases are more inflationary relative to some other choices available for dealing with social security's financial troubles.

Rather than scheduling enormous increases in payroll taxes to shore up social security, it seems to us that it would have made better sense and created fewer problems to have introduced some "general revenues," on a limited basis and for narrow and highly specific purposes, into the cash benefit programs to deal with the system's short-term financial imbalance problem. The excess of outgo over income—a situation that has existed since 1975—is primarily attributable to the impact that elevated rates of inflation and unemployment have had on the social security programs. The system is extremely vulnerable to what goes on in the economy. Since benefits move up automatically with inflation, the higher the inflation level, the higher the outgo from the system. As consumer purchasing power declines—as a result of inflation, higher taxes, et cetera—unemployment increases and payroll tax contributions to the system fall below anticipated levels. The public policy answer to the social security financial imbalance should have responded, but in our view did not, to the economic causes of the problem. The system remains, even after last year's legislation, vulnerable to the impacts of adverse economic developments.

In order to protect the system from these adverse impacts, our associations have, since 1975, recommended that certain "general revenue" safety net devices be introduced as adjuncts to the financing mechanism that supports the programs. First, we advocate a limited—and hopefully temporary—use of general revenues to fund a portion of the cost of automatic benefit increases to the extent that those increases exceed a specified level—for example 4 percent. As the rates of inflation and unemployment decline and the difference between the rate of inflation and the rate of increase in average covered wages in social security covered employment increases, the annual general revenue contributions should gradually phase out automatically. In addition to this proposal, we endorsed the proposal advanced by the administration last year that would have used general revenues to replace income lost to the social security system as a result of unem-

ployment rates in excess of 6 percent. As unemployment declines below that figure, the annual general revenue contribution for this purpose would also phase out automatically.

Two Uses of General Revenues

We wish to make it clear that our associations continue to espouse these two uses of general revenues for the cash benefit programs. First, those two devices will serve to protect the system from the two-fold threat posed by the high rates of inflation and unemployment over the long term. Second, they would also assist sound financial planning for future payroll tax needs by assuring a minimum amount of income to the system each year and by assuring that the payroll tax mechanism would be called upon to fund the cost of automatic benefit increases only up to a specified maximum level. The annual cost of automatic increases in excess of that level would come from the general funds. Third, by desensitizing the social security system to adverse economic developments, not only would the system be better protected, but beneficiaries and workers would have better assurance of its ongoing viability. Fourth, by introducing general revenues into the cash benefit programs, some of the inflation and unemployment pressures that payroll tax increases produce could be avoided. Finally, some of the revenue potential of the payroll tax mechanism would be "freed up" for the purpose of funding the costs incidental to the national pension program that we would like to see brought into being in the future. We would add that, until a new financing source such as we have advocated is introduced into social security, fundamental improvement of OASDI is going to be very difficult if not impossible.

We do not wish to leave this topic without some comment on the source of the "general revenues" which we propose to use for social security purposes. In our view, these general revenues can come from: (1) Increased and nonearmarked revenue derived from existing or new tax mechanisms; (2) deficit financing from the sale of Federal securities; and (3) the shifting of expenditure priorities within the context of the Federal budget.

To the extent that the general revenues are needed in any year, the choice of source(s) for those funds should be made in the light of the needs of the economy at that time. We hasten to add that since our associations believe the Federal budget ought to be balanced over the business cycle, no single source for the general revenues should be relied upon year after year.

In view of the foregoing, it should be clear that our associations believe that, by choosing to rely almost exclusively on payroll tax increases to deal with the short-term financial imbalance of the social security system, the Congress made a serious mistake. We felt compelled to acquiesce in what the legislative process produced in order to avoid the interruption of benefit payments—the DI trust fund was projected to run out of assets next year. Nevertheless, as a matter of first priority and as a first step in making the transition necessary to accommodate the future elderly with respect to their primary income source needs, we urge new legislation to introduce general revenues into OASDI as a substitute for at least some of the payroll tax increases scheduled under current law.

If our recommendations continue to be ignored, and FICA payments become larger and more visible on the pay stubs of current workers, a

serious antipayroll tax revolt could occur that might, in turn, generate increasing political support for meat-ax-type benefits cuts. Those who stand firmly committed to payroll taxes as the sole means of financing social security—on the specious grounds that it introduces discipline and restrains benefits increases—are, because of the rigidity of this stance, helping to set the stage for the antipayroll tax reaction that our associations would like to avoid.

As we have indicated, we wish to see everyone covered under the nationwide pension program that we would like to see brought into being in the future. To achieve that objective, we recommend a "carrot-and-stick" approach. We reject the crude approach of simply mandating coverage for all those employees who are outside the system on a date certain.

Aside from potentially serious adverse financial impacts on OASDI that could result from wholesale withdrawals by employee groups presently covered on a voluntary basis, existing coverage exclusions and voluntary coverage and termination options under the current system have significant policy implications. On one hand, some public employee groups that have not elected or cannot elect social security coverage are able to obtain "fully insured" status through supplemental or seasonal employment and can expect to retire with a benefit heavily weighted in their favor in addition to their own staff retirement benefit. While there may be nothing wrong with "double dipping" if benefits are strictly related to amounts contributed to different systems—and there are no subsidies involved—there certainly is something wrong with giving windfalls to a select class of persons who find themselves uniquely situated to take advantage of things—like the minimum benefit—that were never intended for them.

On the other hand, we recognize that there are substantial incentives for public employee groups even now to come into social security and reserve the option to withdraw. Social security benefits are increasingly valuable; that is, indexed fully for inflation and completely portable. By entering the system, benefit rights can be obtained quickly with the cost spread over all covered employment. After dropping most of these costs on the system, and after having participated just long enough for most of a covered group to acquire fully insured status, the option to terminate can look attractive. Since old-age benefit rights for fully insured individuals are not affected by a termination, those terminated contribution amounts can be accumulated for the purpose of providing a supplementary, age-related benefit under a separate system that more than offsets the amount by which the social security benefit would be reduced because of the years of noncontribution following termination. Not only do these individuals derive a significant advantage from social security's weighted benefit formula, but they can also expect to obtain the advantage of subsequent liberalizations in the cash benefit—OASDI—and hospital insurance—HI—programs. The financial burden falls on everyone else in the system.

Risks of Termination

But termination, of course, has its risks. First, failure to continue contributions may result in a loss of disability protection and impair currently insured status for certain survivor benefits, lump-sum death payments, and chronic renal disease protection under the HI program.

Second, if, after termination, a separate public employee system is established which attempts to guarantee that benefits to be paid will never be less than the amount that would have been paid if social security coverage had been continued, the guarantee may not be kept with respect to those not fully insured at time of termination. Considering the degree to which social security and medicare benefits have been liberalized and extended in the past, and especially in view of the automatic cost-of-living benefit increases under present law, the cost consequences may undermine any separate system guarantee.

Third, for those members who are not fully insured at the time of termination, and for new workers subsequently hired, withdrawal may mean that they may never be insured for retirement, survivor, disability, and HI benefits. Once a jurisdiction opts out of the system under present law, it cannot come back in. Moreover, as time passes, the number of quarters of coverage required for fully insured status will continue to increase to 40, thus making it increasingly difficult for young or future public employees to obtain benefit rights.

In our view, and from the point of view of national policy, there is little that can be said in favor of withdrawal, and what can be said is clearly outweighed by the likely diminution in benefit and cost-of-living protection for current and future public employees affected by the decision to terminate. Therefore, action ought to be taken to strengthen the disincentives to withdraw and increase the incentives to enter the system on the part of at least those who are presently free to do so. Conceivably, current law could be changed to eliminate the right to withdraw on the part of covered groups already participating in social security. However, such a change would entail substantial legal—and even constitutional—problems and certainly would not be fair.

Therefore, we first suggest that the employees of participating covered groups should be given the opportunity to vote in a referendum on withdrawal—if a jurisdiction elects to withdraw—even if such a referendum cannot be made binding on participating jurisdictions and even if it has to be conducted by the Federal Government. Employees must be provided with the information necessary to make an informed judgment and be given the right to express themselves.

Second, with respect to the public employee groups which may enter the system in the future, the terms of coverage agreements should specify that the option to withdraw is subject to approval by a two-thirds vote.

Third, benefits should be frozen as of the time of withdrawal for those who elect to opt out.

Fourth, the introduction of some general revenue financing into social security would act as both the incentive to come into the system—in the case of those who are not presently in—and as a disincentive to withdraw, on the part of those already in on a voluntary basis. To the extent that any such general revenue come from income taxes, those who elect to remain outside this system will end up paying for something they cannot receive.

Fifth, the phasing-in of a new benefit formula that would be proportional or nearly so and would replace not less than 60 percent of a worker's average monthly indexed earnings amount—under the new decoupled approach in calculating future benefits—would result in a benefit reasonably related to contributions and in the process eliminate

minimum and weighted benefit windfalls that presently can go to persons who spent their careers in non-social security covered employment. Greater correlation between benefits and contributions coupled with the introduction of limited amounts of general revenue would leave groups that are outside the system or leave the system at a disadvantage. Finally, the fact that the number of quarters of coverage required for fully insured status under social security is increasing automatically means that persons who try to split their employment between social security and some other system but who spend less than 10 years in social security covered employment, will have made 10 years' worth of contributions to the system and still be ineligible for most—and perhaps all—benefits.

As we follow this kind of a "carrot-and-stick" approach, we must, of course, give to those groups—that is, Federal employees who are presently excluded from social security and could not come in even if they wanted to—at least the option of coming in. If they wish to remain out, that decision is up to them, but they will pay a price for it in terms of subsidies they will be making to the one big program.

Issues for Consideration

We do not wish to leave this subject without commenting on some of the issues that would have to be considered if the Congress were to proceed to mandate coverage for all public employees not presently in the system on a date certain, rather than following the incentive/disincentive approach that we recommend. First, there may be constitutional impediments—in the light of the *League of Cities* decision—although that is not likely.[1] Second, jurisdictions with employees not covered by social security have separate pension or annuity systems designed without taking social security benefits into account. Generally, benefits and contributions are high; if social security were then simply added as a supplement, benefits and contributions for both employees and units of government would likely be excessive. Moreover, since some States have constitutional prohibitions against reductions in retirement benefits—like, for example, the State of New York—those benefits could not readily be reduced.[2]

To us, the only reasonable means for mandating universal coverage would be to mandate such coverage only for new employees hired after the effective date of the provisions of the necessary legislation. States and localities that are not participating in social security would have to be given reasonable time to establish new career retirement programs—for those hired after the effective date—that take into account social security as a first benefit tier. The old systems would have to be closed off with respect to employees employed by those jurisdictions prior to the effective date of the mandatory coverage. They and those already retired would receive their benefits from the preexisting system during their lifetimes.

The present OASDI programs, we have said, contain pension, welfare, and "social adequacy" elements, all of which are reflected in the system's benefit structure and formula. The minimum benefit is clearly a welfare element. Spouse and survivor benefits fall in the more general social adequacy category. Certainly, benefits have less

[1] See app. 1, item 3, page 340, for discussion of this point.
[2] See app. 1, item 2, page 337, for full discussion of this issue.

to do with amounts actually contributed to the system than with the size of the OASI or DI recipient's family.

Under a pure pension or annuity system, however, benefits are always strictly related to contributions. Individual equity is strongly emphasized. Since our associations advocate evolving OASI into a pension program in which individual equity would be given much greater emphasis than it is under the current program, it follows that we would tend to favor changes in the mix and magnitude of current benefits as well as change in the benefit formula as stated earlier. This committee, which had a task force look at the issue of women and social security in 1975, recognizes that there is increasing pressure building for changes in the structure of social security benefits. Much of the inequity now being perceived in the existing structure stems from assumptions made during the early years of the system's evolution. The fundamental one was that the man is the breadwinner who is responsible for the support of his wife and children, and that the woman is the homemaker and a dependent. Over time, the traditional role of women has changed to include substantial periods as a wage earner. That social security does not adequately recognize the overlap occurring in the roles of the woman is a source of dissatisfaction that is increasing, especially now since women are entering the labor force in increasing numbers—and thus earning social security credit—partly to offset the effect of inflation on family income purchasing power and standard of living.

Under present law, a woman as the spouse of a fully insured worker, is entitled to 50 percent of her husband's primary insurance amount, even though she may have made no contributions to the system. A woman worker beneficiary is entitled to a benefit based on her own average earnings. Any spouse benefit to which she is entitled on her husband's record is reduced by that amount. In effect, she receives the larger of the two. However, if she is entitled to a benefit of her own record she derives an expanded degree of protection for herself, her spouse and children—especially in light of the *Goldfarb* decision and that line of cases.

There are other factors that ought to be mentioned. Most workingwomen are employed in lower paid occupations and industries. Moreover, many women periodically leave the labor force to raise children, but those years of nonlabor force participation are included in the computation of benefits. Consequently, the average earnings of women tend to be much lower than those of men and often female wage earners' benefits turn out to be little more than what they would have gotten as spouses. It is not difficult, therefore, to understand why workingwomen often feel that they receive little or nothing for the taxes they paid, since nonworkingwomen can often obtain approximately the same benefits without having paid anything.

Family Protection Inequities

While the major purpose of social security as structured is family income protection, the focus in the determination of benefits is the individual, earnings, and status in the family. This can result in other perceived inequities. A working husband and wife may contribute more to social security than a single worker whose income is equivalent to their combined earnings. It has been shown that when the combined

earnings of a couple are below or slightly above the taxable maximum for one worker, the sum of the benefits to which they are entitled is usually smaller than the sum of the benefits to which a man, whose earnings are equivalent to their combined income, is entitled coupled with his nonworking wife's spouse benefit.

It logically follows from our call for the evolving of OASI into a national pension program with emphasis on individual equity and the earnings replacement function and our call for the sorting out from social security of other functions and making them the responsibility of other programs, that some existing benefits should be phased out of the OASI program over time and cease to exist under a new pension program. For example, pension and annuity systems award benefits as a form of deferred compensation to workers and relate those benefits to contributions. The benefit formula usually takes into account both average earnings and time spent in employment covered by the program. While a survivor option is generally available along with a lump sum payment if the worker dies before eligibility requirements are met, there generally is no separate survivor benefit or other derivative, family protection type of benefits and, if there are, the worker generally has to "buy" them by paying more in contributions.

The national pension program we have recommended would end up paying primary benefits to future retired workers that would be much larger than what would be paid if the present system were to be continued. Workers and work effort would be rewarded. A survivor benefit option would of course be available. However, other derivative benefits under the existing system would be phased out of such a program gradually over time so that no one has his or her benefit expectations defeated. That would require, for example, that only persons who become contributors for the first time after a different benefit structure were enacted would be denied the derivative benefits available under current law. Obviously, that entails enormous leadtime and transition, but it is only fair since persons who are working at the time any such legislation is enacted would have already been contributing in the expectation that they and their family members would be entitled to the benefits existing under current law.

This idea of phasing out derivatives benefits would not mean that such benefits need necessarily vanish. They could simply be in place elsewhere—perhaps in the SSI program—and funded from general sources. But if they are retained under a national pension program, which would not then be a pure pension program, then the financing for those separate benefits ought to come from something other than payroll tax contributions of noneligible contributions, like single persons who have no spouse to be eligible for spouse benefits but who pay as much under current law as a similarly situated worker with a nonworking spouse.

Need for Smooth Transitions

Our associations realize that much thought must be given to the issues that changes in the benefit structure necessarily entail and we anxiously await recommendations in this area by the Social Security Advisory Council and other commissions that are now being set up to study retirement income support programs and social security, we must emphasize, however, one important matter that we have men-

tioned repeatedly—the need for smooth transitions. We are not in favor of introducing significant changes that penalize persons by defeating their reasonable benefit expectations.[1]

Our associations also contemplate other major changes in OASI but have made reference to most of these elsewhere. For example, we believe that social security benefits ought to be increased actuarially for persons who elect to forgo applying for benefits until after age 65. We also believe that the earnings limitation should be eliminated with respect to primary benefits. However, to the extent that derivative benefits remain under the system the earnings test would have to continue to apply to them; otherwise we could have situations where a man under 60 and working full time, but with a dependent child, ends up receiving a survivor benefit on the death of his wife even though he is not at home caring for that child.

Before leaving the general subject of primary retirement systems and turning to SSI and the means-tested programs, we wish to comment on the automatic cost-of-living mechanism that is used to adjust OASDI and SSI benefits. We consider it deficient in two respects.

First, it is not timely enough to prevent a gradual erosion in benefit purchasing power, especially during periods of rapid inflation. Under current law, social security and SSI benefits are adjusted only once a year to reflect increases in the CPI which have occurred much earlier.

Second, the CPI currently used to measure price increases and adjust benefits does not accurately reflect the impact of inflation on elderly budgets. The elderly's expenditures for basic needs and necessities, as compared to other consumers, are concentrated in areas where some of the sharpest price increases have occurred—housing, medical care, fuel, and food.

We should point out that although we think the use of the new urban consumer index will be better for the elderly because it includes the expenditure patterns of old people and of other low-income groups, we will not be certain until we have more experience with it. In the

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[1] One of the more recent and outrageous examples of this failure to provide smooth transition occurred in connection with the 1977 Social Security Amendments' elimination of the "monthly aspect" of the earnings test. Prior to this year, persons could collect full benefits for any month in which they did not render "substantial services" in self-employment or did not earn more than one-twelfth of the annual earnings limit, regardless of their total yearly income. These months are referred to technically as "nonservice" months.

Last year's bill changed all this. Beginning Jan. 1, the protection of the monthly aspect was eliminated (leaving only the annual test)—except for the first year of a person's full retirement. The monthly aspect of the earnings limit was preserved during the first year of retirement in order to protect those who work part of the year but then retire expecting to receive benefits for the rest of the year, from losing those expected benefits because of the salary or wage income earned earlier in the year—a result very likely to occur if only the annual earnings limit is applied.

As if this were not bad enough, the Social Security Administration (SSA) has interpreted last year's change in a manner that effectively denies the "first-year-of-retirement, monthly aspect protection" to many persons who retired this year or in the next few years. In effect, SSA has said that the first year in which a person, otherwise eligible for social security, has a nonservice month is that person's first year of retirement—even though that was not his first year of actual retirement and even though that first year was a year prior to 1978, the effective date of the change of the law.

Thus, in the case of an active teacher who was able to collect benefits for the summer months of 1977 because her earnings in each month did not exceed one-twelfth of the annual exempt amount but who did not actually retire until July of 1978, 1977 would be considered her first year of retirement for purposes of the monthly aspect because that was the first year in which she had a nonservice month. In 1978, the first year of actual retirement, only the annual test would apply and that might well cause her to lose all or part of the benefit she expected to receive in the months after she actually stopped working. The number of persons who have suffered a loss of expected social security benefit income as a result of this SSA interpretation and last year's change in the law is estimated at 250,000. NRTA and AARP are challenging this and are seeking remedial legislation.

first month of publication, the unrevised CPI increased at an annual rate of 5.3 percent, the revised CPI at an annual 6.6 percent, and the new urban index at an annual rate of 7.3 percent. Again, this is only 1 month of experience but it appears that what index is used and when it is used will matter significantly. The inflation impact study which our associations will be obtaining from Data Resources, Inc., will hopefully shed some light on this subject and be useful in developing and supporting appropriate legislative remedies.

New Adjusting Mechanism

To correct the two deficiencies outlined above, our associations support legislation, S. 1243, introduced by Senator Church, that would, first, authorize the development of a special CPI for the elderly and, second, make the social security and SSI adjustment mechanism more responsive during periods of rapid inflation triggering semi-annual cost-of-living adjustments whenever the CPI exceeds a high annual rate.

The new adjustment mechanism would shorten the time that elapses between the measuring period and benefit increase. Our associations appreciate Senator Church's continuing leadership in this area of protecting the elderly's benefits from the impact of inflation and strongly supported his efforts to gain acceptance of his bill during congressional debate on the 1977 Social Security Amendments.

The elderly population in this country can generally be described as a low-income group associated with a high incidence of poverty when compared to the income and poverty status of both their younger counterparts and the population as a whole. It is true that the findings of various Government studies on levels of income and prevalence of poverty among the elderly differ substantially. For instance, while both the Census Bureau and Congressional Budget Office compile statistics on the incidence of poverty and use the same income thresholds in defininining poverty, the findings of each report differ markedly based on whether certain in-kind benefits are included as income.

Definitions of the poverty threshold also vary among Government reports making a consistent measurement of income adequacy difficult. The Census Bureau utilizes two thresholds: "poor," defined as the absolute minimum amount of income necessary for subsistence living—in 1977, the poverty cutoff for elderly individuals was $2,906 and for elderly couples $3,666—and "near poor," defined as income slightly—25 percent—above the poverty threshold but still not considered adequate. The Bureau of Labor Statistics annually publishes yet another income adequacy index which lists required budgets for a retired couple at three different standards of living.

Despite all these disparities in the measurements of poverty and the definitions of income adequacy for the elderly, certain characteristics and trends are quite evident. First, substantial progress has been made over the last decade in reducing poverty—especially for the elderly population. According to recent Census Bureau data as outlined in table VI, the poverty rate among the elderly has been cut from a rate of 29.5 percent in 1967 to 14.1 percent in 1977. In contrast, the poverty rate among the general population only fell from 14.2 percent to 11.6 percent over the same period.

TABLE VI.—PERSONS BELOW THE POVERTY LEVEL BY FAMILY STATUS, SEX OF HEAD, AND RACE: 1959 TO 1977

[Numbers in thousands. Persons as of March of the following year. For meaning of symbols, see text]

Year, race, and sex of head	Number below poverty level							Poverty rate						
	Total		In families				Unrelated individuals	Total		In families				Unrelated individuals
	All persons	65 years and over	Total	Head	Related children under 18	Other family members		All persons	65 years and over	Total	Head	Related children under 18	Other family members	
ALL RACES														
1977	24,720	3,177	19,505	5,311	10,028	4,165	5,216	11.6	14.1	10.2	9.3	16.0	5.9	22.6
1976	24,975	3,313	19,632	5,311	10,081	4,240	5,344	11.8	15.0	10.3	9.4	15.8	6.0	24.9
1975	25,877	3,317	20,789	5,450	10,882	4,457	5,088	12.3	15.3	10.9	9.7	16.8	6.4	25.1
1974 [1]	23,370	3,085	18,817	4,922	9,967	3,928	4,553	11.2	14.6	9.9	8.8	15.1	5.7	24.1
1974	24,260	3,308	19,440	5,109	10,196	4,135	4,820	11.6	15.7	10.2	9.2	15.5	6.0	25.5
1973	22,973	3,354	18,299	4,828	9,453	4,018	4,674	11.1	16.3	9.7	8.8	14.2	5.9	25.6
1972	24,460	3,738	19,577	5,075	10,082	4,420	4,883	11.9	18.6	10.3	9.3	14.9	6.6	29.0
1971	25,559	4,273	20,405	5,303	10,344	4,757	5,154	12.5	21.6	10.8	10.0	15.1	7.2	31.6
1970	25,420	4,709	20,330	5,260	10,235	4,835	5,090	12.6	24.5	10.9	10.1	14.9	7.4	32.9
1969	24,147	4,787	19,175	5,008	9,501	4,667	4,972	12.1	25.3	10.4	9.7	13.8	7.2	34.0
1968	25,389	4,632	20,695	5,047	10,739	4,909	4,694	12.8	25.0	11.3	10.0	15.3	7.8	34.0
1967	27,769	5,388	22,771	5,667	11,427	5,677	4,998	14.2	29.5	12.5	11.4	16.3	9.1	38.1
1966 [1]	28,510	5,114	23,809	5,784	12,146	5,879	4,701	14.7	28.5	13.1	11.8	17.4	9.5	38.3
1966	30,424	NA	25,614	6,200	12,876	6,538	4,810	15.7	NA	14.2	12.7	18.4	10.5	38.9
1965	33,185	NA	28,358	6,721	14,388	7,249	4,827	17.3	NA	15.8	13.9	20.7	11.8	39.8
1964	36,055	NA	30,912	7,160	15,736	8,016	5,143	19.0	NA	17.4	15.0	22.7	13.3	42.7
1963	36,436	NA	31,498	7,554	15,691	8,253	4,938	19.5	NA	17.9	15.9	22.8	13.8	44.2
1962	38,625	NA	33,623	8,077	16,630	8,916	5,002	21.0	NA	19.4	17.2	24.7	15.1	45.4
1961	39,628	NA	34,509	8,391	16,577	9,541	5,119	21.9	NA	20.3	18.1	25.2	16.5	45.9
1960	39,851	NA	34,925	8,243	17,288	9,394	4,926	22.2	NA	20.7	81.1	26.5	16.2	45.2
1959	39,490	5,481	34,562	8,320	17,208	9,034	4,928	22.4	35.2	20.8	18.5	26.9	15.9	46.1
WHITE														
1977	16,416	2,426	12,364	3,540	5,943	2,882	4,051	8.9	11.9	7.5	7.0	11.4	4.6	20.4
1976	16,713	2,633	12,500	3,560	6,034	2,906	4,213	9.1	13.2	7.5	7.1	11.3	4.7	22.7
1975	17,770	2,634	13,799	3,838	6,748	3,212	3,972	9.7	13.4	8.3	7.7	12.5	5.2	22.7
1974 [1]	15,736	2,460	12,181	3,352	6,079	2,750	3,555	8.6	12.8	7.3	6.8	11.0	4.8	21.8
1974	16,290	2,642	12,517	3,482	6,180	2,855	3,773	8.9	13.8	7.5	7.0	11.2	4.7	23.2
1973	15,412	2,698	11,412	3,219	5,462	2,731	3,730	8.4	14.4	6.9	6.6	9.7	4.5	23.7
1972	16,203	3,072	12,268	3,441	5,784	3,043	3,935	9.0	16.8	7.4	7.1	10.1	5.1	27.1
1971	17,780	3,605	13,566	3,751	6,341	3,474	4,214	9.9	19.9	8.2	7.9	10.9	5.8	29.6
1970	17,484	3,984	13,323	3,708	6,138	3,477	4,161	9.9	22.5	8.1	8.0	10.5	5.9	30.8
1969	16,659	4,052	12,623	3,575	5,667	3,381	4,036	9.5	23.3	7.8	7.7	9.7	5.8	32.1
1968	17,395	3,939	13,546	3,616	6,373	3,557	3,849	10.0	23.1	8.4	8.0	10.7	6.3	32.2
1967	18,983	4,646	14,851	4,056	6,729	4,066	4,132	11.0	27.7	9.2	9.0	11.3	7.2	36.5
1966 [1]	19,290	4,357	15,430	4,108	7,204	4,120	3,860	11.3	26.4	9.7	9.3	12.1	7.4	36.1

1966	20,751	NA	16,732	4,481	7,649	4,602	4,019	12.2	NA	10.5	10.2	12.8	8.2	37.3
1965	22,496	NA	18,508	4,824	8,595	5,089	3,988	13.3	NA	11.7	11.1	14.4	9.2	38.1
1964	24,957	NA	20,716	5,258	9,573	5,885	4,241	14.9	NA	13.2	12.2	16.1	10.8	40.7
1963	25,238	NA	21,149	5,466	9,749	5,934	4,089	15.3	NA	13.6	12.8	16.5	11.0	42.0
1962	26,672	NA	22,613	5,887	10,382	6,344	4,059	16.4	NA	14.7	13.9	17.9	12.0	42.7
1961	27,890	NA	23,747	6,205	10,614	6,928	4,143	17.4	NA	15.8	14.8	18.7	13.3	43.2
1960	28,309	NA	24,262	6,115	11,229	6,918	4,047	17.8	NA	16.2	14.9	20.0	13.3	43.0
1959	28,484	4,744	24,443	6,185	11,386	6,872	4,041	18.1	33.1	16.5	15.2	20.6	13.3	44.1
BLACK AND OTHER RACES														
1977	8,304	751	7,141	1,771	4,085	1,283	1,165	29.0	34.9	28.1	26.5	38.8	15.7	35.9
1976	8,262	680	7,132	1,751	4,047	1,334	1,131	29.4	32.7	28.2	26.4	38.3	16.5	39.5
1975	8,107	683	6,990	1,612	4,134	1,244	1,116	29.3	34.0	28.0	25.3	38.9	15.6	40.9
1974 [1]	7,634	625	6,636	1,570	3,888	1,179	999	28.3	32.5	27.2	25.1	37.1	15.5	38.0
1974	7,970	666	6,923	1,627	4,016	1,280	1,047	29.5	34.7	28.4	26.0	38.4	16.7	40.0
1973	7,831	656	6,887	1,609	3,991	1,287	944	29.6	35.5	28.8	26.2	38.3	17.4	37.8
1972	8,257	666	7,309	1,634	4,298	1,377	948	31.9	37.5	31.0	27.7	41.3	19.0	40.9
1971	7,780	668	6,839	1,552	4,003	1,283	941	30.9	38.4	29.7	27.4	38.7	18.2	44.9
1970	7,936	725	7,007	1,552	4,097	1,358	929	32.0	46.2	30.7	28.1	39.6	19.5	46.7
1969	7,488	735	6,552	1,433	3,834	1,286	936	31.0	48.1	29.6	26.9	37.7	19.4	45.5
1968	7,994	693	7,149	1,431	4,366	1,352	845	33.5	46.6	32.4	28.2	41.6	20.9	45.7
1967	8,786	742	7,920	1,611	4,698	1,611	866	37.2	51.0	36.3	32.1	44.9	25.3	48.2
1966 [1]	9,220	757	8,379	1,678	4,942	1,759	841	39.8	53.4	38.9	33.9	48.2	27.7	53.1
1966	9,673	NA	8,882	1,719	5,227	1,936	791	41.7	NA	41.1	35.0	50.7	30.2	50.0
1965	10,689	NA	9,850	1,897	5,793	2,160	439	47.1	NA	46.8	39.7	57.3	35.3	50.7
1964	11,098	NA	10,196	1,902	6,163	2,131	902	49.6	NA	49.1	40.0	61.5	35.7	55.0
1963	11,198	NA	10,349	2,088	5,942	2,319	849	51.0	NA	50.5	43.7	60.9	38.9	58.3
1962	11,953	NA	11,010	2,190	6,248	2,572	943	55.8	NA	55.3	48.0	66.4	43.2	62.1
1961	11,738	NA	10,762	2,186	5,963	2,613	976	56.1	NA	55.6	49.0	65.7	44.8	62.7
1960	11,542	NA	10,663	2,128	6,059	2,476	879	55.9	NA	55.7	49.0	66.6	43.3	69.3
1959	11,006	737	10,119	2,135	5,822	2,162	887	56.2	60.8	56.0	50.4	66.7	42.5	57.4
BLACK														
1977	7,726	701	6,667	1,637	3,850	1,181	1,059	31.3	36.3	30.5	28.2	41.6	17.4	37.0
1976	7,595	644	6,576	1,617	3,758	1,201	1,019	31.1	34.8	30.1	27.9	40.4	17.8	39.8
1975	7,545	652	6,533	1,513	3,884	1,136	1,011	31.3	36.3	30.1	27.1	41.4	16.9	42.1
1974 [1]	7,182	591	6,255	1,479	3,713	1,053	927	30.3	34.3	29.3	28.9	39.6	16.4	39.3
1974	7,467	626	6,506	1,530	3,819	1,157	961	31.4	36.4	30.3	27.8	40.7	17.5	41.0
1973	7,388	620	6,560	1,527	3,822	1,211	828	31.4	37.1	30.8	28.1	40.8	18.7	37.9
1972	7,710	640	6,841	1,529	4,025	1,287	870	33.3	39.9	32.4	29.0	42.7	20.0	42.9
1971	7,396	623	6,530	1,484	3,836	1,210	866	32.5	39.3	31.2	28.8	40.7	19.1	46.0
1970	7,548	683	6,683	1,481	3,922	1,279	865	33.5	48.0	32.2	29.5	41.5	20.5	48.3
1969	7,095	689	6,245	1,366	3,677	1,202	850	32.2	50.2	30.9	27.9	39.6	20.0	46.7
1968	7,616	685	6,839	1,366	4,188	1,285	777	34.7	47.7	33.7	29.4	43.1	21.7	46.3
1967	8,456	715	7,677	1,555	4,558	1,564	809	39.3	53.3	38.4	33.9	47.4	27.1	49.3
1966 [1]	8,867	722	8,090	1,620	4,774	1,696	777	41.8	55.1	40.9	38.5	60.8	29.4	54.4
1959	9,927	711	9,112	1,860	5,022	2,230	815	55.1	62.5	54.9	48.1	65.5	44.1	57.0

[1] Revised.
NA—Not available.

Source: U.S. Bureau of the Census, "Money Income and Poverty Status of Families and Persons in the United States: 1977" (advance report) July 1978.

This progress in reducing poverty among the aged can largely be attributed to ad hoc and automatic increases in social security benefits, especially since 1971, and the inception of the supplemental security income program in 1974 that guarantees a Federal minimum-floor-of-income protection.

The 1977 CBO study to which reference was made earlier clearly isolated what impact individual Government transfer programs had on reducing the incidence of poverty among the aged during 1 year; see table VII. If it were not for income from social insurance programs, an overwhelming 59.9 percent of all families headed by an elderly person would have fallen below the subsistence-based poverty line in fiscal 1976. Social insurance programs, dominated by social security, substantially reduced the poverty rate among the elderly during 1976 from 59.9 to 21.5 percent. Cash assistance programs, such as SSI and veterans pensions, reduced the remaining poverty rate from 21.5 to 14.1 percent.

TABLE VII.—FAMILIES BY AGE BELOW THE POVERTY LEVEL UNDER ALTERNATIVE INCOME DEFINITIONS: FISCAL YEAR 1976

Families in poverty	Pretax/ pretransfer income	Pretax/ postsocial insurance income	Pretax/ postmoney transfer income	Pretax/post-in-kind transfer income [1]		Post-tax/post-total transfer income [1]	
				I	II	I	II
Under 65:							
Number in thousands	11,789	8,994	8,029	6,710	5,463	6,886	5,615
Percent of under 65	18.6	14.2	12.7	10.6	8.6	10.9	8.9
65 and over:							
Number in thousands	9,647	3,459	2,686	2,268	977	2,279	982
Percent of 65 and over	59.9	21.5	16.7	14.1	6.1	14.1	6.1

[1] Column I excludes medicare and medicaid benefits received by families participating in those programs; column II includes medicare and medicaid benefits.

Source: Appendix table A-8, "Poverty Status of Families under Alternative Definitions of Income," Congressional Budget Office, revised June 1977.

In-kind benefit programs, such as medicare/medicaid and food stamps, also made an important contribution to supplementing the elderly's income. According to the same CBO study, when the value of these in-kind benefits is cashed out and included in income, the percentage of elderly falling below the poverty line in fiscal 1976 was reduced even further, from 14.1 to 6.1 percent—after accounting for taxes. Although calculating the exact impact of in-kind benefits on income status yields some interesting findings, our associations do not believe the resulting CBO poverty data should be accepted as a new measure of poverty, especially for the purpose of comparing poverty rates among age groups. Of all the benefits in the CBO's in-kind category, medicare/medicaid benefits contribute the most "income" to the elderly—the sicker you are, the richer you are? Receipt of these sometimes large medical benefits is, of course, dependent on the incidence of illness, which happens to be higher among the elderly than other age groups.

But what these CBO statistics do indicate is that, of all the Government programs benefiting the elderly, social security contributes the most toward reducing poverty. However, cash assistance programs, backed by in-kind benefits, have also come to share a good portion of

the burden of income maintenance for the elderly. More importantly, however, these statistics demonstrate just how dependent the elderly are on Government transfer programs.

A second trend evident in examining poverty data is that the incidence of poverty is higher for the age 65-plus population than for the overall population. In 1977, according to Census Bureau statistics, 11.6 percent of all persons fell below the poverty line in contrast to 14.1 percent of persons age 65 and over. While the elderly represented only 11 percent of the total population in 1977, they represented 13 percent, or 3.2 million, of the poor population. Similarly, in 1977, 16.7 percent of the total population fell into the "near poor" category—defined as 125 percent of the poverty standard—while a much larger 24.5 percent of the elderly were considered near poor. None of the Census Bureau statistics include institutionalized elderly persons, of whom an estimated one-half million are thought to be poor.

The elderly's comparatively adverse income status is further substantiated when median income levels are examined. Since 1960, the aged have consistently had median income levels equal to roughly half of the younger population. Table VII illustrates this trend from 1960 to 1975.[1] In 1975, the median income of families headed by elderly individuals was $8,057, in contrast to $14, 698 for families headed by persons under age 65. Elderly persons living alone are characterized by even greater economic deprivation. The median income for elderly unrelated individuals in 1975 was $3,311 as compared to $6,460 for their younger counterparts.

TABLE VIII.—TRENDS IN MEDIAN MONEY INCOME OF FAMILIES AND UNRELATED INDIVIDUALS BY AGE, 1960–75

	Families			Unrelated individuals		
		Heads, 65 plus			65 plus	
Year	Heads, 14–64 amount	Amount	Percent of 14–64	14–64 amount	Amount	Percent of 14–64
1960	$5,905	$2,897	49.1	$2,571	$1,053	41.0
1961	6,099	3,026	49.6	2,589	1,106	42.7
1962	6,336	3,204	50.6	2,644	1,248	47.2
1963	6,644	3,352	50.5	2,881	1,277	44.3
1964	6,981	3,376	48.4	3,094	1,297	41.9
1965	7,413	3,514	47.4	3,344	1,378	41.9
1966	7,922	3,645	46.0	3,443	1,443	41.2
1967	8,504	3,928	46.2	3,655	1,480	40.5
1968	9,198	4,592	49.9	4,073	1,734	42.6
1969	10,085	4,803	47.6	4,314	1,855	43.0
1970	10,541	5,053	47.9	4,616	1,951	42.3
1971	10,976	5,453	49.7	4,783	2,199	46.0
1972	11,870	5,968	50.3	5,018	2,397	47.8
1973	12,935	6,426	49.7	5,547	2,725	49.1
1974	13,823	7,505	54.3	6,080	2,984	49.1
1975	14,698	8,057	54.8	6,460	3,311	51.3

Source: Herman B. Brotman, "Income and Poverty in the Older Population in 1975," The Gerontologist, XVII, No. 1 (1977), p. 23, quoting U.S. Bureau of the Census data.

These comparative statistics indicate that, although we have made great progress toward reducing poverty and improving the economic status of the elderly, much remains to be done. It is true that persons reaching retirement age today are relatively better off than their

[1] Although these Census Bureau statistics do not account for the impact of taxes, the trends and disparities in income levels would be relatively similar.

predecessors; but nevertheless, reaching age 65 for many persons still significantly increases the probability that they will suffer a severe loss of income and often face impoverishment, and that probability increases as the annual inflation rate spins at higher rates.

The Goal: Earnings Replacement

If we are to move toward the goal of gradually restructuring the social security system into a national pension system that has earnings replacement as its sole—or at least clearly dominant—function, we must begin now to make changes which will insure that the underlying cash and in-kind support programs will be able to take up the present minimum-floor-of-income protection function and adequately serve those elderly who would otherwise be in poverty. Benefits available under the new national pension system would be related to previous employment and earnings, not to the needs of beneficiaries, and, therefore, would be less than adequate for many beneficiaries.

The supplemental security income program must be looked to as the main policy instrument available to us to provide the sort of safety net that would guarantee minimum income protection and supplement low social security benefit levels. However, any transitional reordering of the present income maintenance structure, because of its massiveness and complexity, must be made in any incremental manner so that the millions of persons who are already extremely dependent on existing programs would not be hurt in the process.

Since the creation of SSI, several incremental improvements have been made in its benefit levels and eligibility structure that have been of great value to recipients. Our associations hope that Congress will continue in this spirit of making incremental, but extremely necessary, improvements in SSI because this permits us to move gradually closer to the ultimate goal of comprehensive restructuring. Some of the more significant improvements enacted to date include: Automatic annual cost-of-living increases in payment levels so that recipients have some protection from inflation, a requirement that States which supplement Federal SSI levels pass through to recipients any Federal cost-of-living increase, the exemption of the total value of one's home in determining eligibility, the provision of automatic eligibility for food stamps, and the preservation of medicaid elgibility for persons who lose their eligibility for SSI because of a Federal cost-of-living increase.

To facilitate the more complete transition of SSI into an income support program capable of carrying the largest part of the minimum income protection burden currently being borne by social security, our associations see three major areas of change necessary in the current SSI structure. These areas involve payment levels, employment, and assets limits. The first priority recommendation on our agenda for the SSI program is to raise Federal payment levels to at least the officially defined poverty level. Current SSI levels fall far short of the poverty line, guaranteeing eligible aged individuals an annual income of only $2,373 and married couples only $3,413. This liberalization in payment levels is obviously the most needed change if we are ever going to approach making SSI an income support program that is adequate.

State supplements to this Federal poverty level payment should be encouraged by having the Federal Government share a portion

of the cost of supplementing so that recipients can be compensated partially for regional cost-of-living variations. Some States, approximately 23, already augment the Federal SSI benefit to varying degrees under current law, but as we have seen recently in California these supplements can easily become victims of State fiscal pressures, and therefore, need some Federal financial backing.

Because participation of the elderly poor in the food stamp program has been low—only one-quarter of the elderly estimated to be eligible actually do receive them—cashing out food stamps and combining them with SSI benefits into a single cash payment would ultimately benefit the majority of aged SSI recipients. For this reason, we support the eventual cashout of benefits but with safeguards that the value of the food-stamp benefit component will be preserved and adequately cost-indexed. The value of food stamps cannot be preserved in any reform effort which combine SSI and food stamps into a single cash payment that falls below the poverty level. Therefore, we do not support welfare reform proposals which cash-out food stamps by providing a small increase in SSI payment levels and at the same time deny SSI recipients food-stamp eligibility.

To facilitate better coordination between SSI and social security payments, the partial disregard of unearned income—usually social security benefits—existing under current law should be made on a progressive rate basis rather than on a flat dollar basis. Under the current structure, even though SSI payment levels are indexed in the same manner as social security, many recipients experience a partial decrease in their SSI payment as a result of social security cost-of-living increases, and some may even lose their SSI eligibility totally. Changing the present flat $20 unearned income disregard to a 20-percent disregard above that base would, in our view, alleviate this situation and result in improved program coordination.

Employment Incentives

Providing employment incentives, and eliminating disincentives, is the second major area of SSI reform. First, we believe the current 50 percent SSI benefit reduction rate for all earned income over $65 per month is an extreme deterrent for recipients who might want to work. This $65 disregard, which was established over 4 years ago, is not only outdated but was initially set at far too low a level. The earned income disregard should be raised substantially—possibly to a level equivalent to the present social security earnings limit—and automatically indexed.

Second, the Federal Government must actively create public service job opportunities specifically for SSI recipients and back up this effort by providing a job training and referral mechanism through offices administering SSI payments. While we shall have much to say on employment and the elderly in part III of this statement, we would like to say here that our associations are extremely dissatisfied with the complete disregard of elderly workers in the administration's welfare reform proposal. Not only would it have treated earned income more harshly than SSI does, but old people would have been inelligible for any of the 1.4 million jobs the program would have created. Government continues to view the older worker as it views the buffalo.

The third major area of SSI reform relates to the assets test. In

addition to the problem of creating jobs and providing work incentives, the current SSI structure strongly discourages saving among low-income individuals and denies payment to needy persons through the application of severe assets limitations. Our associations understand the intent of Congress in imposing an assets test for SSI eligibility that would prohibit persons who are not really lower income individuals from receiving benefits. However, we believe the assets limits under current law are overly and unnecessarily restrictive and have the effect of denying SSI eligibility to many truly poor and needy elderly persons. It has been estimated that 12 percent of elderly families whose incomes fell below SSI payment standards were denied SSI assistance strictly as a result of the assets test.[1] The elderly in particular are unfairly penalized by assets limits because, unlike younger persons, they tend to have higher assets simply because they had a lifetime to accumulate them. By any standard, the assets of many low-income elderly are not excessive yet they do not come within the restrictive limits and exclusions prescribed under SSI.

Some limited progress with the assets test is being made. In 1976, Congress decided to disregard the total value of a person's home in determining SSI eligibility. The Social Security Administration also recently proposed to increase the resource exclusions—those resources not counted toward the asset limit—permitted for the "reasonable" value of household goods, personal effects, and an automobile. These exclusions were defined in 1973 based on 1972 data and since then have not been updated to take account of the effect of inflation on such assets.

Our associations feel that more substantial liberalization is needed of the present assets limits, which are $1,500 for individuals and $2,500 for married couples. These limits should be raised to more realistic levels—such as $3,500 for individuals and $5,000 for couples—and cost-indexed to keep pace with inflation. As we look toward a major restructuring and rationalization of the current SSI and social security programs, our associations see the need for a close examination of equitable ways in which the assets test could be completely eliminated or at least its effects on eligibility substantially neutralized—certainly when it is obvious that retention of assets is needed to maintain an adequate standard of living and, furthermore, the assets could not be converted into income without lowering the standard of living.

III. Employment

The recent concern with the long-term financing problems of social security has highlighted the growing dependency ratio—the percentage of nonworkers, particularly the elderly, to workers in the population. This has reawakened the interest of some economists and policymakers in the way labor markets work for older persons. In view of future demographic trends, it has become increasingly apparent that policies which make for early labor force withdrawal are imposing serious and unnecessary costs on our economic system and are in need of reversal. Interest has recently been raised in the use of employment strategies, particularly part-time labor market opportunities, as income supplementation mechanisms for the already retired. Additionally, the role of

[1] Moon, Marilyn. "Treatment of Assets in Cash Benefit Programs for the Aged and Disabled." Technical paper prepared for the Federal Council on Aging Study entitled, "The Treatment of Assets in Income-Conditioned Government Benefit Programs" (Sept. 1, 1977).

poorly functioning labor markets as a causal force in the retirement decision itself is being explored by a number of researchers and it has been recognized that with an earnings related retirement system such as social security, employment problems in later years have a particularly adverse impact on earnings histories and hence income, once retirement does occur.

It is also obvious that despite the new recognition that what goes on in labor markets is important to older persons and to the retirement systems that serve them, those markets do not perform particularly well for this segment of the population, especially the unemployed older worker. In 1977, unemployed workers 45 years of age or older remained out of work an average 7 to 10 weeks longer than their younger counterparts. In that year, unemployed workers in this age group comprised 22 percent of those out of work for 15 to 26 weeks and 32 percent of those who had not been employed for 27 weeks or more.

Dr. Marc Rosenblum of the National Commission on Employment and Unemployment Statistics has measured the extent of the "discouraged worker" phenomenon and found that persons over 55 years of age contain the single largest population of persons discouraged from the job search because of job market reasons. Among males under 55, there are 4 discouraged workers for every person counted as unemployed while among those 55 and above, there are 37 discouraged for every person in the unemployed category.

On the positive side, it is generally not recognized just how extensive labor force participation by older persons really is. In 1974, while the participation rate for persons 65 and older was 22 percent for men and 8 percent for women, some 35 percent of the men and 17 percent of the women did some work for pay during the year. Focusing only on those persons 65 to 69, the percentage increases to 45 percent and 22 percent. Among the relatively "young" elderly, persons 60 to 64, the percentages with some labor force involvement over the year were 78 percent and 43 percent. Again, focusing on the 65-plus population, what goes on in the labor markets directly affects the 6 million people who participate in them directly and an additional 2½ million nonworking dependent spouses. In brief, it is inappropriate to chronologically split the population into younger working people and older "retired," nonworking ones.

Although work and the income derived from it is an integral and important part of the overall income maintenance system and an important component of the income stream of the current elderly generation, we have too little information on the workings of the labor market for older people.

Employment rates for the population 55 and older are dropping and dropping at an increasing rate. It is well known that the average annual employment rate among persons 63 and older has been declining for two decades. Virtually ignored, however, is the parallel trend, particularly after 1968, for persons 55 to 65.

As indicated in table IX, the mean percent change in the employment rate for men 55 to 64 over the period 1969 to 1975 has been around 1.6 percent a year. This rate of decline has been increasing by about 13 percent a year. For females in the same age group, the decline has been slower but a decline nevertheless. For persons 55 and older, the

decline has averaged about 2 percent a year over this period and the rate of decline has been increasing by about 7 percent a year.

TABLE IX.—ANNUAL AVERAGE EMPLOYMENT RATES

Year	Persons 55 plus	Males		Females	
		55–64	65 plus	55–64	65 plus
1961	36.8	80.5	27.3	36.1	9.5
1969	37.0	79.6	25.6	41.2	9.1
1970	36.3	78.5	25.9	41.1	8.8
1971	35.7	77.3	23.6	40.9	8.5
1972	35.0	76.6	22.5	40.5	8.5
1973	33.9	75.1	21.0	40.0	8.2
1974	31.1	74.4	20.8	39.1	7.5
1975	32.0	71.5	19.7	38.6	7.4

What is important for present purposes is recognition of the fact that more and more older persons, at an earlier age, are becoming dependent on sources of income other than that derived from employment and that this trend is accelerating. This increasing dependency has implications for all of our income transfer mechanisms and to the extent that this declining labor force activity rate is reflective of withdrawal by productive, willing and able workers, implications for national output as well.

The Federal policy response to older worker empoyment problems is found in two major programs. The senior commmunity service employment program—SCSEP—funded under title IX of the Older Americans Act provides approximately 50,000 part-time job slots to workers over 55 years of age who have experienced chronic unemployment problems and are below federally established poverty levels at program entry. The program is administered by five national contractors [1] and although it has historically been primarily operated as an income maintenance program with work elements attached, in recent times it has been moving in the direction of a bona fide manpower program with increasing emphasis on unsubsidized job placements in both the public and private sector. Originally organized under Operation Mainstream, SCSEP is the only categorical program focused on the employment problems of older workers.

The other primary vehicle for dealing with the employment difficulties of older persons is the CETA program. It has been well documented, however, that in spite of the need for employment assistance, older worker participation in the CETA program has been well below what might be expected on the basis of the size of the older worker unemployed pool. Although in 1977, workers 45 and older comprised 13.2 percent of the unemployed, only 10 percent of CETA participants were in this age group with the percentage declining dramatically with age. Workers 65 or older were 5 percent of recorded unemployed in that year but only 1 percent of CETA participants were in this age group. To date, there has been little or no official explanation for CETA's relative inability to provide more employment opportunities for older workers.

It has been suggested that since CETA prime sponsors are required to place at least half of their terminated enrollees into unsubsidized

[1] The United States Forest Service, Green Thumb, the National Council on Aging, our own National Retired Teachers Association-American Association of Retired Persons, and the National Council of Senior Citizens.

employment, the probability that an applicant will be selected for initial enrollment very much depends upon his or her likely employability, with those most likely to be placed, most likely to be initially enrolled in the program. This has been caled the "creaming" phenomenon.

Since project directors must work in markets that are biased in favor of younger workers and since placement rates are a direct and important measure of a project director's perfomance, it is likely that this hypothesis is correct. Additional evidence of this phenomenon can be found in the performance statistics of the U.S. Employment Service. Once referred to an employer, older and younger workers have essentially the same probability of being hired. However, in 1974 only 18 percent of those seeking work who were 65 or older and only 21 percent of those 55 to 64 were ever referred to an employer for a job interview. Fifty-two percent of applicants under 22 received such a referral. Given that we know that older workers are on average less likely to find employment once unemployed and that job service referred older workers are just as likely as younger referrals to be hired once referred, it seems quite likely, that only "better" older workers are being referred for interviews. It seems clear that any attempt to improve the functioning of employment programs for older workers, of necessity, requires more complete documentation and understanding of this phenomenon.

An additional conjecture concerning the relatively low participation rate of older workers in the CETA program has recently been offered by Secretary of Labor Ray Marshall. He has suggested that prime sponsors tend to deemphasize the needs of older workers in CETA because of the existence of the categorical older worker program, SCSEP. Again, just as with the phenomenon discussed previously, there is little if any evidence to support this conjecture.

In summary, although older worker employment and labor market strategies are taking on new importance and although older persons experience several, and to a great extent unique, problems in the labor market, governmental response to these problems has been primarily limited to two major programs: CETA and the categorical SCSEP. The former is not doing much for the older worker for reasons still unclear and the latter is much too small and restrictive, employing less than 50,000 of the estimated 5 million who would qualify under age and income guidelines.

SCSEP Evaluation

In June 1976, our associations decided to evaluate our senior community service employment program and to develop information which was at that time unknown: How long does it take to get a permanent job placement, and what does it cost? How long does the ex-enrollee stay on the job once hired, and how well does he or she perform after placement? What is the level of income transfer payments received by enrollees prior to entering the program, and how much is saved when they are enrolled? In short, does the program really work, and if so, how well?

In July 1976, funding became available to enroll 400 additional persons in our own SCSEP. Accordingly, survey instruments were prepared and distributed to the project sites slated for expansion. Simul-

taneously, survey instruments were distributed to employers who had permanently hired enrollees during the June 1974–June 1976 contact period.

Although the data used in this evaluation was drawn from the NRTA–AARP program, any of the findings generally apply to the program run by the four other sponsors as well. The principal differences between us and other sponsors are that we administer the program directly rather than by using subcontractors, and that we view permanent job placement of enrollees on employers' payrolls as the primary program objective.

It was found that enrollees were on the SCSEP payroll an average of 47 weeks before permanent employment was offered and accepted. Termination data collected from the employers indicated that the SCSEP placement, once hired, was quite likely to stay on the job. Over the 29 months for which data were available, the termination rate averaged less than 2 percent per month and declined the longer the person worked for the employer. Regression estimates, using this data, indicate that the average time an SCSEP placement will remain on the job after accepting permanent employment is 47 months.

At the time the permanent hiring occurred, enrollees received an average hourly wage increase of 14 percent. This is clear evidence that over the 47-week subsidy period, the value of the work performed for the employer and the value of the work to society more generally, was at least equal to—and, in fact, exceeded—the wage actually paid. Additionally, after becoming permanent employees, ex-enrollees received annual wage increases of 8 percent per year.

Ex-enrollees received high evaluations from their employers in eight aspects of job performance. Overall, 53 percent of the placements were regarded as above average or outstanding employees relative to their coworkers.

Also, it was found that, on average, new enrollees had not held a job for 2.2 years; that 50 percent of the enrollees had been unemployed for at least a year; and that 28 percent had been jobless for more than 2 years. On the last job held prior to employment, the average hourly wage earned was $2.54, with 50 percent of the new enrollees earning less tha $2.30. Savings to the unemployment compensation system were probably small, due to the short duration of remaining benefits at the time of SCSEP enrollment. But, at the time of enrollment, approximately 29 percent of the new enrollees were receiving food stamps with an average subsidy or bonus amount of $48 per month. The SSI program was paying an average of $65 per month to 16 percent of the new enrollees at enrollment. These participation rates and benefit amounts were highly consistent with findings of previous studies of these two transfer programs.

Given the wage rate paid by SCSEP, all benefits from these two programs would be lost by enrollees upon joining the program. Therefore, on average, the food stamp and SSI programs save $24 a month, 0.29 multiplied by $48 plus 0.15 multiplied by $65, whenever SCSEP adds a person to its rolls, and the programs continue to save this amount for as long as enrollees stay in SCSEP or remain employed once placed in permanent jobs.

Various components of costs and benefits associated with the permanent hiring of an SCSEP enrollee were estimated and, together with information developed from the two surveys, used to calculate

an approximate and very rough benefit-cost ratio, internal rate of return, and net present value of SCSEP permanent placement. An ex-enrollee returns $1,039 more per year in tax revenue to all units of Government, and $390 more in tax revenue to the Federal Government, than it costs in tax revenue to find him or her a permanent job. The placement of an enrollee in a permanent job yields a rate of return to all taxpayers of approximately 16 percent per year and to the Federal Government of approximately 6 percent a year.

As our study did not have a control group available, we had no way of estimating what percentage of these benefits would have occurred without SCSEP. We believe, however, that, given the characteristics of SCSEP enrollees found in the new enrollee and employer surveys, the employment prospects of the enrollee were poor. Therefore, it is our opinion that very little of the tax revenue returned would have been captured without SCSEP efforts to find enrollees jobs.

The permanently hired SCSEP enrollee produces approximately 15,400 dollars' worth of economic output during the time spent on the program and after permanent hiring, resulting in a net gain in economic output of about $12,900 per permanently hired enrollee over the 58-month period. If the 1,700 ex-enrollees placed in permanent jobs by our NRTA–AARP SCSEP during the June 1974–June 1976 contract had only earned the average minimum wage prevailing over that period—and we know they earned more—the net gain in economic output would have totaled approximately $18.5 million.

Urgent Need for Work Strategy

It should be clear from the preceding discussion of labor force trends and rising dependency ratios and the gross inadequacy of the Government's public policy response to date, that a work and employment opportunity strategy for older persons—one that represents a rational response to these problems—is urgently needed. There are great benefits to be derived from devising and implementing such a strategy. Given the national commitment to the maintenance of reasonable levels of income among the elderly, any share of that income that can be generated through the work effort of willing individuals represents a share that need not be borne by the taxpayer. Clearly, additional work opportunities benefit older individuals as well, raising their standard of living, providing them with a greater feeling of independence and self-determination and improving their prospects for maintaining their living standard in the face of serious inflation. Just as clearly, the Nation as a whole would benefit from the gains in national income and tax collections that would result from our getting the most from our previous investment in training, education, and experience embodied in older persons.

If we are to devise and implement a national, coordinated older worker strategy, we must, in the process, divest ourselves of some of the "tenets" about jobs and job markets that have been proved fallacious by the march of events. For example, it is widely held that the number of jobs in the economy is fixed, and must be reserved for the young. Continued adherence to this belief virtually requires one to ignore the enormous expansion of job opportunities that the current

business cycle recovery has generated—opportunities that extraordinary numbers of married women have taken advantage of to enter the labor force.

Our associations believe that a significant portion of the persistent hard core inflation rate, which has become part of the annual economic scene, is the result of the fact that by our laws, prejudices, and customs we have kept too many of the old, and the young, out of the labor force. When we successfully induce more of them back into the great productive stream of the country we will be easing many of our severe economic problems. More hands will help.

The first element for inclusion in a national strategy to expand employment opportunities for older workers and induce greater labor force participation is the elimination of existing employment barriers.

In our view, there is no greater barrier to the employment of older citizens than the existence of legal sanctions that permit discrimination. Unlike the Federal fair employment laws that protect all women and members of racial minorities; the fair employment statutes protect only some older citizens and prohibit only some discriminatory practices.

For over two decades our associations have sought to persuade legislatures and courts that mandatory retirement violates basic constitutional rights. Mandatory retirement is a practice that dismisses from employment many individuals who are competent to work and who may want to keep on working, dismisses them for an arbitrary reason—their date of birth. Certainly, this committee is familiar with the psychological and cost consequences of arbitrary, forced retirement. Indeed, the work of this committee was instrumental in focusing national attention on the evils of forced retirement and the prevalence of age discrimination.

There are at least 2.1 million older citizens willing and able to work in an enforced retirement today. Those over 65 have not had legal recourse against discriminatory decisions denying them work.

Earlier this year, Congress acted to limit the practice of forced retirement and to strengthen the protections of the Age Discrimination in Employment Act. The associations advocated those changes and supported efforts to secure enactment. Those amendments prohibit almost all mandatory retirement imposed earlier than 65; with a few exceptions forced retirement before 70 will be unlawful next January 1. As a consequence, it is anticipated that a quarter of a million older people each year will extend their employment careers. This protection of the ADEA will extend to people under 70. At the end of this month, most Federal employees will be protected completely against age-based retirement.

Although the associations fully supported these statutory changes, the fact is that Congress took only a limited step. Association members are at work trying to persuade State legislatures to join Florida and California in outlawing forced retirement. NRTA-AARP will continue to support litigation challenging the constitutionality of mandatory retirement and we will continue to advocate and support legislation to repeal the statutory sanction for forced retirement and the statutory exclusion of all those over 70 from enjoying the rights created by the ADEA. Finally, we will continue to urge employers to hire those older citizens who want to work and are fit to work. There

can be little doubt that legally sanctioned forced retirement must end, if the expansion of employment opportunities and the creation of work incentives aimed at older persons are to be successful in reversing the downward trend in elderly labor force activity.

Work Disincentives

Paralleling the need to eliminate existing barriers to employment there is the equally acute need to eliminate existing work disincentives. Chief among these is the social security earnings limitation. Our associations want it abolished, not because we are insensitive to social security's financing problems, not because we are iconoclastic about the social insurance nature of the system, and not because we favor elderly "fat cats," but because we firmly believe that, as an economic matter, the earnings test already costs society more than its worth and will cost even more in the future. In addition, the elderly detest it.

Given this country's historical predisposition to the work ethic and the fact that the only income-related means test imposed by the social security system is on earned income, it ought to be clear why the test is so unpopular among the elderly and why it is so frequently the target of congressional proposals. It is defended, however, on a number of grounds. First and foremost, it is argued that abolition of the test would be costly to social security, which is already under severe financial strain.

Some estimates have put a price tag on complete elimination of the earnings test at close to $7 billion in increased social security outlays. Unfortunately, there are no estimates of what the existence of the test now costs the overall economy in lost production or of the costs to the Government in forgone income and social security taxes. But, even if there were, we do not know what effect such estimates would have on the cost argument, particularly in view of Congress' tendency to compartmentalize program financing and view social security as if it existed in a vacuum.

Second, it is argued that the elimination of the test would fundamentally change social security from a social insurance program to an annuity pavable upon reaching a specific age. In this view, social security dollars are intended for the retired and the retirement test provides a functional test to establish just who is retired and who is not.

Third, the distributional consequences of an earnings test elimination appear to favor those elderly persons in relatively higher income brackets—a not too surprising result in view of the fact that social security is an earnings-related system. Other things being equal, persons with a higher earnings capability are more likely to encounter a test based on earnings levels and are also more likely to have accumulated a higher level of wealth, including social security wealth, over their lifetimes. Because of this, apparent channeling of limited social security resources to the "wrong" people, it is argued that rather than eliminate the test, the billions of additional outlays should go to low income, nonworking older persons instead. Aside from the fact that this "alternative" has no potential economic gains associated with it and is hence more costly and at least as unlikely to actually be undertaken, this line of argument seems more appropriate to an income-tested, welfare program rather than one based on "earned right" and earnings-

related benefit levels. It must be restated that the only income test in social security is the earnings test—a test aimed only at earned income.

Finally, although the argument is rarely made explicitly, the retirement test is defended as a means of improving the employment prospects of younger workers. Organized labor and some organizations of retired union members have been consistently and strongly opposed to the elimination of the retirement test and although lip service is paid to the cost, annuity and distributional arguments, it seems likely that these organizations favor the retirement test for the same reasons that they have tended to favor mandatory retirement. Chief among these is a dedication to supply control and the belief that making reduced employment a condition of the receipt of social security benefits opens up positions for younger union members and keeps the retired from reentering the labor market to compete for jobs, perhaps offering their services at lower than market rates.

Research on Earnings Limit

Prior research on the earnings limit has focused on three areas: the effect of the test on workers' earnings, the effect on labor force participation and recently, the distributional consequences of test modification or liberalization.

Sander, 1968, evaluated the 1963 data from social security's 1 percent continuous work history sample. In that year, there was a $1,200 exempt amount, a 50-percent rate from $1,200 to $1,700 and 100 percent thereafter. Examination of the earnings distribution of workers 63 to 71 years old revealed a strong clustering of earned income around the exempt amount but no clustering around earnings of $1,700, the point at which the 100-percent tax rate became effective. The amount of annual exempt earnings had a considerable effect on the beneficiaries' earnings but the reductions did not. Beneficiaries did not noticeably differentiate between the $1 for $2 and the $1 for $1 reduction provisions in determining their earnings levels after they became entitled to benefits.

In a later study, 1970, Sander looked at the effect of changes in the earnings distribution when the earnings limit was liberalized. In 1966, the level of the exempt amount was raised for the first time since 1955. Beneficiaries were allowed to earn $1,500 without penalty—an increase in permissible earnings of $300. The 50-percent range went up from $1,200–$1,700 to $1,500–$2,700. Examining the earnings distribution of beneficiaries for 1966, he found that "* * * a fairly large number of workers responded to the higher annual exempt amount by increasing their annual earnings * * * from about $1,200 to about $1,500 a year." Second, most workers affected by the extension of the 50-percent and 100-percent brackets did not alter their earnings levels. Some men did, however, reduce their earnings to get from the 100-percent range to the 50-percent reduction rate—an effect quite consistent with theoretical expectations.

Vroman, 1971, also studied the labor force response of social security beneficiaries when the social security benefit level and retirement provisions were adjusted upward by the 1965 Social Security Amendments. Like Sander, he also used the 1 percent continuous work history sample. His major finding was that "* * * over 10 percent of the

working retirement beneficiaries raised their earnings from $1,200 in 1965 to $1,500 in 1966 and 1967 in response to the revised earnings test." He also found that very few beneficiaries had earnings in the 50 percent tax range, and that liberalizations in the system caused by the 1965 amendments increased both the social security benefit application rate and the overall percentage of beneficiaries who did some work over the year. He did not find workers in the $2,800 to $4,799 earnings range reducing their earnings to below $2,700 to avoid the test, however, as Sander did in his study.

A 1976 study by Boskin examined a sample from the University of Michigan panel study of income dynamics which tracked the economic situation of 5,000 American families from 1968 through 1972. He extracted a sample of 131 households headed by white married males aged 61 through 65 for all 5 years. Using several definitions of "retirement" his results "* * * suggest that a decrease in the implicit tax rate on earnings from one-half to one-third would reduce the annual probability of retirement by almost 60 percent."

Ling, 1975, investigated the characteristics of retired worker beneficiaries who actually bore the test in 1971 losing some or all of their benefits because of earnings over the exempt amount. In that year, approximately 1.5 million retired worker beneficiaries aged 62 to 71, 20 percent of all retired workers, lost $2.2 billion in benefits, roughly 71 percent of what they would have received had the program not been earnings tested. About 70 percent of the group were men. Of beneficiaries 62 to 71 years old, 17 percent were 62 to 64 and 83 percent were 65 to 71 while among benefit losers, 12 percent were 62 to 64 and 88 percent were 65 to 71. Information was also presented on earned, but not total, income for those who exceeded the exempt amount. Only 18 percent of 275,000 people had earnings in the 50 percent range of $1,681 to $2,880. The remainder had earnings in excess of $2,880 and 51 percent of the benefit losers had earned income in excess of $5,000.

Schulz, 1976, investigated the distributional consequences of changes in the earnings test more explictly. Again, within a social security flow of funds concept, the "affected" population was defined to be only persons earning in excess of the exempt amount. He concluded that complete abolition of the test would have particularly "adverse" distributional consequences with more than 50 percent of the new benefits going to families in which income would be greater than $10,000 per year. In fact, 20 percent of the benefits would go to families above $20,000 and only 38 percent to those with incomes less than $10,000. After testing a number of alternatives, he concluded that returning to the three-tier test of 1971, but with much lower effective tax rates, would concentrate benefits in the under $10,000 class—as would many of the two-tier alternatives—and would also be relatively less costly compared to today's system with a flat 50-percent rate.

Finally, a very recent study by Marshall R. Colberg of the American Enterprise Institute has found that elimination of the retirement test would generate new revenues to the Treasury in the neighborhood of half a billion dollars. He concludes that not only should it be eliminated but that, until it is, "the socially useful monthly test—renewed by last year's social security amendments—should be restored."

Summarizing prior research on the test, it is clear that workers attempt to control their earnings to avoid it. Sander, Vroman, and

Boskin all found evidence of this effect and in fact evidence as well that the exempt amount is viewed as an earnings ceiling by many older workers. Ling and particularly Schulz have documented the fact that complete abolition of the test would tend to direct social security dollars to families and individuals at the higher end of the elderly income distribution. It is less clear, however, what the effect of the earnings test is on various labor market indicators like unemployment rates, labor force participation rates, and the percentage of elderly persons employed over the year. Vroman found that liberalizing the retirement test increased the percent employed; and Boskin's findings imply a strong effect on the labor force participation rate. These findings are not, however, considered conclusive on this issue.

Recognition that older workers attempt to control earnings so as to avoid high marginal tax rates implies that the earnings test does indeed have effects on labor force participation. Earnings control can only be accomplished by the control of hours at work and although there are some jobs flexible enough to permit year-round, low-hour employment, for a significant proportion of elderly workers, the only means of controlling earnings is to leave employment before exceeding the exempt amount. Hence, although the test does not affect labor market entry, it may affect labor market exit and make job turnover higher than otherwise be the case.[1]

If the retirement test does increase turnover by forcing people out of the labor force sooner than would otherwise be the case, it has implications for distributional issues as well. In both the Schulz and Ling studies, the "affected" population were those who actually bore the test. If a substantial number of elderly workers drop out prior to having benefits reduced, however, the actual number of "affected" people is some multiple of those who actually lose benefits. It is likely, as well, that since these people have relatively low earnings they are of relatively low total income levels as well. Hence, although the distribution of additional social security dollars would still go to the relatively well off, the distribution of the total economic benefit from earnings test abolition would certainly be less skewed.

It is clear to our associations that having a provision in the social security system which causes people to limit their work effort, itself, imposes a significant cost on taxpayers—a cost that those who support retention of the test choose to ignore. Potentially productive people who could be supplementing their income through their own efforts and contributing to national output are instead forced to remain idle. If only 1 million older people reentered the labor market on a part-time basis, even earning at the minimum wage, the increase in gross national product that would occur would exceed the $2.9 billion that the Social Security Administration recently estimated would be the annual cost of repealing the test for persons age 65 and over.

[1] The effect of this higher turnover depends upon the degree of labor market segmentation. With a highly segmented market, the likelihood that an unemployed older person will find a job depends upon turnover among the employed elderly. In this case, the earnings test causes the unemployment rate and durations of unemployment among older people to be lower than would otherwise be the case. It also reduces the labor force participation rate and increases the number of older people who do some work for pay over the year, essentially by distributing a limited number of "elderly jobs" to more people. Where there is no market segmentation, however, the elderly unemployment rate is likely to be higher than would otherwise be the case, as both the elderly and nonelderly are in competition for the opening caused by the earnings test. Labor force participation is again lower because of the additional exit and it is likely that the number of elderly persons employed over the year will increase by less, if at all, than the segmented case.

It is also clear to us that additional workers are additional taxpayers and additional tax receipts should be taken into account whenever the subject of cost is raised. If the test were eliminated only for persons age 65 and older, the estimates of the gain in income tax receipts and social security tax receipts—indeed, tax receipts of all kinds. It appears quite likely that the cost in terms of lost output and tax receipts of continuing the earnings limitation is greater than the cost of the repeal.

To the argument that repeal of the limitation would primarily benefit the relatively higher income elderly and not older persons of low income, we would like to note that the working elderly are higher income when compared to their nonworking counterparts solely by virtue of the fact that they work, not because they are wealthy, and that compared to younger workers, even the working elderly are of relatively low income. More importantly, however, there is a large group of hidden beneficiaries who are of relatively low income that the supporters of the earnings limitation also choose to ignore. The studies reviewed above have clearly documented the fact that large numbers of low-income working elderly deliberately hold their earnings down and drop out of the labor force rather than bear the incredibly high 70-percent tax rate the earnings limitation imposes. Since these people do not actually have their social security benefits reduced, they are not counted as potential beneficiaries, when in fact repeal of the test will permit large numbers of those people to earn additional income to supplement and improve their standard of living.

Summary on Earnings Limit

In summary, we advocate repeal of the earnings limitation because it will in fact benefit large numbers of low income elderly people and because the limitation now imposes a substantial cost on taxpayers through the loss of gross national product and tax revenues—costs we can no longer ignore.

It is clear to us that barriers and economic disincentives that drive older workers out of the labor market must be eliminated if work incentives and employment opportunity that might be created and aimed at older workers are to be successful in achieving their goal: Increasingly elderly labor force participation and reversing the trends. At a bare minimum, any limit on the protection of the Age Discrimination in Employment Act and the social security earnings test must be abolished. Whenever the issue of work incentives is raised, the first one that comes to mind and that we have mentioned earlier in this statement is the introduction of actuarially increased social security benefits for persons who elect to delay their retirement until after the age of 65. We think that this ought to be done on the grounds of actuarial fairness. We see no reason why early retirement should be accompanied by an actuarial decrease in benefits and late retirement not treated symmetrically.

It also seems clear, however, due to the widespread misconception concerning the "uniformity" of productivity declines among older people, that simply changing the rules of the retirement system and hence elderly force supply will not be sufficient. Changes on the demand side—the employer side—are also required. It is obvious from past experience that employers need to be given incentives to employ

and/or retain older workers. The income, corporate, and payroll tax structures of the Federal Government ought to be used to provide such incentives and at the same time provide incentives to older workers to take advantage of the work opportunities so offered. Consideration could be given, for example, to the reduction or even elimination of the employer portion of the social security payroll tax that would otherwise have to be paid with respect to older workers. Such a change would effectively reduce the cost of hiring an older worker, compensating to some extent for any real or imagined productivity decline associated with age that an employer might otherwise entertain. This would also tend to counter any disincentive effect that the minimum wage might have on a employer's willingness to hire or retain an older worker. The House-passed version of the 1978 Revenue Act, H.R. 13511, takes a limited step in this direction by for the first time offering employers a jobs tax credit for a portion of wages they pay to SSI recipients. SSI recipients, along with six other target groups—such as AFDC receipients, WIN registrants, handicapped persons, et cetera—are focused on by H.R. 13511 because of the recognized high unemployment rate and special employment needs associated with them. In addition, the tax laws could be used to encourage employers to inaugurate a host of job training, retraining, part-time, and flexitime programs aimed at older workers.

Clearly, the reduction of labor costs associated with older worker employment would encourage the hiring, retention, and retraining of older workers and improve their prospects for finding employment should they become unemployed. It is also interesting that the CETA program has failed so abjectly when it comes to the older worker and that the eligibility limitations on and limited resources allocated to the senior community services employment program—the great worth of which we have established through our own analysis—have kept it too small to matter significantly to the current generation of elderly persons. We think that the SCSEP ought to be expanded into a nationwide program. In our view, a greatly expanded SCSEP could go a long way toward meeting many of the objectives we have outlined in this statement, enhancing older worker income and life satisfaction, increasing national output and both relieving taxpayers of part of the dependency burden and providing additional tax revenue for that part which remains.

V. Lifelong Learning

We turn now to our third and final topic—lifelong learning. It is a subject that is inextricably intertwined with our thinking and recommendations as set forth in the preceeding sections of this statement.

The uttering of the words, lifelong learning, clearly strike a responsive chord across the land, subscribed to eagerly and totally by academic institutions, organizations like our own that represent the elderly, Federal energy officials, employers, and the lay public. To paraphrase and expand on a comment made by Secretary of Commerce Juanita Kreps at a conference on lifecycle planning, "the press and the public clearly appreciate stories of 80- and 90-year-old individuals returning to school, graduating, taking on new jobs and other 'life-engaging' activities." What is not so clear, however, is our universal understanding of the dimensions of the lifetime learning issue.

A brief historical review of education, learning and the older adult may provide us with the information base necessary to promulgate future public policy in this area.

During the decades, 1900 to 1930, educational opportunities for the older adult, ages 35–50, were limited indeed.[1] This situation was due to a combination of factors including: (1) A high degree of employment resulting in little "perceived need" or "leisure time"; (2) a lesser societal commitment to the notion of universal access to education; and (3) lack of institutional resources available to the "non-traditional" learner.

The advent of the Great Depression, while removing two of these impediments, high employment and lack of time, added yet another barrier, namely, a lack of income for those employed individuals desiring to "purchase" learning opportunities. The Depression had an even greater impact however. For the first time there surfaced what was to become an ongoing national problem—the need for career retraining and relearning. As industry recognized the need to "lay-off" workers in order to reduce costs, the first to go were the middle-aged and older workers. Rather than move vigorously to organize retraining opportunities, we as a society set out exclusively on the road of income maintenance, ignoring "service"—education. The passage of the Social Security Act represented a decision upon the part of Government to "disemploy" older workers by using a monetary carrot rather than engage in reemployment through an educational vehicle.

This process remained in place until the late 1940's when yet another societal upheaval signaled a change in the history of lifelong learning. The return of World War II veterans to civilian life required massive monetary intervention upon the part of the Federal Government to provide educational and training opportunities. While many of these returning soldiers were young men, a significant proportion were middle aged and older, necessitating "learning" programs which had a heavy flavor of retraining or at least retreading. Thus, throughout the 1950's we were witness to a subtle but steady alteration of curricula in universities and junior colleges with an increasing "tilt" toward courses and programs in the professional area aimed at the "older" student.

The advent of the Vietnam war combined with, or resulting in, ferment on the college campus, significantly altered the demographic profile of student bodies. As universities and community colleges became less attractive and perhaps less inviting to the older student, secondary schools stepped into the breech. We saw the growth of adult education classes offered at nights and on weekends and based geographically where older adults would have easy access, for example, shopping centers, union halls, senior centers, et cetera.

The passage of the Older Americans Act in 1965 marked the first time that the Federal Government took an abiding interest in the issue. The genesis of any program has considerable bearing upon its future direction and lifetime learning is no exception. The reasons behind this interest were multiple: Large sums of money being placed in education/training titles; a growing awareness of the implications of the "graying" of America; and pressures by management and labor

[1] Ruth Weg, "Demographics of Aging," Summer Institute, USC, 1977–78.

for the Federal Government to intervene on a variety of levels in the employment/unemployment arena. From 1965 to 1976, the Government moved carefully as it sought to put into operation the concept articulated by the education task force of the 1971 White House Conference on Aging:

> Education is a basic right for all persons of all age groups. It is continuous and henceforth one of the ways of enabling older people to have a full and meaningful life and a means of helping them develop their potential as a resource for the betterment of society.[1]

During the intervening 11 years between the passage of the Older Americans Act and the 1976 Lifelong Learning Act, a variety of programs and program definitions were tried in an attempt to fulfill this "basic right." A brief review of these attempts may result in defining what we see as our future role.

Here we were witness to classes run by secondary school districts which focused on subjects which would enable older adults to function in society, for example, English as a second language, income tax assistance, driver education, et cetera. The majority of these classes were operated at night in schools and community centers.

In an attempt to eliminate the notion that learning must have immediate and direct life utility, classes were developed which would broaden the interests and experiences of older adults. It is important to note that over 50 percent of today's 65-plus generation have had less than an eighth grade education. These offerings included: art, history, civics, languages, et cetera. Senior centers, churches, and local senior citizens clubs served as the conveners of these classes.

As unemployment increased and the older worker became increasingly vulnerable to early "retirement," it became clear that retraining opportunities were required. Thus we saw the rise of classes in job-related fields, such as paralegal training, peer counseling, and child care. Interestingly, the rise in the number and type of these classes accompanied the increase in age-related employment programs such as Foster Grandparents, the retired senior volunteer program, title IX, and the like. In the main, however, these "jobs" have been for the postretired and involve a relatively small percentage of older individuals. The skill development options have, however, involved the use of community colleges and universities in terms of both faculty and sites.

Events of the past 2 years have necessitated yet another shift in lifelong learning programs. The spectre of high level, long-term inflation is likely, as we noted earlier, to cause older workers to cling tenaciously to their jobs. Pressures from trade unions to open positions for younger employees, combined with the desire of management to bring in new knowledge, has placed older workers in a situation requiring retraining, retreading, and job redefinition.

Lifelong Learning Act

The passage of the 1976 Lifelong Learning Act was in many ways as much an economic document as a social statement. It recognizes the need to "attack" the issue on a variety of fronts, while placing heavy

[1] 1971 White House Conference on Aging, Washington, D.C., U.S. Government Printing Office, 1972.

emphasis upon the development of the individual within the work system:

> Policymakers with a lifelong learning prospective can help to close the gap between the learning and work lives of individuals by improving the work-related experience available through the educational system, by improving the learning opportunities available at the workplace, and by encouraging linkages between both systems to support continual human development and life transitions.[1]

The associations have consistently supported a multifaceted approach to lifelong learning issues. Our experience with our Institute of Lifetime Learning clearly indicates the aforementioned trend toward work-related learning. In the early years of the institute the bulk of our efforts were aimed at providing general educational opportunities—see earlier description of "learning for learning sake"—for older adults. As the community colleges and secondary schools assumed greater and greater responsibility in this area, our institute began to alter its role and function.

In the coming year, the Institute of Lifetime Learning will be assessing the work/education field to identify realistic options for the reeducation and retraining of the employed middle-aged and older worker. These options might include: Job sharing, job transitions, returning to earlier careers, job reclassification, and skill renewal. Once the various options have been assessed, the institute, in cooperation with various educational and corporate institutions, will assist in the development and implementation of training materials and curricula.

It is our firm belief that Congress, in cooperation with the Department of Health, Education, and Welfare, must assist in the redirection of lifelong learning into the new areas of work, retirement, and continuous learning. To do anything less would be to develop policy in a vacuum, ignoring the direct impact that the economy and work patterns have upon the educational needs of older adults. A cooperative thrust at all levels aimed at opening new opportunities for America's older worker will have significantly beneficial effects for the society in general and the work environment in particular. We fully support the Lifelong Learning Act and trust its implementation will incorporate the societal realities mentioned throughout this statement.

STATEMENT OF RUDOLPH T. DANSTEDT, ASSISTANT TO THE PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS;[2] ACCOMPANIED BY BETTY DUSKIN AND LOU RAVIN

Mr. DANSTEDT. According to the most recent statistics put out by the U.S. Census Bureau, there are 23,493,000 Americans over 65 today, representing almost 11 percent of the population. Most of these people, 94 percent, are receiving income from the social security program. The remainder had earnings that exceed $3,240 in 1977, plus twice the amount of their yearly benefits or whose earnings every month of the year exceed the monthly retirement test amount which means that they are not retired according to the retirement test in the social

[1] Lifelong Learning and Public Policy, HEW, February 1978, p. vii.
[2] See appendix 1, item 4, p. 342 for supplemental material submitted by NCSC.

security program. Less than half the people retiring today have a private or public pension to supplement their social security benefits. The fact is that senior citizens in the United States have a standard of living far below that of aged people in many other advanced nations. Average social security benefits last year were only $241 per month; the private pension average monthly benefit is below that of the social security system.

The median income of all families in the United States with a household head between the ages of 25 and 64 was $15,322 in 1976. For those families with a household head above 65, the figure was $8,057—52 percent less. For elderly individuals, the median income in 1976 was $3,311, as compared with $7,441 for individuals aged 25–64. The median income level in 1976 for an aged person was just $591 above the poverty level.

By far, more older persons are living in poverty than any other age group in America today; 15.3 percent of our senior citizens, or 3.3 million elderly people, were living in poverty in 1975. If the near poor were included, those people with incomes 25 percent above poverty, the figure jumps to 25.4 percent—one out of every four seniors.

In recent years, with older persons becoming more and more numerous and growing into a strong politcal force in this country, govrenment programs and benefits for the aged have increased substantially. But because of dramatic increases in the cost of living, much of the income gains older people have made in recent years have been whittled away by inflation. While Government support of the aged has increased over the past 20 years, such expenditures represent only 5 percent of our gross national product. In fact, the growth of categorical programs for the aged in the past decade can be attributed to the low level of support in prior years due to wholesale discrimination against older persons in other government service and employment programs.

Sources of Income for the Aged

The following table details the six major income sources for aged people and the shares of income derived from each. One point the table makes quite clear is the importance of social security—OASDHI—benefits for retired persons. Not only do 94 percent of the aged receive social security, but such benefits also represent 30 percent of the income received by aged couples and 40 percent of income for single older persons.

Type of income	Shares of income	
	Married couples	Nonmarried persons
Retirement benefits	42	51
OASDHI	30	40
Other public pensions	6	8
Private pensions	6	3
Veterans' benefits	3	4
Public assistance	2	7
Public income-maintenance payments	41	59
OASDHI as percent of retirement benefits	71	78
Public income-maintenance payments	73	68

Source: Social Security Bulletin, vol. 36, No. 8, August 197?,

Aside from Government means-tested assistance payments, older people receive income from four major sources. A survey of new beneficiaries of social security payments done in 1970 indicates that 51 percent of aged persons derive income from assets; 33 percent have incomes from earnings; 24 percent from private pensions and 12 percent from public pensions. However, the same survey also revealed the following:

Of single persons over 65, 82 percent received less than 20 percent of income from assets; 88 percent received less than 20 percent of income from earnings; 95 percent received less than 20 percent of income from private pensions; 20 percent received less than 20 percent of income from OASDHI; and 85 percent received less than 20 percent of income from public assistance.

On average, 88 percent of the senior citizens receive less than one-fifth of their annual income from any of these sources outside of social security.

The Social Security Program

Monthly social security benefits are the major source of income for the vast majority of the elderly. The program, which was established in 1935, has grown to the point where benefits are now provided for survivors of wage earners, disabled people, and health insurance for the aged. As of July 1, 1978, there were 21,728,000 receiving retirement benefits. The average benefit level is $258.88 per month.

The social security system is in reality four separate benefit programs funded through separate trust funds. The trust funds are financed through joint employer/employee payroll taxes and the current contribution rate is 6.05 percent each, although medicare receives a portion of its financing through general tax revenues. However, the payroll tax rate is only applied to the first $17,700 of earnings, in 1978, with earnings above the covered wage base exempt from the payroll tax.

For the past several years, senior citizens have been bombarded by alarms and scare stories to the effect that our social security system was not soundly financed. Some critics went so far as to proclaim that in the next few years, the system would either go broke or have to reduce benefits. However, we knew that the Congress was not going to break faith with people by permitting their social security benefits to be jeopardized, and the 1976 social security reforms insured the fiscal integrity of the system through the beginning of the next century.

As the committee is aware, the nature of the financing difficulties were properly separated into two distinct aspects: The first involved a short-run cyclical deficit, and the second relates to the forecast of a longrun imbalance, part of which is structural in character.

The reasons for the shortrun problem were the simultaneous high unemployment which is now moderating, and the high inflation rates of the last several years. High unemployment causes total dollar wages to fall, and this causes a decline in contributions to the system. Inflation, on the other hand, causes total benefit outlays to rise, since benefits are automatically adjusted upwards as the cost of living rises. Unemployment also forces many workers to accept early retirement

at reduced benefits. A great many of them would prefer to continue working. While the reduction in their benefits spread over time means no actuarial loss to the system, this present retirement status is reflected in the shortrun outflow of funds. Thus, the shortrun problem cannot be blamed on the social security system, but on a malfunctioning economy. Indeed, it is in large measure a remedy, both for the economy and for older people caught in the squeeze between unemployment and inflation.

The longrun problem arises from anticipated demographic changes early in the 21st century. The projected changes indicate that the retirement age population will be much larger due to the baby boom of the late 1940's and 1950's, while the working age population will not grow similarly if the lowered birth rates of recent years continue into the future. Assuming that there are no adjustments in labor force participation or no unexpected changes in birth rates, this could mean that proportionately fewer workers will be required to support a relatively larger retired population than is currently the case. Given all the uncertain guesses which prophets use to foretell the future, the anticipated problems may be exaggerated. But again, the social security system is not the problem; it is the answer. Those persons born during this baby boom period will be with us early in the next century and they will be in need of a system of income maintenance when they reach retirement age. Obviously, though it sometimes seems to be overlooked, they would be here with their needs even if we did not have a social security system.

Social security benefits are received on a monthly basis with the benefit determination for retirement based on each employees wage history. Generally speaking, a higher earnings history will generate higher retirement benefits. However, a redistributive element within the system does exist. Currently, social security replaces 35 percent of earnings for high salaried workers and 58 percent of earnings for low wage earners.

The controversy over the retirement test in the social security program is an important and largely misunderstood issue. The National Council of Senior Citizens is opposed to abolishing the retirement test completely on the grounds that to do so would be financially irresponsible and severly inequitable to most beneficiaries. Since this is not a universally held position, an in-depth explanation is in order. I would, therefore, like to submit for this purpose a booklet entitled "The Retirement Test in Social Security,"[1] published by the National Council of Senior Citizens in May of 1976, and authorized by Nelson H. Cruikshank, then president of the National Council of Senior Citizens.

Statutory provisions which adjust benefits for cost-of-living increases are now included in every major Federal cash-transfer program, and are crucial to insuring that cash assistance programs keep pace with rising costs. In 1972, older people received a 20-percent cost-of-living increase that enabled beneficiaries to maintain their standard of living at a time when this Nation was experiencing runaway inflation. Similarly, the supplemental security income and the food stamp programs are adjusted for inflation.

[1] See appendix 1, item 4, p. 342.

In regard to construction of a special Consumer Price Index for the elderly and to granting semiannual cost-of-living adjustments for social security recipients, we are fully in support of these proposals. The present system provides adjustments that are too little and too late.

The Food Stamp Program

Although the food stamp program is designed to subsidize food purchases for low-income families, it is often considered as analogous to a cash transfer program because of its impact on family spendable income. As food stamp benefits increase, recipients can spend more money on other consumer purchases because they are spending less on food.

In 1977, almost $5.5 billion went to supplement the income of poor households of all ages through this program. Up until recently, participating individuals and families were required to put up a certain amount of money based on their income level in order to buy stamps which would have a greater face value than was actually paid for them. In 1977, the initial purchasing requirement was dropped, and food stamp participants now receive just the "bonus" stamps in the amount of the subsidy for which they are eligible.

Eligibility and benefit standards are set nationally with a number of deductions permitted to distinguish between those who incur extra expenses because of work-related costs or other uncontrollable costs of living. On the average, some 17 million people participate in the food stamp program, receiving monthly benefits averaging $27.

The Department of Agriculture does not routinely gather figures on elderly participation rates in the food stamp program. However, in 1977, USDA and the Census Bureau compiled a sketch of participation by the aged. The information collected was based on a 1975 survey of the food stamp population.

It is generally believed that only a small fraction of the aged eligible actually receive food stamp benefits. The 1977 report indicated that only 18 percent of the people over 65 eligible for food stamps received them. Continuing obstacles to greater participation include: (1) Unawareness of the program; (2) inability to understand administrative regulations; and (3) the stigma of "welfare" attached to program participants.

Supplemental Security Income Program

For exactly the same reasons as above, elderly people do not participate in the supplemental security income program in numbers reflecting their eligibility. Estimates suggest that perhaps as many as 50 percent of the aged are eligible for SSI but are not currently enrolled in this program designed to put a floor under the income levels of aged, blind, and disabled people.

Federal, State, and local government agencies have not adequately addressed the need for greater outreach to urban and rural low-income aged persons who are not aware of their eligibility for SSI benefits or food stamps. We would encourage a greater commitment of funds and manpower to assist older people in finding out what Government

services they may be eligible for, and assistance in going through the bureaucratic maze of applications and procedures.

As of February 1978, 2,045,954 senior citizens were receiving SSI benefits. The average monthly Federal benefit is $96, although wide variations in State supplementation of Federal benefits do exist. To illustrate this great disparity in State supplements, California SSI recipients may receive a maximum supplement of $112; 24 States, such as Texas, do not supplement at all.

The supplemental security income program provides direct monthly payments to qualifying individuals whose resources fall below specified national standards. In June 1978, the established maximum monthly benefit for an individual was approximately $178 and $284 for a couple. The SSI program presently serves only to bring income levels for participants up to a level which is below the poverty level; benefits are reduced drastically when other unearned income is available. As an example, a person receiving social security is allowed only a $20 disregard of benefits before SSI benefits are reduced dollar for dollar. Thus, an aged individual receiving a monthly social security benefit of just $198 would not receive any SSI benefit.

For earned income, the first $65 per month and one-half of the remainder is disregarded. However, if eligibility is lost, categorical eligibility for medicaid may also be lost. Thus, a major work disincentive exists.

Employment

The steadily declining ability of seniors to make ends meet has resulted in a growing interest in continued part-time and full-time employment. In addition, for many older people, retirement often is synonymous with loneliness and a sense of rejection, and for these people, employment provides a continuing sense of usefulness and involvement.

Unfortunately, many barriers exist, and middle-aged and older workers today represent a large portion of the unemployed and underemployed. People 55 and over also have far longer periods of unemployment than do their younger counterparts in the work force. One indicator of extended unemployment is the number of working who have exhausted their unemployment benefits. A recent study on the subject revealed that 70 percent of the over-45 workers and 40 percent of the over-55 workers had exhausted their unemployment benefits.

In spite of Federal and State laws prohibiting illegal discrimination in hiring, firing, and retirement policies on the basis of age, many cases of blatant discrimination against older people continue today. Up until recently, the Federal Age Discrimination in Employment Act only covered workers between the ages of 40 and 65, thereby allowing employers the freedom to force employees to retire at age 65. Last year, this law was changed to protect workers in the private market up until age 70, and the upper age limit was lifted entirely for Federal workers.

Because of the general failure of the private market to adequately meet the needs of middle-aged and older workers, two Federal programs currently operate to provide limited assistance to the older worker.

The Comprehensive Employment and Training Act—CETA—is the Nation's largest public employment program. However, its main focus is on youth unemployment. Although we recognize the severity

of the problem in providing jobs for America's young people, the CETA program has largely ignored the problems of the aged in finding jobs. Findings of the U.S. Commission on Civil Rights revealed that although persons 55 and over represented 9 percent of the unemployed in 1977, only 5 percent of the enrollees in the CETA program were 55 years of age or older. Additionally, the 9 percent figure understates the problem of elderly unemployment because it does not take into account the many discouraged workers no longer actively seeking jobs.

The Commission study states:

> These figures probably understate the actual situation because, according to many persons in the field of aging, employable persons 65 and over are not adequately reflected in data on unemployed persons.

Both because of the large number of aged unemployed and because of the inadequacies of the CETA program, a senior community service employment program providing part-time community service jobs to people over 55 was created in 1968. In its first year of operation, the SCSEP provided jobs for about 2,000 older persons. Today, more than 37,000 people are working within the program which is sponsored by five national aging organizations and has an operating budget of $190 million.

There has been a major investment over the past 10 years in developing the expertise required to effectively administer the community service employment program. It has been clearly demonstrated that the national contractors have been responsible for the success of the program, and have administered the program effectively and efficiently. Yet, the fact is that efforts are underway in the Senate version of the Older Americans Act to diminish the level of activities of national contractors by as much as two-thirds of their current funding levels. If the Senate position is upheld in the current OAA reauthorization discussion, the hold-harmless date for insuring minimum support of national contractors' activities will be maintained at the June 30, 1975, level. At that time, national sponsors were receiving only $42 million. We are hopeful that the fine track record developed by all national SCSEP sponsors is recognized and that the hold-harmless is updated to the September 30, 1978 level of $190 million.

However, even programs such as SCSEP which have an excellent record, are insufficient to meet the needs of the older worker. Not only will higher levels of funding be needed, but greater encouragement and more innovative approaches will be required to extend the working life of productive individuals who might otherwise retire, voluntarily or involuntarily. Not only is this important to maintain an adequate standard of living for older people, but it will become of increasing importance to the health of the Nation in years to come.

Social Services

The birth of the SCSEP was spawned out of the need for a manpower program with special emphasis on the needs of older workers. A similar history can be traced for the establishment of the Older Americans Act. Before the OAA developed into a major service program for the aged, older people traditionally fared poorly in State-administered programs of social services. The unfortunate friction

between age groups that has manifested itself—for example in the title XX program authorized through the Social Security Act—has left the elderly poor underrepresented in this and other nonage category approaches.

The Older Americans Act, currently funded at an annual level of $489 million—excluding title IX—established a network of nearly 600 area agencies on aging under the auspices of State agencies on aging. The function of these agencies is to determine the needs and services in the community and insure that the delivery of services is planned and coordinated in an efficient and equitable manner. A vast array of services may be offered depending upon the needs of the community.

A recent trend that we find distressing is the shifting emphasis on the part of State and area agencies on aging to a more active role in the direct provision of services to the aged. We view these agencies as planners and coordinators as well as evaluators of the services provided to the aged in the community. They should be maintaining an arms-length distance in order to objectively evaluate the quality of services provided, and to maintain credibility as planners.

Lifelong Learning and the Aged

In 1976, the Congress passed amendments to the Higher Education Act, popularly known as the Lifelong Learning Act. With the passage of that act, our organization hired an education consultant to its affiliated National Senior Citizens Education and Research Center.

We have found that the act has stimulated discussion of education for the aged and the gathering toegther by the Office of the Assistant Secretary of DHEW for Education of statistics and information about a wide variety of Federal activities that affect learning activities of the aged. However, there has been little if any change in the amount and usefulness of learning opportunities available for the aged. Too little too late is the education story of too many of the aged.

In the field of adult learning, the more education a person has received and the higher his economic status, the greater is the likelihood that the adult will be participating in some form of education.

The present population of the aged has more illiteracy than other age groups, a lower average number of years of classroom attendance, and a disproportionate number at or below the poverty line. Moreover, mobility is a serious problem for the aged.

All of these obstacles mean that special effort is required to inform the aged of learning opportunities and to transport them to classroom or other learning settings. Such effort has been very successful in special demonstration projects, but it is the exception, rather than the rule.

NCSC makes a special effort to look to the interests of the less advantaged of the aged. This means that we have a special interest in seeing that learning opportunities are made available to the illiterate and partially literate. Their rate of participation in the federally funded adult basic education program is low, and the elementary and secondary school systems which generally provide ABE learning opportunity have not been aggressive in seeking to serve the aged. In

some areas, community colleges have been aggressive in seeking to serve the aged, partly because they have received demonstration grants.

In education, as is the case in other services and opportunities, the aged are subject to something that might be called grantsmanship roulette. The aged who live close to an institution that has received a demonstration grant may have learning opportunities that are not available to the aged living 50 miles distant.

A very serious problem in education for the aging is that some educators feel it is a waste of time and money to provide learning opportunity for the aged. Our response to that is that today's aged have given generously through the taxes they paid during their working lives to build the most comprehensive system of free public education the world has ever known. The retired worker who quit school in the eighth grade to work for a living and paid school taxes until he retired seems to us to have a moral right to the free education that he did not get when he was young.

We are particularly concerned that public and privately funded ventures into what is sometimes called citizen education—an effort to provide citizens with the information and skills needed to use our democratic political process to better their lives—tend to overlook the aged and concentrate their attention upon the young and middle aged. But the aged—not our members at least—do not retire from citizenship.

It is noteworthy that the National Institute of Education has at this time no program to study the learning needs and wants of the aged.

The blunt truth is that today's aged have financed a vast and expansive publicly funded educational bureaucracy which gives a very low priority to providing appropriate learning opportunities for them.

Someone has said that $9 out of every $10 in public funds going to the aged for education purposes goes to train a gerontologist or social worker to teach the aged what to do with the remaining dollar. This may be hyperbole, but it illustrates an attitude that we in the NCSC find frustrating and just plain wrong.

There are enough good, but small, programs to assist the aged in learning what they want to know and what they need to know to demonstrate that we could make learning a rich part of the aged experience.

There are also enough good, but small, programs which use the aged as learning resources for the young—as tutors and as witnesses to events being studied as history—to demonstrate that we are wasting a valuable resource by not having more of these intergenerational programs.

Programs in existence demonstrate that learning opportunity for the aged can accomplish these things:

Provide new goals and accomplishments to replace the void left by departure from the world of work.

Help the aged to cope as consumers and citizens.

Provide recreation and entertainment; and

Benefit those of other ages by providing a learning resource for them.

A casual examination of the life of the aged show that far too few of them participate in any of the above.

The National Endowment for the Humanities funds courses in literature for the aged. Its brochure states the premise for this program: "If

I had but two loaves of bread, I would sell one of them and buy white hyacinths to feed my soul."

We at the National Council of Senior Citizens are not insensitive to the values of culture, but our first priority is to see that the aged possess one loaf of bread and a roof over their heads. In education this means that our first priority is to provide basic education for the aged who did not receive it when they were young.

We believe that while some of the aged may enjoy discussing the poetry of Dylan Thomas, more would benefit from courses on the great historical events that occurred during their own lifetimes and we are suggesting such a course to the National Endowment for the Humanities.

Many of our members spent their working lives in the school of hard knocks. The NCSC strongly urges the educational bureaucracy of the Federal Government to place a high priority on providing a pleasanter classroom for them now.

STATEMENT OF DR. BERNARD I. FORMAN, WASHINGTON, D.C., REPRESENTATIVE, NATIONAL GRAY PANTHERS

Dr. FORMAN. I am Dr. Bernard I. Forman, official representative of the National Gray Panthers. In the absence of Maggie Kuhn, national convener of the Gray Panthers, I am happy to accept your invitation to appear before the Senate Special Committee on Aging to express our views and offer some recommendations regarding the most pressing problems still confronting older Americans today.

Although the popular image of the Gray Panthers is that of a group of older people selectively concerned with issues affecting the elderly, we are in fact a working coalition of like-minded old, young, and middle-aged activists. We are banded together to expose and attack ageism in all its forms, and to challenge and eradicate every vestige of age-based discrimination in our society. We see ageism as having four basic dimensions: Stereotyping, segregation, paternalism, and victim-blaming. They tend to overlap and reinforce each other and provide convenient alibis for social evasions and calloused exploitation. Young and old alike suffer from their common, characteristic failure to recognize that people remain individuals throughout life—and have individual needs, desires, and problems, regardless of age. Categorizing people as too immature or "overqualified," too impetuous or "set in their ways" ignores the infinite variety of human nature and human experience.

Paternalism has many faces. It appears in the guise of "benign neglect" or "benevolent despotism." It shows itself in overprotectiveness of both young and old, disregarding individual capabilities. It is present in the assumption that some people are inherently dependent and welcome well-intended interference with their rights and freedom of choice. It may explain the tokenism in the rewards granted to retirees for not "making waves," since it may assuage the guilt feelings often experienced by young replacements for older workers.

Lastly, our society finds it easier to blame the victim rather than itself for its own shortcomings. Older workers are criticized for not retiring voluntarily and making room for deserving younger workers. Younger replacements are blamed for forcing their older predecessors out. "Young, new blood" clashes with "old, tired blood," and often produces "bad blood" between generations. As a result, the social serv-

ices that are supposed to blunt the pain of aging are viewed as "handouts" that lead, in turn, to "taxpayers' revolts" and punish those who need help most. Unfortunately, human values sometimes place a poor third behind self-interest and false economy.

The Gray Panthers movement includes people of all ages in some 60 networks across the country. With over 24 million Americans over 65, it is obvious that the problems of a "graying America" cannot be easily "swept under the rug." This new series of hearings is a clear index to the importance Congress attaches to the various issues affecting the elderly. Our interest in so many interrelated questions of national concern may seem too global. But we are convinced that the interests of older Americans are inseparable from those of all other Americans. We also feel that radical changes in our faltering economic system, within its traditional democratic framework, are called for if we are to rectify its present weaknesses and inequities. In this context, the Gray Panthers are deeply committed to active involvement in any programs or proposals crucial to the country as a whole.

Nevertheless, we recognize the hard realities. We know that we cannot tackle every important issue with equal force and have had to order our priorities according to our own perceptions. Among the key issues of particular concern to the Gray Panthers—not necessarily in order of importance—are the following:

Full Employment

Although we view S. 50, the Humphrey-Hawkins Full Employment and Balanced Growth Act, as imperfect and weaker than we would like it to be, we regard its passage as essential to the economic health of the country. We have supported and still support the measure and recommend passage by Congress as expeditiously as possible.

We also look favorably upon supplementary legislation, like S. 2805, Senators Chiles and Domenici, that proposes measures for upgrading and maintaining skills of older workers, as an adjunct to CETA. H.R. 10814, Congressman Waxman, the "Second Careers Act of 1978," would also be worthwhile considering, if fitted in with S. 2805.

National Health Service

The Gray Panthers strongly favor the National Health Service Act, H.R. 11879. We consider a national health service vital to the welfare of all American citizens of all ages. We see holistic health care as encompassing all facets of mental, physical, and environmental health, unimpeded by the profitmaking motive. This includes the services of professional health providers and paraprofessionals in interdisciplinary teams, with special emphasis on health education, preventive medicine, and occupational safety. Community involvement should maximize the effectiveness of health service delivery and assure a higher quality of life for young and old alike.

The Gray Panthers have been involved in a 3-year study of the nursing home industry, culminating in a recent book that exposes abuses, violations of patients' rights, and similar deficiencies. These have recently been the subject of congressional investigation, along with exposures of fraud in medicare and medicaid, and we continue to be deeply concerned with needed reform in both areas.

Mandatory Retirement

We welcome the recent action of the Congress in raising the ceiling for mandatory retirement to age 70 for most private employees and removing it entirely for the bulk of Federal workers. We also appreciate the promises of legislators in both Houses to eliminate the practice entirely. However, we are not entirely satisfied with temporary and piecemeal expedients and will not be satisfied until the policy is abolished completely in both public and private sectors.

The Gray Panthers have chosen to make mandatory retirement a primary target for their active opposition because it symbolizes some of the most odious characteristics of ageism, officially sanctioned. It represents a kind of simplistic stereotyping that portrays all older people as uniformly outworn, unproductive, and incompetent. It tries to justify an exclusionary policy on grounds that research has shown are without foundation. It purports to be efficient, impartial, and humanitarian when in fact it is wasteful, discriminatory, and inhumane. On the pretext of reducing unemployment, it plays a game of "musical chairs" by exchanging the unemployment of youth for the unemployment of the elderly, thus exacerbating intergenerational conflicts.

It is interesting to note that many industrialists and legislators now recognize that our rapidly aging society can no longer afford to waste the invaluable expertise of its elders or support the heavy burden that early retirement places on those who are still employed. The abolition of mandatory retirement is not a panacea, but it is a major key to relieving "the plight of the elderly." Reconsideration of its repercussions may force our society to face up to the paradox of persistent unemployment in a system supposedly predicated on continuous growth and expansion.

Civil Rights

Because age discrimination in employment is so closely linked with civil rights, the Gray Panthers are interested in proposals to amend the Civil Rights Act so as to include age among the protected categories now listed. We will therefore follow with interest and continue to support legislative efforts like S. 3067 and H.R. 3505, that aim at this desirable objective.

The Older Americans Act

The Gray Panthers have supported the extension and improvement of the Older Americans Act, with certain reservations, and will continue to monitor the implementation of its various titles and programs. We appreciate the need to give priority to the requirements of those who need assistance most urgently—the frail, the disadvantaged, and the minority elderly. However, we still have some doubts about the practical impact of the act on its ostensible beneficiaries. It is still unclear whether it is actually benefiting all older Americans—as originally intended—or encouraging separatism and segregation of the elderly, perpetuating dependence on others, and leaving the door open for widespread exploitation of the vulnerable aged.

Welfare Reform

Because so large a proportion of older Americans are poor—or have become poor because of inflation and drastically reduced incomes—many of them are compelled to rely on welfare in order to survive. For those who do not qualify for Older Americans Act programs or are excluded from CETA or similar employment opportunities because of their age or infirmities, this may be their only alternative. The Gray Panthers are committed to support any improvements that may be legislated through measures like the Welfare Reform Act, H.R. 9030 and H.R. 7200.

Criminal Code Reform, S. 143 and H.R. 6869

Insofar as it may affect the rights of elderly Americans, as well as other Americans, the Gray Panthers are concerned about hasty revisions of the criminal code. They will look with great care at any changes that infringe upon the traditional rights of American citizens, old or young, rich or poor.

The Gray Panthers recognize that outlawing mandatory retirement, or implementing the Full Employment Act, or making more CETA jobs available to the elderly, will not make unemployment disappear completely overnight. For that reason, among others, they heartily endorse current efforts to expand part-time opportunities, to experiment with flexitime and shared jobs, and explore similar alternative working arrangements in both the public and private sectors. They especially appreciable recent investigations in Congress of possible alternatives to abrupt retirement, like "phased retirement," "trial retirement," or "gradual retirement."

It is becoming increasingly apparent that "volunteerism," while rewarding and worthwhile for many retirees, does not satisfy everyone. Gainful employment is still a vital need for most people, whether the need is physical, financial, or psychological. Any legislation that genuinely seeks to enrich the lives of Americans of all ages will be sure to attract the attention of the Gray Panthers. But it will still have to merit our wholehearted approval.

Thank you for this opportunity to present the views of the National Gray Panthers.

STATEMENT OF CARMELA G. LACAYO, EXECUTIVE DIRECTOR, ASOCIACION NACIONAL PRO PERSONAS MAYORES

Ms. Lacayo. Mr. Chairman and distinguished members of this committee, on behalf of approximately 1.3 to 1.8 million viejitos, Hispanic older persons. I thank you for this opportunity to share a Hispanic perspective of the issues under consideration before this committee: retirement, income, and lifelong learning. While the Association Nacional does not pretend to speak for all Hispanic older persons in this country, we are keenly aware that as the only national organization representing the Hispanic elderly, we have a responsibility to provide the Senate of the United States with the best information possible about the Hispanic community and its elderly.

Thus, in preparing for this hearing today, members of my staff and I began to identify the kinds of facts that would assist this committee and the Senate as it focuses on these important issues affecting the Nation's elderly. I would like to be able to tell you with confidence the number of Hispanic elderly living in the United States; how many of them receive social security and the average amount they receive; whether they live alone or with their families; whether they receive medicare, medicaid, or other forms of assistance. But, unfortunately, because of the serious lack of reliable empirical data about the Hispanic community in this country, there is only sketchy information available about the Hispanic elderly.

The Bureau of Census states that there are approximately 1,100,000 Hispanic elderly—age 55 and older—living in the United States today. Yet, most Latino leaders disregard Census' enumerations as seriously undercounting Hispanics in this country. They estimate that there are between 1.3 and 1.8 million Hispanic elderly living in the United States.

Almost half of the Hispanic elderly of the United States are foreign born. The bulk of this remarkable statistic is composed of Puerto Ricans and Cubans, reflecting foreign born populations of 91 and 93 percent, respectively.

Like the rest of America, the Hispanic elderly live in metropolitan areas—approximately 81 percent in 1975.

The estimated lifespan of a Hispanic person in the United States is 55 years compared to 70 years for non-Hispanics in the United States.

Approximately 70 percent of the Hispanic elderly in the United States have completed less than 5 years of schooling.

In 1970, approximately 39 percent of the Hispanic elderly were active members of the labor force. Yet, despite this long participation in the labor force, in 1970, the average annual income of the Hispanic older male was only $4,234.

While the empirical data necessary to describe the Hispanic elderly is sketchy and incomplete at best, there are demographic facts about the Hispanic community upon which there is basic agreement, and which portend that steps should be taken now in preparation for the future.

All estimators agree that the Hispanic population is rapidly increasing. Between 1970–76, the Census Bureau shows an annual growth rate of 3.5 percent. Hispanic leaders estimate the growth rate to be even more rapid. Whatever it is, however, even the Census' figures show that Hispanics accounted for one-fourth of this country's population growth between 1970 and 1976.

The Hispanic community is growing faster than the rest of the U.S. population, and it is almost certain that such growth will continue in the future. The sources of this growth are: (*a*) The younger median age of Hispanics—20.9 years compared to 28.9 years overall; (*b*) the larger size of Hispanic families—almost double the size of the average American family; (*c*) the continued influx of legal Hispanic immigrants—about 150,000 per year; and (*d*) some form of amnesty for a portion of the undocumented Hispanic immigrants.

MEDIAN HISPANIC AGE: 20.9

The Hispanic community's median age of 20.9 years means that 50 percent of the community is older than 20.9 years and 50 percent of the community is younger than 20.9 years.

Indeed, according to 1978 Census data, almost 42 percent of the Hispanics in the United States are 18 years old or younger. Demographers agree that the highest fertility ages are between the ages of 20–29. Since the Hispanic community is just on the threshold of the highest fertility aged period, given Hispanics larger family size, it is clear that the Hispanic community will significantly increase over the next two decades by propagation alone. Thus, the policies and plans formulated today, in anticipation of the aged of tomorrow, must consider a significantly expanded Hispanic elderly population.

By these hearings, this committee is beginning the difficult task of determining what Federal Government policy should be on growing old in America. But policy does not operate in a vacuum. Government policy on retirement, employment, and lifelong learning will affect all of society's attitudes and opinions about work and growing old in America. Such policies will have a profound effect on all the institutions of society. And unless steps are taken to affect the realities of minority group workers today, the prospects of retirement and lifelong learning will be meaningless for minority group workers tomorrow. For it is unrealistic for Hispanic older workers to contemplate retirement when the average lifespan of a Hispanic male is only 55 years.

So Senators, as you explore the possible effects of various aging policies on society's interrelationships, it is important to know and understand that the hopes inherent in retirement, employment, and lifelong learning, hopes that so many take for granted as promises, are illusions for most Hispanics in the United States. As leaders in the field of aging, all of us are challenged to vitalize those hopes. I look forward to working with you and my colleagues in aging, toward securing retirement, employment, and lifelong learning as options available to all of our people.

Thank you.

STATEMENT OF CHARLES L. MERIN, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES [1]

Mr. MERIN. Mr. Chairman, I am Charles L. Merin, legislative representative of the National Association of Retired Federal Employees—NARFE. The association is 57 years old and is composed entirely of retired Federal employees, their spouses, and survivors. We have a dues-paying membership of more than 300,000 persons, and we represent the legislative interests of some 1.5 million retired Federal workers. We very much appreciate the opportunity to participate in this roundtable discussion.

The abolition for most Federal employees of mandatory retirement shines as a beacon in the history of American personnel relations. The

[1] See appendix 1, item 7, p. 355; item 8, p. 356; and item 9, p. 357 for supplemental material submitted by NARFE.

compelling economic, social, and psychomedical forces which spurred its passage have been adequately addressed by this and other committees of the Congress. My association is proud of the role it played in lobbying this landmark legislation into law. A copy of our testimony is enclosed for your perusal.[1]

In his testimony before this committee on July 19, Civil Service Chairman Alan Campbell stated that: "The elimination of the age 70 mandatory separation provision of the law for most Federal civilian employees is not expected to have any major impact on the Federal service."

We strongly disagree. We believe that the Commission study of the impact of the new law will prove otherwise as well. Mandatory retirement served as a significant psychological disincentive to performance by older workers. With no hope of remaining on the job past mandatory retirement age, worker self-esteem and productivity most certainly diminished. By raising the mandatory retirement age for private sector workers from 65 to 70, the Congress has only deferred the larger issue with which it must wrestle. My association believes that as long as employment barriers based on age remain, the full meaning of the Age Discrimination in Employment Act Amendments of 1978 will never be realized. For that reason we have lent our support to legislation prohibiting the mandatory retirement of any working American. We believe that 23 million persons age 65 and over deserve no less.

One area in which the Federal Government as an employer has shown admirable initiative has been in flexitime employment. Changing economic, social, and demographic patterns have made it clear that employment is no longer an immutable state of being, regulated by set hours or fixed work conditions. This is particularly true for older workers who are currently retired or who are considering retirement. For many of them, flexitime employment offers significant financial, psychological, and social alternatives to the rigid state known as retirement. The association has addressed this topic in earlier hearings before the Congress, and a copy of our testimony is attached for your review.[2] Flexitime employment is a worthwhile concept whose timeliness has been aided by the rising financial burden of providing an adequate retirement income for older persons. We believe that the total abolition of mandatory retirement practices, the adoption of flexitime work schedules, and the use of financial incentives to dissuade persons from opting for early retirement, offer creative solutions to that vexing financial problem.

Economics of Retirement

I'd like to address the economics of retirement for just a moment. A fellow I know once astutely observed that the only difference between an old man and an elderly gentleman was money. Adjustments in retirement or lifelong learning opportunity without concomitant improvements in the quality of retirement income, are insufficient achievements. As all of us here today know only all too well, inflation hits hardest at those living on fixed or relatively fixed incomes. It is

[1] See appendix 1, item 7, p. 355.
[2] See appendix 1, item 8, p. 356.

estimated that almost one-half of the American population is dependent, in a direct or indirect way, on the Consumer Price Index for various benefit adjustments. The Government Operations Committee of the House has pending before it legislation which would require the use of the new all-urban CPI for all cost-of-living benefit adjustments as of July 1, 1978. While my association does not formally oppose the use of the new all-urban index for future cost-of-living adjustments, we are concerned that this new index has seriously deemphasized two categories of major importance to older persons—food and medical care. Our testimony before the Government Operations Committee [1] detailed these concerns, and called on the Bureau of Labor Statistics to study the feasibility of a CPI for the elderly. I repeat that call today. Changing demographics and inflation's victimization of the ability of many older persons to meet life's most essential needs, argue compellingly for this initiative.

Many persons nearing retirement view its prospect with great fear and trepidation. A recent university study established retirement as one of life's most traumatic experiences. Given that, we believe that the Civil Service Commission needs to expand and improve the preretirement counseling services available to its employees. Preretirement counseling is not mandatory for Federal employees, and we respect the right of every individual to decline the use of this valuable service. However, those who seek it far too often find Federal personnel officers poorly informed or misinformed about the important decisions which need to be made prior to retirement. A recent conversation with a NARFE member well illustrates the point.

It seems that as the woman approached the date of her retirement from the Federal service, she approached her agency personnel officer for counseling. The personnel officer informed the woman that Civil Service Commission regulations mandated a 2-year delay from the date of retirement before survivor benefit coverage could be elected. The woman dutifully waited the 2 years from the time of her retirement, and then sought out the personnel officer nearest her home. The counselor then informed her that she had been misinformed; in point of fact, Commission regulations clearly stated that such an election could only be made at the time of retirement or within 1 year of that date. It was my unfortunate duty to inform her that the information her orignal personnel counselor had provided her was incorrect, and that existing Commission regulations offered little hope for redress. Fortunately for this reason, legislation—H.R. 3800—to authorize a second chance to elect survivor benefit coverage, now pends before the House. This is but one incident, yet illustrative of a recurring problem involving poor or inadequate preretirement counseling for many Federal workers.

Urgent Need for Retirement Counseling

My association urges the Civil Service Commission to take steps to insure that Federal personnel counselors throughout the Nation provide accurate retirement counseling. The designation of a retirement counselor for each Federal personnel office may be a useful vehicle toward achieving that goal.

[1] See appendix 1, item 9, p. 357.

Some basic data dramatizes the urgency of this problem. In 1965, there were approximately 728,000 Federal annuitants and survivors throughout the United States; today that figure exceeds the 1½ million mark. With Federal employees retiring at the rate of approximately 80,000 per year, the need for competent and readily accessible preretirement counseling services is clear.

As an aside, it may interest the committee to learn that my association, with the approval of the Civil Service Commission is now actively involved in the Federal preretirement counseling process. NARFE regularly sponsors preretirement seminars for Federal employee groups ranging in number from 50 to 500. At the solicitation of a Federal agency, the association has coordinated complete retirement seminars, producing expert speakers, and distributing retirement literature to those assembled. These presentations focus on alternatives to retirement in the form of second careers and flexitime employment, technical aspects of the Federal annuity program, estate planning and wills, and other areas of general concern to prospective retirees. The organization does not charge nor will it accept fees for providing this service. Through this involvement, we hope to aid in the improvement of preretirement counseling services, and to attract new members to the association.

This concludes the written portion of my presentation. I will be pleased to answer any questions you have about the association. I appreciate the privilege of appearing before you today.

STATEMENT OF DR. MILDRED M. SELTZER, PRESIDENT-ELECT, ASSOCIATION FOR GERONTOLOGY IN HIGHER EDUCATION

Dr. SELTZER. The Association for Gerontology in Higher Education is an organization of over 150 institutions of higher education, all of which are engaged in activities related to education and research about aging. My main emphasis and bias, therefore, is an obvious one—upon education and research in the study of aging and related issues. If I have another bias, it is the equally obvious one of being an older woman.

Despite my biases I know there is ample evidence to show the need for increased stable funding to support research and education in the field of aging. In the testimony given at the hearings in July, many basic questions are posed which can be answered only through continuing programs of research and education.

Within the context of the hearing subject—retirement, work, and lifelong learning—I will stress: (1) The need to develop policy and plan programs based on accurate information about older Americans; (2) gaps in our knowledge about retirement and its implications for policy and program planning; (3) the need to learn more about changing social attitudes toward work and its implications for pension programs and retirement policies; and (4) the need to have effective programs of lifelong education that are developed from an adequate knowledge based on educational needs and the most effective ways of meeting those needs.

In reading through the material presented at the July hearings, I was impressed with how much we know, how much has happened, and

yet there are significant gaps in our knowledge about work, retirement, and lifelong education. For example, we have a great deal of demographic data, analyses of economic trends, and information about our social security program. At the same time, our forecasts are often ignored, our programs have not always been evaluated except by hearsay and anecdotes, and our research has, in many instances, been limited. We do not necessarily know the policy implications of some of our research. While in our speeches and recommendations we stress the need for lifelong education and long-range planning for older people, we do not always consider how, where, when, and why to implement our recommendations.

In part, our present situation is understandable. In the past, our need to solve the new problems created by a large older population and the necessity to develop a social policy about older Americans were so great that we were willing to try almost anything. It is, therefore, particularly important that we take time now to do research on what has and has not worked so that we may plan more adequately for the present and future older populations. It is legitimate to expect research to provide us with accurate information which will enable us to eliminate mistakes and improve social conditions. While we may not be able to achieve the ideal, we can certainly achieve more satisfactory conditions for older people.

To achieve these more satisfactory conditions, it is important to plan programs and develop policies based upon accurate descriptions and information about older Americans rather than upon our stereotypes about them. For these reasons, it is essential that we devote financial and other resources to both education and research about aging. While my focus will be upon retirement, work, and lifelong education, let me also stress that what I say about the need for research and education relates to countless other topics. It is vital to recognize that those studying aging and the aged are dealing with research strategies and topics that have implications for gaining a better understanding of other aspects of the entire life cycle. It is important also to understand that there is currently no clearinghouse for research about aging and no collected data base, and that few people are engaged in reanalyzing and/or replicating older research in order to assure us that our previous findings are accurate descriptions of the people we are planning for. We also have to keep reminding ourselves that the older population is not a single, monolithic population but instead a constantly changing heterogeneous one, consisting of many different segments needing many different things—old European-born Jews are not the same as old New England Americans who in turn are not the same as old rural Americans in Nebraska. Research findings may not be generalizable to all older people. Programs meeting the needs of one segment of that population may not necessarily meet those of another segment. Age isn't necessarily the great leveler. It is also important that we recognize that today's solutions to the problems of older people may well carry the seeds of tomorrow's problems for older people. For example, the raising of the retirement age may operate against the older people of tomorrow who prefer earlier retirement but find it socially unacceptable.

As all of those present know, we have a great deal of research on some of the social and psychological variables relating to retirement and about attitudes toward retirement. We lack information on the extent to which ethnicity, race, and sex affect decisions to retire and patterns of retirement. We also lack information about the impact of retirement on family relationships and upon working organizations.

In the past, it has been assumed that women's adjustment to retirement has not been nearly so difficult as men's. After all, the women's primary role was a familial one and her work tended to be of secondary importance to her. Increasingly, in part as a result of research and in part as a consequence of the woman's movement, people are beginning to recognize that women work for many of the same reasons as men—money, recognition, success, and because they like what they're doing. Increasingly, also, we are aware that more women are entering the labor force—particularly middle-aged women who constitute the fastest growing segment—although generally in lower paid positions than men occupy. There is a general rule of thumb about women who work, the higher the fewer. This means then that women tend to be employed in lower paying positions, jobs that often are not covered by private pensions or retirement fringe benefits. The long-range consequences of this is a retirement financially poorer than that of most men. Private pension plans as well as social security benefits tend to favor economically the retirement of males rather than females. This is an area in which additional research on differences to men's and women's patterns of retirement could lead to new policy decisions eliminating the discrepancies in the future and providing programs including preretirement services to assist disadvantaged women in the present.

In July of 1977, 11 scholars and administrators identified with the subject of retirement, met for a week to discuss and define some of the major areas in which research about retirement needs to be done. In Robert C. Atchley's forthcoming article about this meeting, it is noted that ". . . retirement research has come a long way in the years since the NICHHD conferences (1966 and 1967)." In the intervening 10 years between the NICHHD and the Scripps Foundation meeting, the United States gained considerable information about and experience with the social phenomenon of retirement. Among the things we learned were (1) for most people, retirement has become a normal, expected part of a worker's occupational cycle; (2) retirement, contrary to what many middle-class researchers believed, is not necessarily a traumatizing crisis to many workers. In fact, if the financial disadvantages of retirement could be eliminated, many people would look forward to retirement in an even more positive sense than they already do.

There continue to be significant areas in which research needs to be undertaken. For example, what factors affect the timing of retirement? Why are people retiring earlier than the mandatory and/or expected retirement ages? Much of our research has dealt with the impact of retirement upon the individual. Just as important is the effect the level of retirement may have on the work organization itself? Our work ethic has changed, people are less subservient than in the past to the demands of work. As a society we are moving away from

a willingness to sacrifice family, friends, and leisure activities to our jobs. The need to achieve at work has become less important than other needs. This means that the younger replacements of retired older workers have a significantly different work orientation. We do not know how this change in workers' values and attitudes will affect work organizations.

These and other questions are vital ones for research undertakings. We need the answers to these researchable questions in order to:

(1) Anticipate more accurately future patterns of retirement and how these will affect the Nation's economy.

(2) Develop preventive programs which will enable individuals to plan more effectively for their retirements.

(3) Develop specific programs which focus on the unique retirement problems experienced by members of particular ethnic, radical and/or sex categories.

(4) Create more effective long-range social policies, based upon the constantly changing characteristics of the United States' older population. Often our solutions are of an ad hoc nature, appropriate for some segments of today's older population, but inappropriate for tomorrow's. Unfortunately, programs and policies become set in concrete, thus carrying the seeds for our future social problems of aging and the aged.

Work

As we turn our attention to the topic of work, much of what I have been saying with reference to research about retirement issues applies to the subject of work. As I already noted, as a society our attitudes toward work have been changing, and we really do not know as much as we need to know about these changes and their consequences for our economy. It would be valuable to undertake research on this topic. Longitudinal research or research using the more complex but more accurate strategies developed by Baltes, Schaie, Nesselroade, and others, could provide us with information about whether or not our attitudes toward work, its significance in our lives and its meaning are changing and, if so, to what extent. For example, we need to know the answers to such questions as "What does work mean to different generations? To women as compared with men? To different occupational categories?" "Is the typical work pattern for women a bimodel one, an in-and-out-of-the-labor-force pattern?" There are some women who work throughout their life cycles, just as there are some women who never work. What are the variables that affect this? We need information not only on middle-class and upper-middle-class women, but on all women.

One of the hot items of today's research is research on old women. The National Institute on Aging is sponsoring a conference next week on this topic. At the annual meetings of the Gerontological Society there have been panels and paper sessions devoted to this topic. A great deal of what we hear is polemics. We need more accurate information about today's population of old women and predictions about future ones. Such information is of value in planning and providing specific programs for specific categories of workers, men, women, rural, urban, ethnic, and other categories. There are differences between the needs of a retired rural woman schoolteacher and a retired urban male police-

man. We need to know what those differences are and how to design programs to meet the special needs—programs which balance between individual and social concerns. We also need research to let us know how effective these programs are in doing what they were designed to do. And, we need to know when no programs are needed.

Lifelong Education

When we turn our attention to lifelong education, we need to ask whether we are talking about education about or directed toward older people. For the most part, education for older adults is self-education and therefore a lot of what is directed toward older people, if it is to be effective, should be media rather than classroom oriented.

In order to develop a comprehensive approach, therefore, we need to bring together those with knowledge about older people with those who know how to transmit knowledge.

Another aspect of education for older people relates to what I would call "self-improvement" activities. Skills such as managing money, planning adequate diets, knowing appropriate exercise programs, preventive health mechanisms, dealing with bureaucracy, once learned usually are effective throughout the life cycle—once mastered these skills have lasting power. We need to know something about the transmission of these skills throughout the life cycle and we need also to learn whether and how skills in one area are transferable to another area.

Other research topics come to mind almost immediately. How interested are people of all ages in different kinds of education? Given educational opportunities in senior centers, how many people take advantage of it? Given State legislation permitting people over the age of 55 or 60 to attend institutions of higher education without tuition costs, how many people are taking advantage of this? Is it lack of opportunity or lack of interest which accounts for the low figures?

Equally important, in fact, perhaps more important, are the answers to such questions as: In designing educational programs for older adults, how much have we attempted to implement our knowledge about learning in the later part of life? How much accurate data do we have on mid-career changes? We're aware that the University of Wisconsin Fay McBeath Center has been undertaking a research project on older people and college attendance. What are the implications for other kinds of colleges and universities? How many admissions programs for medical schools, dental schools, and other professional as well as undergraduate colleges and universities continue to use either implicit or explicit age criteria? What problems do midlife school returnees meet?

Equally important as topics of investigation are those relating to the attitudes of faculty members toward returning adult students. What do we know about faculty attitudes toward the returned student? What are the implications of such data? We talk about lifelong education. What kinds of education are needed at different stages of life? What can wo do in the earlier years of life that will encourage people to view educational organizations as appropriate resources throughout the life cycle and how can educational institutions be changed to accept education as a lifelong actuality?

What are we teaching children in the primary grades about old age and aging? About work and retirement? While there are attempts to introduce curriculum content on these topics in the kindergarten through 12 grades, how effective have they been? How can you teach young children about work, retirement, and aging? Or do you? Are the curriculum materials being used to teach young children about aging doing an accurate job or do they provide further reinforcement of existing stereotypes? How do you teach teachers about aging and the teaching of life cycle approaches? Once again, all of these are researchable questions on which, as yet, we have little data. Answers to these questions will give us some indication about the usefulness of education in achieving attitude changes. They will provide us with ways of developing more adequate lifelong educational opportunities and programs for people.

We talk about growing old. What do we mean in terms of growth when we talk about education, work, and retirement?

The Association for Gerontology in Higher Education is an institutional organization representing institutions of higher education in which there are programs related to the study of aging. As an educational organization, obviously we stress the importance of education, of research, and of public service. It is as inappropriate for us to speak against these topics as it would be to speak against motherhood. It is our convicition that one of the best sources for generating new information is institutions of higher education and that colleges and universities have a responsibility to engage in research relating to aging. In times of decreased enrollment and limited income, it becomes increasingly necessary that such research be externally funded, frequently by Federal and State government agencies. At the same time that it is vital to undertake research, it is also important to transmit such information to our students.

While the temptation is either to over or undersell education, it is not a universal panacea providing us with solutions to all problems, but is one of the better mechanisms we have of maintaining a democratic system and encouraging an enlightened social policy. While it is very doubtful that we will find a perfect solution to problems relating to work, retirement, and lifelong education, we can learn through our research endeavors—adequately funded research endeavors—some of the sources and causes of past errors. We can learn more about the consequences of past social policies and programs. We can gather increasingly accurate information about the realities of the world. In these ways, we can learn to minimize problems if not completely eliminate them. If we're careful, we can avoid making today's solutions the source of greater problems in the future.

We would like to submit for the record the attached supporting data indicating the need for funding of research and training in the field of aging. We might note that the tremendous need for personnel has resulted in hiring people inadequately prepared for the jobs that they are performing.

ROUNDTABLE DISCUSSION

Senator CHURCH. When I was in the Army, at this point my commanding officer usually asked for a volunteer. [Laughter.]

Who would like to volunteer for the discussion?

Mr. DANSTEDT. I will.

Senator CHURCH. Fine, Mr. Danstedt.

Mr. DANSTEDT. I think we can make this kind of observation and supplemented by Betty Duskin and Lou Ravin.

I think we doubt very much if the age discrimination act is going to have much of an impact on people continuing to work when they become eligible for retirement benefits. That is the first point. I don't think you can tell much at this point, but I doubt that that is going to happen because I think had we established a pattern of people retiring at 62 and 65 we are going to have to deal with them. I think there is going to have to be a lot of attention paid to shaping up the attitudes of industry and the unions toward continuing to provide employment for older people.

Then I think something must be done concerning a subject which I don't know very much about, but I have been strongly impressed by the fact that there must be out in the labor force the millions of people who are bored to death with their jobs and are working toward retirement. I know in the government sector, and the private sector too, in which they are literally saying "wait until the golden days come" and as soon as it looks like they have a decent retirement benefit, bang, they go. So one has to address also the business of making a satisfying situation to people if they are going to stay around, and if they are needed, and not be atracted out of the labor force because of the state of retirement benefits available.

Senator CHURCH. Mr. Brickfield.

Mr. BRICKFIELD. We agree that there won't be a strong, immediate impact. In fact, I have been reading some economic reports and actuarial reports which say that raising the mandatory retirement age will have a very small impact in the beginning. However, I don't think, Senator Church, that is a true indicator of the long-term effect. I think, especially in these days of inflation, more and more older people need to work, they simply must work, and we need to eliminate the various barriers to their employment.

For example, we need to eliminate mandatory retirement completely. We need to eliminate the social security earnings limitations test which is a disincentive to full or maximum employment. I really think it is in a sense mandatory retirement. It is a form of mandatory retirement because you reach a certain earnings level and if you continue to work, you lose at least some, if not all, of your benefits.

Senator CHURCH. We have moved that retirement test up very substantially. It is now $4,000 and will be $4,500 next year.

Mr. DANSTEDT. If you live to be age 72.

Senator CHURCH. If you live to age 72, it is eliminated entirely.

Mr. BRICKFIELD. If we can only progress incrementally, we should at least continue to raise the exempted earnings amount and at the same time continue to reduce the age at which the limit is removed so that eventually, when you do retire, you can earn as much as you want and continue to collect your full social security.

Senator CHURCH. There has been quite a lively argument on these questions and I see several hands.

Jim Hacking.

Mr. HACKING. In view of the demographics with which we are faced, we should, as a matter of public policy, try to induce a maximum work effort on the part of older workers and older persons. In

order to do that, we have to get rid of disincentives like the earnings limitation and we must begin to have built-in incentives, rewards to encourage increased work effort as we go on into the future.

Senator CHURCH. Those to increase the amount of retirement that a person would receive to continue to work beyond the age of 65. In other words, the incentive now does not amount to very much. In fact, it falls considerably short of the anticipated annual increase in the cost of living. Would increasing the delayed retirement credit be an inducement to continue to work?

Mr. HACKING. That certainly would be helpful. However, it is not enough when you have these preexisting disincentives that offset the incentive effect. The demographics with which we are faced are unalterable and we have to begin to accommodate these things. To the extent that we have in place today a combination of work disincentives or barriers that are forcing out of productive labor persons who could be productive and are willing and able to work, we are losing something—losing goods and services produced that would otherwise have been produced and we are losing tax revenues. In the future, it is going to be increasingly difficult to make ends meet as relatively fewer workers are called upon to support relatively more nonproducing retirees. So we have to begin to change this declining elderly labor force participation trend. It ought not to be carried on into the future.

RETIREMENT TEST

Ms. DUSKIN. I do take issue with Jim's position. I understand that we should not have disincentives to working, and I think that is more than adequately taken care of by liberalizing the retirement test. Someone who is totally involved in the labor force and thus loses all his social security benefits may be earning on the order of $14,000 or $15,000 a year as an individual. He or she already has sufficient incentive to work because income from earnings is so much higher than maximum social security benefits. I don't think the incentive question significantly affects the people at the upper end of the income ladder. The liberalization does work to supplement the income of those with meager earnings and benefits; the tax rate for them was too high previously. The liberalization is a good move forward but it is not necessary to eliminate the retirement test. To do so would drain the system on behalf of individuals who would work anyway.

Senator CHURCH. Could we just at that moment place in the record what present law provides in the way of future liberalization of the retirement test. This year the retirement test is $4,000; in 1979, it becomes $4,500; in 1980, it becomes $5,000; in 1981, it becomes $5,500; and in 1982, it becomes $6,000. Moreover, in 1982, the inapplicability of the retirement test will be lowered from 72 years of age to 70. So I think we are moving in the direction of eliminating one of the principal disincentives to work.

Mr. BRICKFIELD. And we fully support that.

Senator CHURCH. Yes.

Mr. BRICKFIELD. If I may ask an expression of views from the others in attendance.

Mr. AHRENS. Senator, I would like to jump in to say that from a local level representing the National Council on the Aging, I am not optimistic that people are that well fixed that they are not going to

stay on and work until 70. I think inflation has greatly damaged the retirement incomes of many, many people. I think the extension to 70 may have come just in time and that a large number of people will be choosing to stay on until they are 70.

Senator CHURCH. You may be right. Inflation is a real factor and that brings back the other question I raise. For purposes of getting the correct figures into the record, I want to note that the delayed retirement credit is 1 percent per year. That is not much if the dollar is depreciating at the rate of 8 percent. It is hardly an incentive at all.

Under the present law, I think we will go to 3 percent in 1982. I think Congress could well consider the need to increase that percentage much sooner and in a larger amount to provide some inducement to people who might otherwise be inclined to work if they felt that there would be some advantage to it when they finally retire.

Ms. DUSKIN. I agree with you completely that obviously that rise in the delayed retirement adjustment ought to at least keep up with inflation. How much further you go than that requires consideration of the cost to the system and the alternative liberalizations—on behalf of those who don't have good jobs or who can't work—that must be foregone. I think it is equally important to consider the group that is out of work among the younger or the elderly.

Senator CHURCH. Now I see from an eminent economist and a good friend of mine, the Secretary of Commerce, and others, vacancies beckoning that the age should be raised all 3 years in order to save money for such a period. I think these gentlemen who are urging the lift of any limits on earnings and social security are going in the same direction, and I think for this time that is the wrong direction. We have millions of people who retire early, who retire at age 62, some of them because they had been waiting to retire, but many of them because they had been unemployed for 1 or 2 years before that and had no choice.

Now we ought to be concerned about getting people like that back into the labor market, keeping them in the labor market, before we worry about getting people out at 67 and 68 and keeping them at work. That problem is solved in sufficient time to give real concern to these older people who are affected.

A FIXED NUMBER OF JOBS

Mr. HACKING. Senator, let me, by way of response to that, indicate that the present recovery is creating an enormous number of new jobs. There are apparently many people who have a static view of the world who think that the number of jobs is fixed and must be rationed, primarily to the young. We, however, view our economic world as dynamic. This economic recovery that is still in progress has witnessed the creation of a tremendous number of jobs. Some 2 million people many of them women, have come in to take those jobs. We don't think in terms of a static fixed number of jobs that have to be rationed to younger people, but rather we think in terms of a growing economy which offers a huge growing number of new jobs. We want the elderly to have an opportunity to get their share of these new jobs. But to do that, we have to get rid of the barriers and disincentives that force or discourage older people out of the work force. The statistics show

clearly that middle-age workers are unemployed for far longer periods of time than young workers. The figures also show that the older the unemployed worker is, the longer his period of unemployment is likely to be. We are simply not going to be able to make ends meet in the future if we continue this kind of situation. We might be able to do it if our productivity was as high today as it used to be, but as a matter of fact, our productivity is declining.

Senator CHURCH. Wouldn't we be better off all the way around if we more seriously addressed the central question of inflation?

Mr. HACKING. Yes.

Senator CHURCH. I am always puzzled at the lack of resolution in a whole succession of administrations when it comes to dealing with the problem of inflation.

Mr. MERIN. Senator, my association sees a special need, a need that is for a separate Consumer Price Index for the elderly. A number of national organizations have endorsed this concept. We believe that the present Consumer Price Index does not adequately reflect the needs of older persons in the two categories of greatest importance to them—food and medical care. I have some very clear data to support that assertion. I trust that the other groups represented here today support these efforts.

Senator CHURCH. There is a lot of support. I have sponsored a bill for that purpose.

Mr. DANSTEDT. We support that.

Senator CHURCH. It would reflect the typical budget for an older person.

Mr. DANSTEDT. Yes.

Senator CHURCH. I introduced that bill, S. 1243, and it is presently pending in the Congress.

STATEMENT OF DOLORES DAVIS, EXECUTIVE DIRECTOR, NATIONAL CAUCUS ON THE BLACK AGED, INC.

Ms. DAVIS. Senator Church, I would like to say that for the major national black aging organizations, and national black organizations in general, the elimination of the mandatory retirement age is a very controversial issue. One, there is the argument that if persons are allowed to stay in the labor force, this would mean inadequate jobs for you and not enough jobs for youth at the lower entry levels. Even greater than that, I think the greatest fear is that following elimination of the mandatory retirement age, and also because of the increases of the number of elderly in the population, eventually there will be arguments to extend the age eligibility for those who receive the social security benefits. That is the greatest fear, and because of the differentials of life in the black age population and other minority populations as well, this is a very, very serious concern.

The Black Caucus would like to go on record as opposing any distinction in the age of eligibility for the receipt of social security benefits.

Senator CHURCH. Would you tell me, Dolores, whether that gap in longevity is beginning to close? Do you have any data that would indicate that that gap is starting to close?

Ms. DAVIS. Yes. I have a chart.

Senator CHURCH. You just happened to bring a chart.

Ms. DAVIS. This shows life expectancy. I would like to personally thank Herman Brotman for being interested in this subject for many years. This chart was designed by Beth Solo with the George Washington University, and it shows the life expectancy. There are some other charts,[1] and I will have them passed out, that reflect the same problem. The differences in years in 1959, you can see at age 65 the gap was 8 years. Down to the present time in 1973, there was a differential of only 1.1 years at age 65. The real differential occurs particularly at the ages between 25 and 44, because of greater mortality among black males due to homicides and violent deaths. That is the reason for the differences in midlife which keeps the differences up, but at birth the differences in life expectancy are still a six-point differential at birth, but at age 65, we see that these differentials are decreasing for males and for females.

Now what is very, very interesting among the oldest age cohorts, those 85 and older, we find that there is an extension of life expectancy, and the rate is almost twice as great for the black elderly as for the white elderly.

Senator CHURCH. 85——

Ms. DAVIS. Well, it begins for black females at age 70 and for black males at about age 75. It is called the crossover effect and the reasons are not known, but we feel——

Senator CHURCH. I suppose if they are tough enough to make it to that age, they are especially hardy.

Ms. DAVIS. Senator Church, I would like to interject here a very interesting hypothesis in terms of the lack of access to institutional care for black elderly. We do not have access to institutional care at all so, therefore, we are thinking that the preponderance of black aged to live with their family's home health care, we are thinking that this might have, to some extent, an effect on the life expectancy of the aged blacks at this rate of increase.

Senator CHURCH. You know, that is a very interesting possibility.

Ms. DAVIS. They do not have access to institutional care.

Senator CHURCH. I have seen so many older people decline when they move or are moved by their families into nursing homes.

Ms. DAVIS. For every 21 white females living in an institution, there is only 1 black female, and, of course, females live longer than the males. We would like to do some research into this, because it would have a great impact and meaning for all older persons.

Senator CHURCH. It might help me in my efforts to get medicare to pay greater attention to home health care. I think something less than 3 percent of medicare part A outlays today go to home health care and everything else is institutional.

Ms. DAVIS. There is a related problem to family support. Secretary Califano, in his testimony on July 17, testified to the need for supported family care. He indicated that HEW, of course, is providing little incentives for providing this kind of supportive care, but under the supplemental security income program not only is there a little encouragement, there is indeed a penalty for families who live——

Senator CHURCH. That is income in kind.

Ms. DAVIS. Income in kind. There is a penalty, but you see even so this is an area where incentives need to be provided.

Senator CHURCH. Absolutely.

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[1] See pp. 307–313.

Ms. DAVIS. Because the benefit of only $189 a month being subtracted because you can choose to live with a family relative being deducted seems a crime in our society.

Senator CHURCH. I agree with you. When we talk about the enormous increasing costs of the entire retirement program and medical care program, we have not begun to calculate how much of this is self-imposed by the system. The system has been built, to a very large degree, around supporting institutions—hospitals, nursing homes, and the like. It would clearly be much less costly—and in most cases more satisfactory—if we had some way of encouraging or helping families to help their own, as most families would want to do, if they could manage it.

Ms. DAVIS. Make very serious applications for it right here.

Also, in terms of the SSI program, in kind transfer programs, we are talking about incentives to work. That program is a locked in program of poverty because even if you choose to work there are no incentives. You can only make $65 a month if you are receiving SSI. That amounts to $16.25 a week, 41 cents an hour. We are talking about supplementing meager incomes, particularly of black females, and this is the only financial support they have, and it is my belief they would like to work because they have such a medium income. The Harris-NCOA poll shows that they must work in order to meet other financial needs such as housing, providing for medical cost. If you look at the cost of living, it is up 7 percent for retired elderly urban couples due to rising medical costs. I think that we have to look at the provision of making for income maintenance programs and for allowing incentives for people at the lower age, lower income level, as well as the upper income levels as well. It is a very serious problem.

Senator CHURCH. Thank you very much.

[The charts referred to by Ms. Davis follow:]

TABLE I.—PERCENTAGE DISTRIBUTION OF TOTAL MONEY INCOME FOR THE POPULATION 65 YEARS OF AGE AND OVER, BY RACE: 1975

Total money income	Race	
	Black	White
Without income	4.0	6.4
With income	96.0	93.6
$1 to $999	96.0	93.6
$1,000 to 1,499	10.7	7.2
$1,500 to 1,999	16.9	8.4
$2,000 to 2,499	22.0	9.9
$2,500 to 2,999	10.4	8.8
$3,000 to 3,499	8.6	8.6
$3,500 to 3,999	5.6	6.0
$4,000 to 4,999	5.5	9.4
$5,000 to 5,999	4.2	7.5
$6,000 to 6,999	2.4	4.8
$7,000 to 7,999	1.5	3.9
$8,000 to 8,999	.8	3.2
$9,000 to 9,999	.3	2.0
$10,000 to 11,999	.9	3.4
$12,000 to 14,999	.4	3.0
$15,000 to 19,999	.8	2.1
$20,000 to 24,999	(1)	.9
$25,000+	($)	1.3
Total	100.0	100.0
Total persons (thousand)	1,796	19,654

[1] Less than 0.1 pct.

Source: U.S. Bureau of the Census current population report, series P-60, No. 105, "Money Income in 1975 of Families and Persons in the United States," table 46.

TABLE II.—PERSONS 65 YEARS OF AGE AND OVER BELOW THE POVERTY LEVEL, BY RACE: 1966, 1969, 1971, 1973–75

[In thousands]

Year	Black		White		Ratio of black to white rate
	Number below poverty level	Poverty rate	Number below poverty level	Poverty rate	
1966	722	55.1	4,357	26.4	2.09
1969	723	49.2	4,125	23.7	2.08
1971	623	39.3	3,605	19.9	1.97
1973	620	37.1	2,698	14.4	2.58
1974 [1]	591	34.3	2,460	13.8	2.64
1975 [1]	652	36.3	2,634	13.4	2.71

[1] Based on revised methodology for computing poverty levels.

Source: U.S. Bureau of the Census, series P-60, No. 103, "Money Income and Poverty Status of Families and Persons in the United States: 1975 and 1974 Revisions" (advance report), table 17.

TABLE III.—POVERTY RATES FOR THE POPULATION 65 YEARS OF AGE AND OVER BY REGION, METROPOLITAN-NONMETROPOLITAN PLACE OF RESIDENCE, AND FAMILY STATUS: 1975

Region, metropolitan-nonmetropolitan, and family status	Percent of total below poverty level	
	Black	White
U.S. total	36.3	13.4
Metropolitan, persons 65 plus	29.0	10.3
In families with head 65 plus	24.0	6.5
Not in families	56.3	22.9
Nonmetropolitan, persons 65 plus	52.1	18.6
In families with head 65 plus	45.5	10.8
Not in families	72.5	36.9
North and west	22.7	10.6
Metropolitan, persons 65 plus	20.3	8.9
In families with head 65 plus	16.5	3.8
Not in families	41.5	20.3
Nonmetropolitan, persons 65 plus	(1)	14.2
In families with head 65 plus	(1)	6.4
Not in families	(1)	30.6
South	36.6	11.4
Metropolitan, persons 65 plus	40.6	14.6
In families with head 65 plus	25.5	7.6
Not in families	74.9	31.7
Nonmetropolitan, persons 65 plus	52.2	24.7
In families with head 65 plus	46.1	16.6
Not in families	73.9	46.4

[1] Base less than 75,000 persons.

Source: U.S. Bureau of the Census current population reports, series P-60, No. 106, "Characteristics of the Population Below the Poverty Level: 1975," table 9.

TABLE IV.—AVERAGE MONTHLY SOCIAL SECURITY BENEFIT OF RETIRED WORKERS AND DEPENDENTS BY RACE: 1960, 1967, AND 1973

	Average monthly benefit						Ratio of average monthly benefit				
	1960		1967		1973		1960	1967		1973	
Type of beneficiary	White	Black and other	White	Black and other	White	Black and other	Black	Black and other/white	Black and other/white	Black and other/white	Black/white
Retired workers	$75.00	$58.90	$86.90	$68.50	$169.20	$136.70	$134.70	.79	.79	.81	.80
Male	83.00	65.40	96.10	76.20	185.60	151.30	149.70	.79	.79	.82	.81
Female	60.60	46.60	73.20	56.90	148.50	117.30	116.60	.77	.78	.79	.79
Dependents:											
Wives	39.20	28.10	44.90	32.20	86.30	62.40	62.30	.72	.72	.72	.72
Children	30.00	18.00	35.80	23.10	66.30	45.00	45.40	.60	.64	.68	.68

Source: Thompson, G. B., "Blacks and Social Security Benefits: Trends, 1960–73," Social Security Bulletin, April 1975, table 4.

TABLE V.—PERCENTAGE OF PERSONS 65 YEARS OF AGE AND OVER RECEIVING SELECT TYPES OF INCOME, BY RACE AND FAMILY STATUS: 1975

Family status and type of income	Percent of elderly receiving income from sources	
	Black	White
Head, 65 years and over:		
Earnings [1]	56.5	48.7
Wages and salaries	53.3	40.4
Nonfarm self-employment	4.2	7.5
Farm self-employment	2.8	5.7
Income other than earnings [1]	96.7	91.7
Social security income	85.3	85.3
Public assistance income	12.0	1.3
Supplemental security income	26.9	4.7
Other transfers of payment [2]	12.9	12.0
Dividends, interest, and rent	20.9	66.4
Private pensions, government pensions, alimony, annuities, etc	18.1	39.4
Total with income	100.0	100.0
Total persons (thousands)	673	7,424
65 plus,not in families:		
Earnings [1]	20.0	17.2
Wages and salaries	18.4	13.0
Nonfarm self-employment	1.5	2.5
Farm self-employment	(3)	2.2
Income othe than earnings [1]	97.5	98.2
Social security income	85.0	90.6
Public assistance income	5.7	1.8
Supplemental security income	39.2	11.3
Other transfers of payment [1]	10.0	8.4
Dividends, interest and rent	13.5	58.0
Private pensions, government pensions, alimony, annuities, etc	8.8	26.2
Total with income	100.0	100.0
Total persons (thousands)	599	6,200

[1] Detail does not add to 100 percent because some families and individuals receive income from more than one source.
[2] Unemployment and workman's compensation and veterans payments.
[3] Base less than 10,000.

Source: U.S. Bureau of the Census, current population report, series P-60, No. 106, "Characteristics of the Population Below the Poverty Level: 1975," table 38.

TABLE VI.—POVERTY RATE FOR THE POPULATION 65 YEARS OF AGE AND OVER BY TYPE OF INCOME, RACE, AND FAMILY STATUS: 1975

[In percent]

Family status and type of income	Poverty rate	
	Black	White
Head, 65 years and over:		
Earnings	4.3	5.0
Wages and salaries	18.4	4.4
Nonfarm self-employment	17.3	7.6
Farm self-employment	31.5	11.3
Income other than earnings	28.8	6.7
Social security income	27.2	9.6
Public assistance income	64.8	51.3
Supplemental security income	39.8	25.5
Other transfers of payment [1]	16.7	5.6
Dividends, interest and rent	5.4	2.2
Private pensions Government pensions, alimony, annuities, etc	20.6	7.2
65 plus not in families:		
Earnings	30.8	14.9
Wages and salaries	33.6	11.7
Nonfarm self-employment	(2)	19.7
Farm self-employment	(2)	26.1
Income other than earnings	60.6	27.3
Social security income	58.3	26.6
Public assistance income	88.2	70.9
Supplemental security income	78.7	61.2
Other transfers of payment [1]	33.3	19.4
Dividends, interest and rent	25.9	14.1
Private pensions, Government pensions, alimony, annuities, etc	11.3	4.6

[1] Unemployment and workman's compensation and veterans payments.
[2] Base less than 10,000.

Source: U.S. Bureau of the Census, current population report, series P-60, No. 106, "Characteristics of the Population Below the Poverty Level: 1975," table 38.

TABLE VII.—EDUCATIONAL ATTAINMENT BY AGE, SEX, AND RACE 970

[In percent; base numbers in parentheses]

Race, sex, and age	Level of educational attainment: 0 years	1 to 8 years	Some high school	High school graduate	Some college	College graduate or more	Total	
White males:								
60 to 64	1.4	41.6	20.2	19.1	8.4	9.4	100	(3,663,861)
65 to 69	2.0	51.4	17.1	14.5	7.1	8.0	100	(2,800,064)
70 to 74	3.1	55.6	15.4	13.0	6.4	6.6	100	(2,108,971)
75 plus	6.0	60.0	12.1	10.8	5.5	5.7	100	(2,755,089)
Total	3.0	51.1	16.6	14.8	7.0	7.6	100	(11,327,985)
Black males:								
60 to 64	5.9	67.8	14.0	7.3	2.7	2.4	100	(337,974)
65 to 69	8.9	71.6	10.2	5.3	2.2	1.8	100	(279,685)
70 to 74	11.1	71.4	8.5	4.9	2.2	1.7	100	(188,756)
75 plus	15.4	68.7	7.5	4.5	2.1	1.7	100	(223,281)
Total	9.7	69.7	10.6	5.7	2.3	2.0	100	(1,029,698)
White females:								
60 to 64	1.3	36.1	21.0	24.0	10.0	7.6	100	(4,173,191)
65 to 69	2.0	44.4	18.5	19.7	9.1	6.2	100	(3,497,162)
70 to 74	3.3	49.3	16.6	17.5	8.2	5.2	100	(2,875,600)
75 plus	5.0	53.4	14.6	15.7	7.2	4.3	100	(4,323,390)
Total	2.9	45.6	17.7	19.3	8.6	5.9	100	(14,869,343)
Black females:								
60 to 64	3.7	62.3	18.3	9.0	3.2	3.5	100	(404,380)
65 to 69	5.7	68.3	13.7	6.9	2.8	2.6	100	(354,097)
70 to 74	7.2	69.8	11.6	6.3	2.8	2.3	100	(233,426)
75 plus	11.4	68.2	9.7	5.9	2.6	2.2	100	(306,750)
Total	6.7	66.7	13.8	7.2	2.9	2.7	100	(1,298,653)

Source: U.S. Bureau of the Census, "1970 Census of Population, Detailed Characteristics—U.S. Summary," PC (1)-D1 table 199.

TABLE VIII.—EDUCATIONAL ATTAINMENT BY AGE, SEX, AND RACE: 1970

[In percent; base numbers in parentheses]

Race, sex, and age	Level of educational attainment: 0 to 8 years	Some high school	High school graduate	Some college	College graduate or more	Total	
White male:							
55 to 64	38.7	20.7	22.2	8.8	9.7	100	(7,987,036)
65 to 74	55.7	16.4	13.8	6.8	7.4	100	(4,909,035)
75 plus	66.0	12.1	10.8	5.5	5.7	100	(2,755,089)
Total	48.8	17.8	17.6	7.6	8.2	100	(15,651,160)
Black male:							
55-64	69.6	15.9	8.9	3.0	2.6	100	(746,414)
65 to 74	81.3	9.5	5.1	2.2	1.8	100	(468,443)
75 plus	84.1	7.5	4.5	2.1	1.7	100	(223,281)
Total	75.7	12.5	7.0	2.6	2.2	100	(1,438,138)
White female:							
55-64	33.9	21.5	27.2	9.9	7.5	100	(8,889,372)
65 to 74	49.1	17.7	18.7	8.7	5.8	100	(6,372,762)
75 plus	58.4	14.6	15.7	7.2	4.3	100	(4,323,390)
Total	44.3	18.7	21.9	8.9	6.2	100	(19,585,524)
Black female:							
55 to 64	62.1	20.3	10.7	3.3	3.6	100	(877,667)
65 to 74	75.2	12.8	6.7	2.8	2.5	100	(587,523)
75 plus	79.6	9.7	5.9	2.6	2.2	100	(306,750)
Total	69.4	16.0	8.6	3.0	3.0	100	(1,771,940)

Source: U.S. Bureau of the Census, "1970 Census of the Population, Detailed Characteristics—U.S. Summary," PC(1)-D1, table 199.

TABLE IX.—EDUCATIONAL ATTAINMENT BY AGE, SEX AND RACE: 1975

[In percent, base numbers in parentheses]

Race, sex, and age	Level of educational attainment: 0 to 8 years [1]	Some high school	High school graduate	Some college	College graduate or more		Total
White males:							
55 to 64	28.8	17.9	32.6	9.6	11.3	100	(8,324,000)
65 to 74	44.1	16.9	19.8	8.4	10.7	100	(5,264,000)
75 plus	61.7	10.4	13.3	6.0	8.7	100	(2,629,000)
Total	39.1	16.3	25.3	8.7	10.6	100	(16,217,000)
Black males:							
55 to 64	61.5	19.1	11.8	5.5	2.1	100	(766,000)
65 to 74	75.8	10.3	8.0	2.4	3.7	100	(488,000)
75 plus	86.5	1.9	6.9	3.6	1.1	100	(239,000)
Total	70.2	13.5	9.7	4.1	1.1	100	(1,493,000)
White females:							
55 to 64	25.8	18.4	38.7	9.5	7.5	100	(9,299,000)
64 to 74	39.8	17.5	25.7	9.4	7.6	100	(6,897,000)
75 plus	54.3	13.4	18.7	8.3	5.4	100	(4,416,000)
Total	36.6	17.1	30.1	9.2	7.1	100	(20,612,000)
Black females:							
55 to 64	52.3	22.7	16.5	4.2	4.3	100	(918,000)
65 to 74	72.5	13.5	9.5	2.1	2.3	100	(639,000)
75 plus	80.6	8.8	6.6	2.2	1.9	100	(356,000)
Total	64.3	17.1	12.3	3.0	3.2	100	(1,913,000)

[1] Using published data from 1975, older persons without any formal education are indistinguishable from those who completed 4 years of school or less.

Source: U.S. Bureau of the Census, current population reports, series P-20, No. 295, "Population Characteristics, Educational Attainment in the United States: March 1975," table 1.

TABLE X.—LIFE EXPECTANCY AT SELECTED AGES, BY SEX AND RACE: 1959-61, 1970, AND 1973

Year and age	Male: Black and other races	Male: White	Male: Difference in years	Female: Black and other races	Female: White	Female: Difference in years
1959:						
0	61.5	67.6	6.1	66.5	74.2	7.7
40	28.7	31.7	3.0	32.2	37.1	4.9
65	12.8	13.0	0.2	15.1	15.9	0.8
1970:						
0	61.3	68.0	6.7	69.4	75.6	6.2
40	28.6	31.9	3.3	34.2	38.3	4.1
65	13.3	13.1	0.2	16.4	17.1	0.7
1973:						
0	61.9	68.4	6.5	70.1	76.1	6.0
40	28.7	32.2	3.5	34.4	38.5	4.1
65	13.1	13.2	0.1	16.2	17.3	1.1

Note.—The data in this table charts the course of changes in life expectancy at selective ages, by sex, for whites and nonwhites. At any point in time or at any age, males, white or nonwhite, have lower life expectancies than their female counterparts. Over time, sex differences in life expectancy are diverging. Life expectancy at any age, but particularly at birth, has improved but the increment is not uniform by race. At birth, approximately a 6-year difference separates whites and nonwhites. By age 40, racial differences have converged and by age 65 differences in life expectancy between whites and nonwhites are minimal.

Source: U.S. Bureau of the Census, 1974, current population reports, series P-23, No. 54, "The Social and Economic Status of the Black Population in the United States," table 81.

TABLE XI.—PERCENT OF PERSONS 65 YEARS OF AGE AND OVER REPORTING A PROBLEM AS BEING SOMEWHAT OR VERY SERIOUS, BY RACE

[In percent]

	Race	
	Black	White
Not enough money	75	36
Fear of crime	65	46
Poor health	70	48
Not enough education	56	22
Not enough job opportunities	28	10
Loneliness	45	27
Poor housing	37	7
Not enough medical care	47	21
Not enough clothes	27	5
Not enough to do	33	15
Not feeling needed	28	18
Not enough friends	22	14
No car	30	23
Availability of buses	43	24
Cost of bus	26	15

Source: 1974 National Council on Aging—Harris survey of aging, as reported in Jackson and Wood (1976).

Senator CHURCH. Dr. Forman.

Dr. FORMAN. I am sorry to find myself on the opposite side of the fence, so to speak, but I think that is so in respect to the statements made before. The Gray Panthers are unalterably opposed to mandatory retirement in any shape or form. To me, it seems that the key word in the opening statement was that it is doubtful whether anything can be gained by "allowing." The key word is "allow," and it is a humanitarian issue rather than simply a question of economics. I would like to ask, in that connection, what retirees are supposed to do for 20 or 25 years after they have been forced to retire, twiddle their thumbs, or enter into playpens for the elderly, or engage in some other programs based on disparagement of the old?

I know these are emotionally charged issues. I understand why supporters of the rights of black people are aroused. I agree that many injustices have been done and are being done, but I can't see any reason for the tradeoff of one injustice for another. I think we are merely evading real issues.

There are other things that have to be addressed. Something has to be done. I can see why discriminatory injustices occur, but I don't see why discrimination on the basis of age is any better than discrimination on the basis of race. They both have to be attacked, but perhaps attacked in different ways. I don't think it is fair to play a game of musical chairs with older people, younger people, blacks, whites—to see who can get into that chair at the most propitious

moment. There are things that can be done, and many of our legislators have addressed that problem. I think it is important that we continue addressing them, and that we get into them deeply, to find some kind of reasonable answers, but they have to be rational answers to what seem to be extremely complex problems.

"Gradualism" Does Not Work

I would also like to say something in response to the original question regarding the probable impact the change from the former ceiling for mandatory retirement will have on most work in the private sector. I think that such recommended gradualism just does not work. It does not do a bit of good. I was forced to retire in 1976, against my will, when I was enjoying my work and wanted to continue. But I wasn't allowed to continue. Nobody asked me whether I wanted to retire. Since that time, I find that I just can't get back into the mainstream. Believe me, I have been trying for the past 3 years. I am pleased to find apparent reversal of feeling on the part of both legislators and "aging" advocates and industrial representatives with regard to any kind of retirement. I think we have finally come to the realization that early retirement in our system is something we simply cannot afford—whether it is voluntary or involuntary. That, I think, is the sense of the objections raised—in terms of the impact that it has on people who are still working, on the social security system, and on all the other token advantages that are supposed to be given to older people by the various new laws and new rules.

Mr. Ravin. I would like to emphasize Mr. Forman's point of view. I won't take too long. This, basically is the question of civil rights.

Dr. Forman. Exactly.

Mr. Ravin. I personally view discrimination based on age just as much as an incursion on civil rights as is the factor of race or sex. A man or a woman should have the right to retire or continue working, to work full time or part time, or on a voluntary basis, depending upon his abilities and his desires; to say that they have to move out because the jobs are needed by somebody else is the very argument that was rejected in the Age Discrimination and Employment Act. The arguments of all the companies at that time was that middle-aged and older people, to a large extent, had to make room for young blood. Now the argument is that we have got to make room for those people who have been discriminated against in the past. However, the argument is no better on principle than that of making room for youth. I find it very difficult to understand someone who is representative of blacks and women proposing that kind of offense to an individual's civil right.

Senator Church. I asked the original question, what impact is to be expected from the law that we passed this year which increases the permissible mandatory retirement age from 65 to 70 and which virtually eliminates mandatory retirement for all Federal employees. To consensus, as I gather it, is that this is not likely to have much perceptible effect on whether or not people elect to retire early.

Mr. Ravin. Well, the history of the law proved that. After all, it has been in effect 11 years, and it was said by the original opponents to that legislation that the people should be quitting earlier and

they would not if the law was enacted. The fact is that the age of retirement has decreased. I think there are some special situations possibly in higher education and government.

Senator CHURCH. I understand that.

Mr. DANSTEDT. We have to go through a whole series of lawsuits like we did in sex discrimination.

Senator CHURCH. The real question is: Will more people tend to work until the age of 70—quite simply because they are no longer required to retire at 65—or will they continue to retire at 62 or 65, at which time they are eligible for social security? I know we cannot get a definitive answer to this until we have sufficient experience to test the figures against the earlier experience behavior. I understand, Mr. Merin, you have different view concerning the impact for Federal workers.

Mr. MERIN. When Mr. Campbell testified before the committee, he noted that in his opinion the abolition of mandatory retirement for most Federal personnel would have little or no effect on the work force. We disagree. Mandatory retirement in and of itself, serves as a serious psychological disincentive to productivity. Brief conversations with personnel officers throughout the Government indicate changes are underway. Many employees nearing retirement age are not opting to stay on the job. They are pleased about their new freedom of choice.

WHO WILL PRODUCE NATIONAL PRODUCT?

We see the Federal Government as a leader in setting personnel policy and that is why the abolition of mandatory retirement for Federal personnel was important. The complete abolition of mandatory retirement is necessary if the age discrimination acts are to be realized or the full import of the ADEA amendments are to be realized. Can we afford mandatory retirement? Can we afford early retirement? The inactive or retired population is growing at a significantly faster rate than the active or working population, and by the year 2020, 45 percent of the population will be either under 18 or over 65. Given the present configuration of our society, it raises some very serious questions about who will produce this country's gross national product. As with so many matters, it all comes back to dollars and cents economics.

Senator CHURCH. Let me ask the panel this. It seems to me that we have at either end of the spectrum a somewhat similar problem. In one case, we are addressing that problem quite effectively and in the other much less so. When young people are attending college, a great many of them need to supplement their income and help pay their way through college by working. Just 2 days ago, I was at Boise State University in my own hometown. The president of the university told me that 70 percent of the students at that university had jobs and were helping to pay their way. They could not get their college education except by supplementing their income with jobs. He spoke very willingly about the Federal student work program that helps these universities pay students for work on campus.

So we have that and other programs to provide part-time work for students who need part-time work. Now what are we doing for older

folks who retire but would like to supplement their income with part-time work? Can we have some discussion on that issue?

Mr. Merin.

Mr. MERIN. I think that we need to change job opportunities to make them more compatible with changing mental and physical capabilities. Flextime employment is a concept which embodies this philosophy. Legislation approved by committees of the House and Senate would, if enacted, adopt flexitime work schedules for Federal personnel. Retirement need not mean diminished capability but rather enriched opportunity. Flexitime schedules represent a vehicle for achieving this goal. It must be extended to all work sectors of our society to insure maximum success.

Mr. DANSTEDT. We are having a session here in October and I am sure it is going to address itself to that subject. We have done a lot of work.

Senator CHURCH. I know they have been experimenting with this and we ought to know the results of that experiment.

Mr. Ahrens.

Mr. AHRENS. I would like to talk about the framework in which I would fit some of these mechanics that relate to how jobs might be handled, how education might be handled. I would agree that individual human rights are indivisible by age, race, sex, or any other kind of senseless discrimination. We need some view of human development as a continuing process over the lifespan. If we have that, then we are not in the position, I think, of pitting race against age or youth against age.

I would be concerned about the distribution of work, of opportunities for education, of leisure time, across a lifetime, because I think these institutions in our society are presently organized in a way that does not serve us too well. They don't really serve individual lifestyles. We spend one-third of life in school—and that is not education until you add experience—and serve another third at work, and then another third in retirement, or poverty, you name it. We ought to mix work, education, and leisure, as society has demands and as the individual has needs. There is not any reason in the world why somebody at the age of 90 should not have a part-time job or full-time job if he can function. At the age of 50, if someone wants to go back to college and get a degree, it should be possible. We could get rid of the word "dropout" if there were enough opportunities over the lifespan to plug in. Lots of youngsters need the——

Senator CHURCH. You are really talking about the need for lifelong educational opportunities in connection with job training.

Mr. AHRENS. The kinds of things you are mentioning, such as job training, need to be looked at in this larger framework. I think we have got to take a look at the three together.

Then, if I might add, I think these hearings are tremendously important.

I was happy to read through all of the July testimony over the Labor Day weekend. We made copies of it and I have made it required reading of my staff, because I think these are really fundamental issues of public policy, and I am delighted to see us addressing them.

Senator, I want to say—and I doubt if there is anybody in the room that does not share my view—that since you are going to be leaving the committee in the future——

Senator CHURCH. The chairmanship, not the committee. I will not leave this committee.

Mr. AHRENS. I am delighted to hear that. I want firsthand to express the appreciation we have for the things that you have done and for the fact that these kinds of tacky, difficult issues, are finally being faced and discussed. It is an opportunity, really, to get the big things out in front and to inquire into them.

Mr. BRICKFIELD. May I supplement?

Senator CHURCH. Yes, Mr. Brickfield.

Mr. BRICKFIELD. The American Association of Retired Persons truly believes in the concept of lifetime learning, not only for pleasure, but also to enhance one's skills and to learn new skills. We think that title IX is a great program for employment opportunities, but we think that in the CETA program much more could be done for the elderly. We don't think the elderly are getting anywhere near their fair share of the jobs available under the CETA program. We have a division within our associations, which we call the Institute of Lifetime Learning, and it has affiliations with some 400 universities and community colleges across the United States. Our institute encourages universities to emphasize older adults in their education programs. Older students should be able to take French, or typewriting, or courses to improve their present skills or to learn new skills.

EDUCATION AT SENIOR CENTERS

We hope before too long to move our institute's emphasis away from the university setting, while continuing it at the community college level, but move it into senior centers so that educational training is more readily available. This would enable us to reach more older people who could continue to learn over their lifetimes, improve their skills, and seek employment to which they can bring the new knowledge and skills acquired.

Senator CHURCH. Yes, Mr. Kaskowitz.

STATEMENT OF ED KASKOWITZ, EXECUTIVE DIRECTOR, GERONTOLOGY SOCIETY

Mr. KASKOWITZ. We are clear on this from the industrial revolution, as Bob was referring to. We are now trying to find ways where we can provide people the opportunity to take advantage of the enriched kinds of jobs and functions that there are around. I often think of social health education in grade school as gerontological education. You teach a child to brush his teeth in the second grade class—if you want your teeth in old age, you better start now.

I sometimes wonder. We really call for more of a look at the total educational function in life to provide people with the capacity to take on roles and jobs in future years for jobs don't even exist yet. I call for a closer affiliation between associations in aging and the education programs, even at the level of preschool and elementary school. I sometimes think of astronaut training as a program in accelerating age. It is an admission that we must take a person at a given age and give them a superaboundance of experiences so that they are able to make a judgment in a given situation. One of the unique functions of

aging is that over time you do gain a number of experiences and perhaps at a full capacity to make the judgments. The work of Carl Eisdorfer in the middle to late sixties has not been completely tied up. He did some startling research, where he demonstrated as a person ages they maintain their capacity to learn, but there is a change physiologically. I think we need to address more of that physiological capacity to function. Take a look at the laws we have already for pilots and their ability to stay on the job. They still don't complete address the individual's capacity. Those are the kinds of questions that affect large numbers of people as they age.

Senator CHURCH. It appears as if there may be a vote. I must vote, but I hope that the discussion could continue in my absence because a record is being made. I am not exactly in the position of the Idaho justice of the peace who in the midst of trying a case told the witnesses to go ahead with the evidence because he had to go out and irrigate the north fork. [Laughter.] I will get the information.

I will go vote on the agricultural export bill. So, please continue the discussion and I will be back just as soon as I can.

MIND-SET FOR YOUTH

I would like to throw out, though, one idea concerning the mind-set of our society. For example, I mentioned earlier that a youngster of college age whose parents may furnish him with part of the money he needs for his education—paying his tuition, his book fees, and so on—but expect him to earn his spending money and any extra money he may need. That youngster can go to an employer and ask for a part-time job and the employer is immediately responsive, understands the situation, is anxious to help, and approves of the fact that the young person involved is trying to earn his way through college to pay a part of the expense. But if an older person goes to an employer and says, "I am retired, I would like a part-time job to supplement my income," the attitude is likely to be quite different. The attitude is likely to be that you have your retirement, what do you need extra money for? It is better to give this part-time job to someone else. We have a social security system set up and you have money that you can look at and, therefore, you are less in need on the job. The attitude is quite likely to be negative, even though the circumstances are quite similar. In the student's case, he is getting help but not enough and, therefore, must help himself. In the older person's case, he is getting help but maybe not enough; he needs to supplement that help and wants to work part time to do it.

Why should the attitude be so different in the two cases? I think typically it is.

Mr. RAVIN. There is one notable exception. I represent the National Council of Senior Citizens senior aide staff. More than half of my staff are part-time older people. It was not a gesture of charity in their direction, I simply got the very best people I could get.

Senator CHURCH. I would expect it of your organization, but I think your organization is the exception that proves the general rule.

Excuse me. I will be back as soon as I vote. Bill Oriol will take over in my absence.

Mr. AHRENS. Bill, if the young people who want part-time jobs depend on the Government employment service for them, they still will be looking, too. Most of them have the help of the very effective people who work in college placement bureaus and others who are helping them to find the jobs, and yet they don't have enough. I think that I call older worker employment an agenda on which we really have a need.

Mr. ORIOL [presiding]. Your office on senior citizens has worked very closely with the manpower agency. Have you been able to do anything in making it more possible for an older person to find a part-time job?

Mr. AHRENS. Yes; we have, and yet the program always skates on a certain amount of thin ice. We were able, since I sit on the manpower council, to convince them that the manpower target for jobs and training opportunities for the older workers should be in terms of their proportion of the unemployed population; 20 percent of the unemployed are older workers and 20 percent of the jobs ought to go to them. We also set aside 3 to 5 percent for the handicapped of all ages.

So we have got thousands of jobs, but I am always getting the word, you know, that this is on thin ice because even though the Department of Labor in Washington says it supports these kinds of programs, word gets out to the field that maybe you better take a look at what city is being cost effective, and that is how you rate them.

So then they worry whether providing jobs for older and handicapped workers brings down the level of cost effectiveness, since it is still harder to place them in private employment.

Mr. ORIOL. I am not clear on who is determining this cost effectiveness.

Mr. AHRENS. I am not either. I think it is more in the nature of information that is communicated verbally rather than anything I have seen in writing. But we are continually being pressured on that issue, so I am wondering how long we will be able to continue funding at the level we are now doing in Chicago. You know, someone says, well, Cleveland is being more cost effective.

Mr. ORIOL. How is cost effectiveness determined, and why is there a penalty for serving more older workers than perhaps another city does?

Mr. AHRENS. I suppose it would depend on how many support services you need and how many people you send out of the program to and unsubsidized job. It is more difficult to do this with older and handicapped workers than other segments of the population, because of the very problems that made you start the program in the first place. They represent such a significant percentage of the unemployed that I would like to go back home feeling that the word got out to all echelons from the Federal Government that prime sponsors should be doing these things, and will be encouraged in doing these things, and that the evaluation of their effectiveness is not going to be diminished if they do.

Mr. ORIOL. I would like to ask Ms. Lacayo a question. I understand that under the senior community service program, your association has funds for a senior aid worker. I wonder if you have any special plans to deal with employment problems of older Spanish-speaking workers, and whether the part-time situation enters into these plans.

Ms. LACAYO. Before answering that question, Bill, I would like to comment on the larger implications of the issues raised in this hearing—retirement, work, and lifelong learning. What we are discussing today, is what this country urgently needs if we hope to adequately accommodate the demographic realities characterized as the "graying of America." Retirement, work, and lifelong learning are the components of a national aging policy. While the thoughts expressed by my colleagues around this table are valid, well-considered ideas about these important issues, the lack of a national aging policy framework severely undercuts the potence of these ideas by hindering our institutions from creatively participating in shaping roles and attitudes to accommodate the changes envisioned by the ideas expressed today.

Speaking as a Latina, the absence of a national aging policy further complicates and frustrates my community's ability to address the problems facing our elderly. It is difficult enough to try to plan or attract services from the Anglo bureaucracy when there is inadequate information about the Hispanic elderly community. Those tasks are further complicated by the various inconsistencies more or less resulting from the absence of a national aging policy. The Hispanic community of this country will shortly be the largest minority community in the United States. It's frustrating not to be able to project and plan for the human problems that are coming with this demographic reality.

If I may, Bill, I would like to respond to your original question about our title IX program. As you know, the vast majority of Hispanic workers in this country are unskilled. Hence, attracting and recruiting Hispanic older persons for title IX positions is difficult because of the lack of community service-type job skills. Nevertheless, the association, in conjunction with various other groups around the country, is working to develop training procedures, skills, and working environments that are sensitive to the problems of Hispanic older persons. Since the association's title IX program is barely off the ground, it will be several months, at the least, before there is adequate empirical information to share with you about our successes or failures in addressing the employment problems of Hispanic older persons.

Mr. ORIOL. May I interrupt on that point?

Ms. LACAYO. Sure.

Mr. ORIOL. So often during the 1971 White House Conference on Aging, we heard the statement, "We have no statistics," or "We don't know."

Ms. LACAYO. Right.

Mr. ORIOL. Here it is 1978, with the White House Conference probably coming up in 1981. Even on a crash basis, it is not possible to gather needed data on Hispanics through the Bureau of the Census at this late date. Is it possible to have rather informed estimates of the kind of information we are looking for? What will it take to get it in time for it to be useful at the White House Conference?

Ms. LACAYO. Bill, there are some activities going on right now that, hopefully, will more adequately prepare us for the White House Conference in 1981. As you may recall, AOA awarded the association a

2-year research grant to do a national needs assessment of the Hispanic elderly. In addition, there is a topflight Hispanic advisory committee helping the Bureau of Census prepare for the 1980 census. While I am proud and optimistic about the research being done by the association and hopeful for more reliable data from the 1980 census, only a sincere commitment from our national policymakers to understand my community can provide the awareness essential to adequately address the aging concerns of the Hispanic elderly.

Built-In Bias for Bureaucrats

I agree with Ms. Seltzer's point. For too long now, human services programs, including againg programs, have been developed with a built-in bias toward the concerns of bureaucrats; the people intended to be helped are simply required to fit into the program. This bias for administrative ease has become an end in itself and, therefore, has had the cruel effect of "deindividualizing" the problems of real people seeking help. As social services leaders, we must not only acknowledge the uniqueness of the individual, we must insure that those unique qualities of individuals are recognized by "the system," and that solutions to human problems are commensurate with the individual need.

Mr. Oriol. I would like to turn to Anne Blakeley now. The National Indian Council on Aging has submitted a statement prepared for another conference, but which happens to fit this particular hearing beautifully, about retirement and the elderly Indians. It, too, describes the elderly, today's middle-aged group, as the retirees of the future, and suggests some of the adjustments that have to be made. Specifically, I just would like to ask you if you have the same sort of difficulty in getting essential information, and certainly information that will be needed for the White House Conference.

STATEMENT OF ANNE E. BLAKELEY, LIAISON ASSISTANT, NATIONAL INDIAN COUNCIL ON AGING [1]

Ms. Blakeley. Yes, very definitely. The Indians have always been undercounted in the census, and therefore lack accurate data. There are problems on the reservations, but that data is not available, so those problems are difficult to assess. As a result, we hope to have some more data.

Mr. Oriol. I was impressed as I looked through the material of the participants in this roundtable. We have a good number of persons whose background or present role is in the educational community, and I would like to throw out a question. Now perhaps any of you might care to explain the difficulties that the bill had from university presidents who wanted an exemption and the relationships to the tenure system. Maybe you can help us understand that one better. While you are mulling that one over, there is one of the papers prepared for the lifelong learning project of the U.S. Office of Education that referred to that old proverb: "If you give a hungry man a fish, he'll eat for 1 day. If you give him a fishing rod, he'll eat for the rest of his life." It then calls upon education to help older persons faced with problems

[1] See appendix 1, item 5, page 348, and item 6, page 351 for supplemental material submitted by the National Indian Council on Aging.

in health care, income, and even crime, that they probably did not have in earlier years. It says further: "Money for direct services alone will never be sufficient to meet basic needs as long as the elderly themselves are not trained for their own needs."

Now Professor Seltzer's paper makes a very similar comment. She also agrees with the person who says: "We always talk about growing older. We put the emphasis on the 'older' and not on the 'growing.'" There is a similar comment in your statement, too.

Dr. SELTZER. I was thinking while you were talking, university presidents often don't know the difference between old and new—young—wine, and that most of them prefer the young. They go with the idea that most new ideas come from the young. I don't go along with that.

Senator CHURCH [resuming chair]. Does anyone care to speak for the young?

Dr. SELTZER. I am not saying categorically that I am opposed to the young. As I listen to all of us presenting our points of view, it seems to me we are talking about older people as though they belonged to monolithic categories. We are saying that such categories are not true. There are unique problems to the old black. There are unique ones for old retired people, and old Spanish-speaking people. Problems unique to old women. The programs we develop often speak to all old people, but don't take into consideration the needs of specific older people. Maybe what our policies ought to be emphasizing is the provision of a number of options rather than providing the single solution.

Ms. LACAYO. In line with that point, I think that for too long we have planned human service programs and expected people to fit into those programs. If we look at the Netherlands, at England, or at any other socially developed country, we see much planning behind their aging policies. Here, not only our aging programs, but all our social service programs are created in a such way that the older person has to be convinced to comply with them.

Dr. SELTZER. There is that marvelous little story about social workers spending 35 hours contacting 41 agencies in order to get help for one client.

Mr. ORIOL. Where does that appear?

Dr. SELTZER. Somewhere in an income security bulletin. I just saw it. I will send it to you.

Mr. ORIOL. Concerning what you just said, Carmela, who used the term "paternalism" in reference to older people. It seems like a contradiction of terms.

Dr. FORMAN. That is what it adds up to, the assumption that somebody has to be taken care of. The popular assumption seems to be that people have to be taken care of, are dependent, and especially the assumptions that all older people grow more dependent as they grow older and, therefore, someone has to take care of them. Now, why that process has to be taken for granted I don't know, but there seems to be a built-in bias in our society which does not always work to the advantage of the older person. It is my personal objection and the objection of the Gray Panthers. The Older Americans Act does just that, too.

Mr. ORIOL. Does what?

Dr. FORMAN. It segregates all the older people into one category, assuming they cannot help themselves. If they eliminated mandatory retirement and gave us options to continue working, why not? You would relieve the burden on the rest of society that way.

Mr. ORIOL. Mr. Hacking has been waiting. Jim.

Mr. HACKING. There is an insensitivity to, if not an actual bias against, older workers on the part of Government. The combination of bias and insensitivity in Government probably explains why the CETA program has not helped the older worker that much. In fact, only 1 percent of the CETA participants are 65 or older. The elderly are getting far less than their fair share of CETA jobs. We think we know why. CETA project directors performances are evaluated on the basis of the number of people he places in unsubsidized employment. Since the probabilities for unsubsidized placement are viewed as greater in the case of younger workers, given the antiolder worker bias of employers, older workers are screened out of the CETA program at the outset.

EDUCATING THE EMPLOYER

We think that there is a tremendous need to educate both the Government and private employers as to the value of the older worker. In an attempt to move in this direction, we have done an evaluation of the title IX senior community services employment program by surveying a group of 400 older workers newly enrolled in the program and their employers. We found that these enrollees were in subsidized employment for an average of about 47 weeks before permanent, unsubsidized employment was offered. However, once in they held these jobs for an average of 47 months. In the process, these workers returned to the Government more in tax revenue than it cost the Government to subsidize their initial employment in the first place.

Our study clearly demonstrates the value of older workers, as far as we see it, but that has to be made public knowledge.

Mr. ORIOL. Dave Affeldt, our chief counsel, has a question which I think is related to that.

Mr. AFFELDT. Senator Church is very much interested in this because he is, as you know, a very strong supporter of the senior community service employment program and worked with Senator Kennedy for its enactment in 1973. We were very much impressed by one statement that was included within his written testimony and, if I may, I would just like to quote from it for the hearing record:

> If the 1,700 ex-enrollees placed in permanent jobs by our NRTA or AARP senior community service employment program during the June 1974–June 1976 contract had only earned the average minimum wage prevailing over that period—and we know they earned more—the net gain in economic output would have totaled approximately $18.5 million dollars.

I think the question Senator Church would like to raise at this point is: How do you account for the striking success of the senior community services employment program in terms of the impact upon enrollees as well as the communities being served?

Mr. HACKING. Well, at least as far as we are concerned, we have centralized direction of our own project. We don't use subcontractors and we do make a very concerted effort to get permanent placement for our enrollees. When the community services employment program began, there was a tendency to view it as a supplemental income program, but now it has come to be viewed, at least by us, as a manpower program that really helps the people it was intended to help and generates more in terms of tax revenues and economic output than it costs. What more can you ask? We believe it ought to be expanded vastly, but we don't

see the administration recommending sufficient resources to allow the kind of expansion we have in mind. The administration wants to keep it as a very small categorical program. We are only reaching 50,000 people with that program, and that is very small number compared to the estimated 5 million unemployed who could qualify under the age and income guidelines.

Just to add another point to this, it is very interesting that in developing a major overhaul of our welfare structure in this country, the administration designed a program that placed all older persons automatically into the category of "those not expected to work." Therefore, none of the public service jobs that were to be available under the program were allocated to them. That should point up once again the antiolder worker bias we see.

Mr. DANSTEDT. May I just add something?

Senator CHURCH. Yes.

Mr. DANSTEDT. As I am sitting here thinking about the process we had to go through with the handicapped, we went through the whole business of rehabilitation of the handicapped person. Instead of being a money consumer he is now a money contributor. I think something happened in that area with the handicapped, not only with the way they organized, and they are really well organized, but also in the fact that the industry in particular, if they had contracts with the Government, they had to make sure they employed a certain number of handicapped people. Until we can move in that kind of direction, anything else we do is demonstration. I think we are up against a difficult public attitude toward the elderly. Old Joe, he does not need a job at this time and Mary does not need a job—they have a pension.

This is a personal reflection. Periodically, as I drive, with some care, I might add, some car with a young driver starts around me and looks over my way. I know what he is saying. "What the hell is that old gray-haired guy sitting in the traffic for?" I don't know if anybody has any clear answer to the attitude of the youth toward the elderly.

It still comes out in the media. Last night I looked at this program where the professor goes to Washington—it is not that much of a show—on channel 4. While he is depicted as an active, energetic, intelligent elderly person, he goes to a nursing home and the residents there were made to look silly in terms of their comments and observations. So still there is a powerful attitude. The elderly are different and why should we have to fuss around with them so much.

Senator CHURCH. Mr. Merin.

OLDER WORKERS MORE PRODUCTIVE

Mr. MERIN. There is great irony to this discussion. A recent university study established that older workers were qualitatively and quantitatively more productive than their younger counterparts. We talk about gross national product and we talk about a diminishing work force, and here you have an enormous natural resource whose varied abilities go ignored. Here are people who can work, who can produce. I agree with you, Rudy, it is a sad, and tragic thing.

Mr. DANSTEDT. Unless the Government decides that a certain amount of elderly persons have to be hired, nothing is going to happen.

Mr. KASKOWITZ. This country is wonderful. We can package and sell you things you never thought of. We can sell you things you don't even need. We can create things that you don't need and sell it to you and make you want more. We can sell the older worker very easily. All we have to do is do it. It is no secret that the Chinese didn't have any brainwashing secrets. Madison Avenue knows how to package and sell things.

Senator CHURCH. They are selling the wrong things.

Mr. KASKOWITZ. Often they do, but in terms of our being a capitalistic society, if we recognize that there is a market out there and that there are older people who have the capacity to both work and consume, we have to address ourselves to the existing systems there and call that to their attention and see if we cannot get them involved. Our office is getting something from marketing and advertising companies in New York, and we are just starting to hear there is a significant population out there and they have money to spend, and they are beginning to look at that market. But similarly, we could take a look at that population as a work population, and we could sell it.

Ms. DAVIS. You asked the question, why is the title IX program so successful? As you know, the national center has been more successful in securing a title IX grant in Southern States and we have been examining some of the other national aging organizations. This is an important program because it is people to people, but there are other underlying psychological reasons that people get great rewards from working. The reward, I think, particularly for low-income people, is to feel that they can give service, they go home and they feel good because they have helped someone, and I think this is a particularly beneficial program for the elderly to help other elderly because of the health-related programs that we have in our country where elderly people just need a kind word and where elderly people need and want to work in public schools, where they want to work in churches. I think we have to recycle in creating new innovative jobs, so there could be a generalization support built into that. When they think of young people using the energy of young people and help middle-aged people and young people and young, young people and middle age helping old, old people in community service—you would not in human services, because we are not going to have enough social workers, enough professionals, to take care of all the human needs of the aging population. We just are not going to have it, and that is why that program is successful. It needs to be expanded so we can have it operational.

Senator CHURCH. Have you ever considered that some professions—perhaps because of the nature of the profession—naturally turned to the older members and kept them engaged? For example, I think of Federal judges. A judge may became a senior judge, and many do because the workload becomes too great in terms of their physical ability. But they are then available as senior judges and are called upon to preside in given cases, or to help out when a particular court has an overload. They will travel for this purpose and work on a part-time basis. This is highly desirable and they are very much in demand. Nearly every senior judge I know does it.

For what reason? You know the judge gets his his salary anyway in retirement. He does not get an extra cent for going out and working, but he wants, or she wants, as the case may be, to continue to practice. I think this is a case in point where the attitude just naturally keeps the older people engaged at least in part-time work.

Ms. DAVIS. Senator, not only the professions but also for sex. Take elderly females and middle-aged females. They have resources, and for the resources they have energy that has not been utilized appropriately. With the increasing numbers of women in the population, I think this committee should look at it and should encourage HEW, the Office of Education, and the Department of Labor to utilize the skills of these women, and not only that, but in designing educational programs that will help people to be better consumers.

I don't know if you saw an article recently in the Washington Post that told of an older woman trying to make her way through the bureaucratic maze, of trying to just collect what was her due. People are not able—older people and particularly those of lower educational levels—are not able to fill out forms. This is an area where older people could be trained to assist those older people who are not able, and to help them get through the bureaucratic system again that we have created. It is a monster that we have created.

Mr. AHRENS. It goes deeper than that, Dolores. I would quarrel with Ed, too, that what we need is one more advertising campaign to sell the older worker or to sell anything else. We need some really fundamental systems change. I think it goes back to our educational system, about which I would be critical, and I think I am entitled. I spent 18 years in the field of higher education before the last 11 in government, and I will tell you this: You can set up Federal, State, or local government moneys in services for individuals and services for groups. The most difficult job is still that of systems change. You must deal with the people in transportation, deal with the people in housing, deal with the people in health. It is not only that the universities have not trained our doctors to know that there are older people; they have not trained anybody. They have just not done a good job with these courses. Half of the courses in human development end with the psychology of adolescence. Only if someone comes along and gives them a special grant do more and more of them get into the field of gerontology. I know full well that for many years the adult programs were exploited for reasons that would help subsidize many of the day school programs.

HIGHER EDUCATION FOR ELDERLY

I see now a turn of higher education to the elderly and I have hope that it is not going to exploit them in any way by looking for dollars, but is going to serve them, and that it also deals across the board with the people who are training to go into every field and profession.

Dr. SELTZER. Let me respond. I think to some extent, you are right. Normally, our courses about child development end when they graduate from college, get married, and live happily ever after. I would agree with you that there are schools developing gerontology programs in response to available money. Many of the programs will die when the funding stops, and in many instances those programs are merely perpetuating the myths and stereotypes that already exist.

I would also point out to you that there have been other organizations and schools which are doing a superb job, which are doing research that is not externally funded, that are giving programs which are not funded. These are "turning out" people who are working with older people, frequently in the human services area for far less income than they would get if they had other jobs.

I think there are some questions about whether formal education in an educational institution is the best place for providing lifetime learning. Perhaps we ought to be looking at other ways of teaching older people, drawing on some of the research data that Ed was talking about, psychological data. Maybe what we ought to be doing is what I referred before, design programs that provide options for people rather than assuming that we must do more for all older people in a paternalistic and maternalistic fashion.

We come back to the fact that old people are not all the same. Every year, the committee's annual report, "Developments in Aging," notes that 5,000 people become 65 daily, 3,600 die, and that there is a net increase of 1,400 daily. It is a hetergeneous population but we act as though we don't believe it.

Senator CHURCH. I would like to pop in here for a moment and concur with your observation that we cannot think too much about what we should do for older people in the way of new programs, new projects, new Government direction, education assistance, and so forth.

I am not suggesting that in legitimate cases this is necessary. Of course, in many cases it is. We tend to overlook the much greater opportunity, and that is to remove the barriers that would enable older people to do their own thing.

I don't want to keep interjecting personal cases, but I remember when I was a young man in college, I was afflicted with cancer and was very sick. I was fortunate to have some very fine specialists. But when they reached a point where they were unable to diagnose the tumor or to agree upon the method of treatment, or even to agree whether or not the tumor had returned, they called in a very old man who was a professor emeritus, and they asked him for his judgment. They followed his advice and I am still alive.

Now you know that old professor didn't need a retraining program or a recycling program. It was not anything that those younger men could teach him. I think we ought to consider how we keep people with all this ability and seasonal experience productively engaged.

That really brings us around to the private sector. Before I get to that, I would like to say that we have two members of the minority staff here, Dave Rust and Jeff Lewis, who are most welcome to come up to the table and participate with the questions, if you care to do so, along with the majority staff.

Then I am told before we go back to suggestions, one of our consultants would like to make a comment.

STATEMENT OF HERMAN BROTMAN, CONSULTANT, SENATE SPECIAL COMMITTEE ON AGING

Mr. BROTMAN. I am in agreement with a lot of the things that have been said here. I would like to add something, and it has been touched on by the Senator, and that is the basic economy that underlies everything we are doing. If you look back at our history during the First

World War and Second World War, you find the economy was expanding at a tremendous rate. We had a labor shortage and all of a sudden minority and older workers were very popular, sought after, found employment and their production and their activity was recognized and was very welcome, but it was an artificial period of increased production and expansion. Then right after those periods were over and the economy contracted, part of the program disappeared and we went back to the "normal" situation.

Now, without being too much of an economic determinist, I think we have to look at the situation of our economy, the situation of our industrial revolution. I see it moving in the direction of maximizing profits by automation, rationalization of production, and so on, and cutting back on human employment. The natural result is what the Senator just said, that when you have to make choices in filling a limited number of jobs, you are creating competition, and the competition is between the minority groups, women, and older people and the teenagers. The same economy which is interested in mass production and mass sales says that the young people are the ones who are building families and buying houses and they are the future market, so they should get the priority on what jobs do exist.

Now all the supplemental public programs that we have are supplemental, they are not in the mainstream of economic activity. So I would suggest that in addition to all the things that have been said here to take care of special needs and to determine services on the basis of the needs of the individual we also have to think about how we are going to turn around the economy and how we are going to build incentives into increased production and increased creation of job opportunities in all sectors. I think that when we get into something approaching a labor shortage, the discrimination based on competition will begin to disappear and then we can talk about real options for people and the burden of heavy inflation. Our present talking about options is not very realistic because all we are doing is saying we have a tiny little pie and how do we divide it up, perhaps, a little more equitably? How do we all get together, within the special needs that we are attacking, and see how we can manufacture a much larger pie, which is of benefit to the whole country, as well as every part of the country separately?

I think that might be a major contribution. That is why, in planning these conferences, we wanted at these hearings to get all of these special interest people together, because to the extent that they can agree on some common goals, in addition to their special programs, I think we will make progress for everybody.

Senator CHURCH. Thank you.

Dr. Forman.

Dr. FORMAN. I have no intention of contradicting Mr. Brotman. I agree wholeheartedly. We have to face the overall problem. Everything else fits into that same context. We have to think of things in a much broader sense than we usually do. I want to bring in here what seems to me to be an inextricable contradiction that exists at the present time between our capitalistic concept of an ever-expanding economy and our apparent inability to provide enough jobs for everybody—in which event, presumably, production would take care of everybody.

I don't know the answer. I don't pretend to be a demographer, or an economist, or a gerontologist. I am only a retired art professor. To me, it appears that we are underutilizing some of the expertise we have in the association of psychologists and others who have some of the answers, but not all of them. I wonder why we have not been using this expertise—in addition to all this—perhaps coordination of some of the many think tanks that exist in the Washington area might be helpful.

I know my wife just finished typing up a report that is a proposal being sent to the Department of Energy. The experts seem to be able to attack all aspects of the different problems. Now why can't we do the same thing to make use of our supposed knowledge and expertise in the area of motivational research, as they call it, or behavioral modification, to get the American public to recognize the value of older people and all of their expertise that is presently being wasted? One of the most necessary and invaluable human resources just goes down the drain.

Now I recognize that we are confronted by a deep-seated mythology that pervades the entire American way of life—and the thinking—not just of Americans, but also around the world—the prejudice against the old, the stereotypes and all that. If we have ways of building up stereotypes, we also have ways of breaking down those stereotypes. Perhaps some kind of combination of those things to provide that kind of professional expertise from people who know how to go about it would be in order—to use that kind of thing effectively. I know that such contracting is going on all the time.

There are problems. Why not do the same thing with the Department of Aging and let some of these experts utilize the vast information that we already have. I gather from what has been said here that most people have problems getting the information needed to support decisions as to whether those programs are adequate or not. I know that this particular organization I have referred to has access to all the information needed in its own field.

Senator CHURCH. There are certainly a lot of think tanks around. I know that a great many are engaged, and have been for 20 years, on the subject of how to blow up the Soviet Union without blowing up ourselves at the same time, and thus far have not succeeded in finding an answer to that question.

Mr. BRICKFIELD. I hope it does not become a demonstration project.

PRODUCTIVITY'S CATCH 22

Mr. AHRENS. We have got a kind of catch 22 here I think, Herman. You are saying that until we have all this productivity and a larger pie we cannot do all these things for older people. But then we don't have this productivity if we keep making people like Dr. Forman unproductive.

Mr. HACKING. The economic pie is not going to increase at the rate we need with the inflation spiral the way it is. As long as inflation spins along at 5 to 10 percent a year, we are not going to get the "real" expansion in the economy that we want, that we would like to have. Therefore, we are not going to have the resources that we need to accommodate the future elderly's income needs if we continue to push them out of the work force.

Mr. RAVIN. I know it is easier to share a large pie than a small pie; I think we all agree on that. We are not solving the problem of inflation here, so I am going to address myself to a "fair shake" for older workers in employment. This pie in the next couple years is not going to be much larger. What I am concerned about is the fact—and Herman Brotman and I have worked together side by side for years—so we know how pervasiveness of stereotypes about the aged or even middle aged—the consequence of which is we are not getting a fair shake. I am talking about we. When Herman and I first started working, we talked about "they."

Let me give you an example. A great step forward is lifting the ADEA age to 70. When the original bill was proposed—and I worked on it, I drafted it—the chief sponsor at that time was Senator Javits. There was no age limit at all in that bill. We got opposition from large firms, Bell Telephone, and so on. They got us to compromise on it so that the Department of Commerce and the Bureau of Budget would go along. We accepted it. Eleven years later, we have gotten part way back to where we started. I think this is a demonstration of not only how strong the stereotype is, and this despite the tremendous vote not only in Congress, but of people outside, close to 75 percent who approved the lifting of the maximum age. So we still have a stereotype effect.

Now we have built a mechanism into Government operations—we have the Commissioner of the Administration on Aging, whose chief function is supposed to be fighting for the older person's privilege or right, et cetera. What is the position not only of the Administration on Aging, but in all the States there are State commissions on aging, and area agencies, of which there are 600. What are they fighting for in terms of employment? Not in terms of the share of the billions of dollars that have gone to CETA, much of which has been misspent. If we had given to older persons only the money that has been misused in CETA—I know that is from way back—we would have much more money for title I and other older worker programs than they have. What is the program, however, of the people who are supposed to be advocates—the State and local area agencies on aging—not to get a greater share of CETA funds? That would be a minimum of 15 percent rather than 6 percent of billions of dollars compared to that small portion that we do have, which is less than 47,000 jobs, it is not even yet half of the billion dollars that we are talking about for future years, and we are talking about the billions now in CETA.

What I am saying is we have certain machinery now in the Government, but we are not going to have a great deal more money to spend, and we have to see to it through that machinery, that that money is spent effectively.

Senator CHURCH. Yes, Ms. Lacayo.

Ms. LACAYO. At the risk of sounding revolutionary, I think there is a serious national question that deserve wide ranging, reasoned debate. It is seldom raised by our national politicians, perhaps because there is little discussion of it by the population in general. Nevertheless, the issue profoundly affects the very scope of the resources and solutions available to our people to adequately address the problems discussed today and the problems of tomorrow.

I believe that this country has got to address and adjust a mentality that continually emphasizes maximum profits over the legitimate claims of people in pain. No one denies that we are the richest nation in the history of the world. Yet, the resources aren't available to provide more than 47,500 jobs for the millions of elderly men and women who desperately need work. Why? Why is it that only the Government has responsibility for helping people make their own way? Why is it that only a fraction of this Nation's vast resources are available to addressing human problems that affect all of us one way or the other? Why is it that although we share the same life process, the quest for maximum profits is allowed to pit young against old, men against women, black against white and black against brown. I, for one, look forward to the day when we, at the least, recognize that what we share as humans, is as important as the superficialities that we allow to divide us in the name of maximum profits.

Experiments in Private Sector?

Senator Church. That might bridge us into the last question that I wanted to raise with the panel—and that is some discussion of what the private sector is doing in changing its own work patterns in order to better accommodate the needs of the aged. To what extent, for example, are any of you aware of any private companies introducing part-time work, the so-called flexitime concept, and so on, in order that older employees might have the advantage of continued employment on a basis that they could accommodate in their own lives? We have talked mainly about government. Yet, by far the larger part of our economy is still to be found in the private sector, and by far the larger number of jobs are still to be found in the private sector.

So I was just wondering if anybody is aware of what experiments are occurring in the private sector.

Ms. Lacayo. I think one of the questions—it is like answering a question with a question—would be what is the perspective of the labor movement, especially as it relates to the older national corporations which are obviously—let's take the auto industry which is obviously focusing on some of the biggest corporations of this country and the values towards older persons, towards retirement in terms of the younger person coming in.

I would raise that as a point of reference because I think private industry—and I am just focusing on the auto industry—the problems the United Auto Workers, for example, were facing recently regarding mandatory retirement, and so on; it is a serious labor problem that we have to look at.

Mr. Ahrens. Senator, the National Council on the Aging has had a significant program that for years has been labeled industrial gerontology, which I guess no one has ever understood, so I think it is now called age, work, and retirement, something similar to the title of these hearings. Some of the new board members who have joined the national council, such as Gerald McGuire of Bankers Life & Casualty, represent firms which do not have a mandatory retirement policy. Then there is the Xerox Corp., which has had a policy of year-long sabbaticals for certain selected employees to be paid full salary

and go out and try their wings at something they might want to do, perhaps become a social worker for a year.

I know that the Continental Bank in Chicago has developed a big program of part-time jobs for older people. They may be following the example of the United Bank of Illinois. I am not even sure where that one is located, but they are mentioned in the report I have filed for the national council. They have been using older people part time. They have to get out the accounts statements and they fall on different days of the month for different letters of the alphabet so it has been able to work out. In the written report that we filed for NCOA, there are a number of examples. Minnesota Abstract and Title Co. is one of them.

We ought to note that there are significant changes in education also. The old residency rules are changing. An Army man or a pilot would get no degree with 300 hours of credit for courses. He took courses in Los Angeles and Chicago and nowhere did they give him a degree because he didn't do the magic figure of 20 or 30 hours at one place, as required for residency.

Now you can get credit for life experience. So you are beginning to see what I think is some significant change both in the world of education and in that of private industry. We can only hope that somehow we can work together to make the examples better known and to get more to follow them.

Mr. BRICKFIELD. Following up on what Bob said, Senator, I happen to know that Continental Bank has 8,000 job slots and they allocate about 10 percent to former employees who are retired but who want to come back and work part-time. There is another organization out on the west coast that guarantees their retired employees up to 60 hours every quarter of part-time work. This is some evidence that progress is being made.

I think, too, that there should be some tax incentives given to employers to foster the creation of part-time employment opportunities for older persons who want to acquire new job skills and work.

Senator CHURCH. Well, I think we have reached the hour of 12 o'clock.

Mr. DANSTEDT. Could I just pose one question?

Senator CHURCH. Yes.

Mr. DANSTEDT. Just to put it on the record. It is kind of slicing the pie somewhat differently.

THE "OLD" ELDERLY

One of our serious concerns now is the question of the elderly-elderly who are a growing proportion of the elderly people. Against a limited set of resources, and this is suggested in part by the testimony of Secretary Califano and Hal Sheppard, we have to weigh our priorities and ask whether we want to use our resources to help the elderly-elderly or whether we want to use them as now for early retirement at age 50 and even below that age. I know it is a ticklish subject but nevertheless it is a fair question to ask.

Senator CHURCH. Yes, it is a fair question to raise, and moreover it is a question to which we must find an answer. I know that right now in the Federal pension system that every projection I have seen shows that it is greatly underfunded. And then, of course, we have the ques-

tion of those who have served with the military, for example, and have full pensions after 20 years, who then come on the Federal payroll again, the so-called double-dipper problem. Our pension system has been put together in a helter-skelter way and all of it has to be carefully reviewed or we will be in very serious trouble in the years ahead.

I want to thank you all.

Mr. DANSTEDT. Thank you, Senator.

Senator CHURCH. Thank you for your very fine contribution this morning.

I don't know whether this is the last meeting over which I will preside for this committee as the chairman, but I do want you to know that I appreciate immensely the many contributions you have made to the work of the committee, all of you, and many, many others who are not present here today. I don't know of any work that I have done in the Senate that has been more satisfying to me than work that I have done in this capacity. I think that the committee, through the years, has not only tried to understand what the problems are that face older America but has tried to do something about it. On the whole, I am very proud of the committee's record, and that would not have been possible but for the kind of help that you have all given us. So I want to thank you. [Applause.]

[Whereupon, at 12:05 p.m. the hearing adjourned.]

APPENDIXES

Appendix 1

MATERIAL RELATED TO HEARING

ITEM 1. HISTORY OF GENERAL REVENUE FINANCING FOR A PORTION OF THE COST OF THE SOCIAL SECURITY SYSTEM; SUBMITTED BY NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS [1]

Efforts to finance some of social security out of general revenues have been made from the program's inception. In fact, the Committee on Economic Security whose recommendations formed the basis of the original Social Security Act, called for a contribution from general revenues that would begin around 1965. However, President Roosevelt, who believed the program should be self-supporting, rejected this committee proposal.

The rationale leading to the committee's belief in general revenue financing was outlined by J. Douglas Brown, a member of the Committee on Economic Security and a member of four succeeding advisory councils. In his book (J. Douglas Brown, "An American Philosophy of Social Security," Princeton University Press, 1972.), Brown states:

"In social insurance, we were convinced that a full reserve was not only unnecessary but an impossible incubus on the national economy. Not only would the accumulation of the reserve be deflationary and a temptation to unwise use, but, in 1934, there was no prospect that there would be enough Federal securities in which to invest it. In place of a large reserve, we were convinced, an eventual government contribution to the system would be necessary. . . . The provision for an eventual government subsidy to the system seemed to us to be the only possible way of paying reasonable benefits in the early years, and at the same time, of avoiding a huge invested reserve." *Id* at pp. 17–18.

The other side of this argument was taken by Secretary of the Treasury Morgenthau, who wanted to build a reserve in order to avoid any future government involvement in financing the social security system. However, proponents of general revenue financing added to their economic reasoning, which opposed a large reserve, by looking at the beneficiaries of the social security system. This argument was stated as follows:

"Millions of aged workers who would otherwise require needs-tested old age pensions entirely financed by the State and Federal governments, would be receiving benefits, instead from a contributory social insurance system. It seemed entirely reasonable to ask the government to reimburse the system the amount it would save through reduced old age assistance payments." Brown at pp. 98–99.

As stated earlier, these arguments in favor of general revenue financing were rejected by President Roosevelt. However, they reappeared soon afterward in the report of the Advisory Council on Social Security in 1938. The council first stated:

"Governmental participation in financing of a social insurance program has long been accepted as sound public policy in other countries. Definite limits exist in the proper use of payroll taxes. An analysis of the incidence of such taxes leads to the conviction that they should be supplemented by the general tax program."

The advisory council listed the following four arguments in favor of amending the social security legislation to include provisions for some financing through general revenues:

[1] See statement, page 236.

36-780—79——9

1. Since the Nation as a whole, independent of the beneficiaries of the system, will derive a benefit from the old-age security program, it is appropriate that there be Federal financial participation in the old-age insurance system by means of revenue derived from sources other than payroll taxes.

II. The principle of distributing the eventual cost of the old-age insurance system by means of approximately equal contributions by employers, employees and the government is sound and should be definitely set forth in the law when tax provisions are amended.

III. The introduction of a definite program of Federal financial participation in the system will affect the consideration of the future rates of taxes on employers and employees and their relation to future benefit payments.

IV. The financial program of the system should embody provision for a reasonable contingency fund to insure the ready payment of benefits at all times and to avoid abrupt changes in tax and contribution rates.

Even Roosevelt administration officials showed some movement toward support of an introduction of general revenues into the social security system. Testifying before the House Ways and Means Committee in 1939, Treasury Secretary Morgenthau noted that 80 percent of the United States' population would eventually qualify for social security benefits. Given this knowledge, Morgenthau said:

"This experience throws new light on our original belief that the act ought to be self-supporting. Four years of experience have shown that the benefits of the act will be so widely diffused that supplemental funds from general tax revenues may be substituted—without substantial inequity—for a considerable proportion of the expected interest earnings from the large reserve contemplated by present law. Therefore, it becomes apparent that the argument for a large reserve does not have the validity which 4 years ago it seemed to possess."

During the 1940's, general revenues were authorized for use by the social security system under certain circumstances. The circumstances that would trigger the use of general revenues never arose. The authorization was a result of Congress' postponement of scheduled increases in social security taxes in the years between 1942 and 1950. The main proponent of the freeze was Senator Vandenberg, who believed that sufficient funds were entering the system under existing tax rates. Opponents of the Vandenberg amendment were concerned with the long-term actuarial stability of the social security system. One such opponent was Senator Murray, who in 1944, introduced an amendment authorizing an appropriation from general revenue of "such additional sums as may be required to finance the benefits and payments under this title."

The Murray provision was enacted, but the condition of the social security trust funds never required the use of general revenues. Throughout the life of the provision, supporters spoke of the government's interest in the social security system. In 1946, the House repealed the general revenue authorization. However, the Senate reinserted it, with the Finance Committee saying, "To repeal this provision, as proposed by the House of Representatives, while continuing to freeze the tax, might be taken to imply an unwillingness of Congress to underwrite the solvency of the system."

The Advisory Council on Social Security of 1948 was the last in which the use of general revenues was strongly advocated. The council stated:

"The Federal Government should participate in financing the old-age and survivors insurance system. A government contribution would be a recognition of the interest of the Nation as a whole in the welfare of the aged and of widows and children. Such a contribution is particularly appropriate in view of the relief to the general taxpayer which results from the substitution of social insurance for part of public assistance."

The appropriation from general revenue provision was repealed by Public Law 81–734 in 1950. After this action, congressional committees made many references to the social security system's self-supporting structure. Some limited use of general revenues was authorized by the 1965 Social Security Amendments, which "extended hospital insurance (medicare, part A) to everyone who attained age 65 before 1968, without regard to whether they could qualify for monthly social security benefits." Also general revenue funded the Prouty amendment to the Tax Adjustment Act of 1966, providing benefits "to people who were 72 before 1968 and who would not otherwise be eligible for monthly social security benefits."

ITEM 2. MANDATING COVERAGE UNDER SOCIAL SECURITY FOR EMPLOYEE GROUPS NOT PRESENTLY COVERED; SUBMITTED BY NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS [1]

THE CONSTITUTIONAL ISSUES

There has always been some question as to the constitutionality of possible congressional action which would extend compulsory social security coverage to State and local government employees. The question of constitutionality in this instance divides into two separate but related issues: (1) Is there an intergovernmental immunity which would prevent Congress from interfering with affairs of State and local governments in this manner? and (2) Does Congress have express or implied power to enact legislation which provides retirement assistance and relief for State and local government employees.

The law concerning the first issue is well settled. In an early leading case, the Supreme Court painted a picture of intergovernmental immunity with broad strokes in its decision that the salaries of State officials were immune from Federal taxation. *Collector* v. *Day*, 11 Wall. (78 U.S.) 113 (1871). The court's rationale did not rest upon specific provisions of the Constitution, but was based on the principle of federalism thought to be implicit in the Constitution. The principle of intergovernmental immunity from taxation reached its zenith in 1937. In *New York ex rel. Rogers* v. *Graves*, 299 U.S. 401 (1937) (salary of general counsel of Panama Railroad Co. immune from New York income tax) and *Brush* v. *Commissioner*, 300 U.S. 52 (1937) (salary of chief engineer of municipal water system immune from Federal income tax) the court recognized the existence of intergovernmental tax immunity but intimated that a reevaluation was forthcoming. See Powell, "The Waning of Intergovernmental Tax Immunities," 48 Harv. L. Rev. 633 (1945).

In 1938, the Court decided several cases which severely limited the scope of intergovernmental tax immunity. In *Helvering* v. *Gerhart*, 304 U.S. 405 (1938), the court held that the salaries of New York Port Authority employees were not immune to Federal income taxation. This decision was based on findings that the Port Authority was not engaged in an essential government function and that the burden imposed by the tax on the State was conjectural. Immunity would follow only where the burden imposed was "actual and substantial, not conjectural. . . ." *Helvering* v. *Gerhart*, supra at 421. Since the purpose of tax immunity is to protect the continued existence of the State, it was thought unnecessary to afford the State a competiive advantage over private persons to achieve this end. Finally, in *Graves* v. *New York ex rel. O'Keefe*, 302 U.S. 466 (1939), the court held that the salaries of employees of the Federal Home Owners' Loan Corporation were not immune from New York State income taxation. In so deciding, the court declined to follow previous cases which had found immunity where the employer was engaged in a governmental function. Hence, the burden which the tax placed on the government as an employer became the principal determinant of immunity and this burden was thought to be too speculative in all cases where the tax actually rested on the employee. Since *Graves* is still good law today, it is clear that the burden imposed by social security taxes on the employee would be the employer's tax which would rest squarely on the shoulders of State and local governments. However, in light of other decisions of the court, e.g., *New York* v. *United States*, 326 U.S. 572 (1946) (no State immunity from taxes on the sale of mineral waters) which have not found State immunity from Federal taxation where the tax is imposed on a State activity which is not uniquely governmental in character, it is unlikely that the court would find employment to be an activity which confers immunity from taxes such as the social security employer tax.

Having found that the doctrine of intergovernmental tax immunity does not preclude the extension of mandatory social security coverage to State and local government employees, one must turn to the related question of whether Congress has the affirmative power to pass such legislation. As a starting point for this analysis, it will be helpful to examine the cases which sustained the constitutionality of the original Social Security Act.

[1] See statement, page 236.

In 1937, three cases were decided by the Supreme Court which upheld the constitutionality of the Social Security Act. These cases were *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495 (1937), *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937) and *Helvering* v. *Davis*, 301 U.S. 619 (1937). Of these cases, *Helvering* v. *Davis* is most closely on point since it dealt with the old age or retirement benefit provisions of the Social Security Act. However, broadly speaking, the court held in each case that Congress' power to enact legislation protecting workers in the private sector of the economy derived from the same source: the power to provide for the general welfare (article I., section 8). Implicit in each opinion was the recognition of a problem national in scope whose solution was thought to be beyond the resources of the States. Either the States were without adequate resources to deal effectively with the problem or they were reluctant to impose heavy tax burdens on intrastate employers for fear of creating an economic disadvantage. *Helvering* v. *Davis*, supra at 644. The court asserted that the considerations of federalism implicit in the 10th amendment must yield to Federal action, at least where a national problem of such urgency weighs in the balance. Unfortunately, the court did not clearly indicate what factors should be considered in weighing interests expressed in Federal legislation against asserted interferences with a State's rights and autonomy. However, this matter has received fuller exposition where the Federal legislation was based upon the commerce power (article I, section 8).

The leading case in this area is *Maryland* v. *Wirtz*, 392 U.S. 183 (1968). In *Wirtz*, the court had the opportunity to examine the 1961 and the 1966 amendments to the Fair Labor Standards Act. These amendments extended the act's regulation of wages and working hours to schools and hospitals operated by States and their political subdivisions. The court held that the extension of the act to apply to State and local governments, insofar as they are operators of schools and hospitals, was justified either under the "unfair competition" theory of *United States* v. *Darby*, 312 U.S. 100 (1941) or the "labor dispute" theory of *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). The court stated: "(T)here is no general doctrine implied in the Federal Constitution that two governments, national and State, are each to exercise its powers so as not to interfere with the full and free exercise of the power of the other.'" *Case* v. *Bowles*, 327 U.S. 92, 101. The Federal Government may, when acting within a delegated power, override countervailing State interests whether described as "governmental" or "proprietary." *Wirtz*, supra at 195.

Hence, *if* the power of Congress to extend mandatory social security coverage to State and local government employees rested on the commerce power, *Wirtz* would seem to control and hold that it would be constitutional. However, recent developments, at the very least, call into question the continuing validity of the court's decision in *Wirtz*. In 1975, the court decided *Fry* v. *United States*, 421 U.S. 542, 94 S. Ct. 1792 (1975). There the court examined the Economic Stabilization Act of 1979 as applied to the States. The State of Ohio had enacted legislation providing pay increases of 10.6 percent during a period in which increases of 7 percent were the maximum permitted by the pay board. In affirming the district court's holding of constitutionality based on *Wirtz*, the court noted that the statute in Wirtz was "restricted" in scope and thought the Stabilization Act to be even less intrusive on State sovereignty. Furthermore, in footnote 7, the court reiterated that the tenth amendment is not without significance: "(t)he amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a Federal system." *Fry*, supra at 1795–6. Justice Rehnquist, in his dissent, thought the court should go further and expressly overrule *Wirtz*. *Fry*, supra at 1796–1801.

In 1976, the Supreme Court handed down its decision in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), a case in which the 1974 amendments to the Fair Labor Standards Act that extended the coverage of the act to all employees of States and their political subdivisions were challenged successfully. The appellants argued that either *Wirtz* was wrongly decided or that it should be restricted to the narrow instances where the governmental functions regulated can justly be considered in competition with similar commercial enterprises. Given what the appellants claimed to be substantial Federal interference with State and local governmental functions, the asserted Federal interests in regulating commerce do not outweigh the interests of State and local governments in governmental autonomy and self-regulation. By extending the act's impact on all government employees, Congress, it was argued, had irrationally attempted

to regulate State and local governmental functions which are uniquely governmental and not within the scope of the commerce power.

Despite the court's descision favorable to the appellants in *National League of Cities*, it has not been dispositive of the issue of extending mandatory coverage of social security retirement benefits to State and local government employees. In the year and a half that has passed since the prospectus was written, time has been available for an evaluation of the scope of the *National League of Cities* holding, an evaluation that has taken place in lower courts, legal journals, and pension research organizations.

The trend has been to confine the holding of *National League of Cities* wherever possible. While the plurality opinion speaks of invalidating Commerce Caluse based legislation which "operate(s) to directly displace the State's freedom to structure integral operations in areas of traditional governmental functions," NLC at 852, later cases have weighed this approach against the Federal interest involved. For example, in *Usery* v. *Board of Education of Salt Lake City*, 421 F Supp. 718 (D. Utah 1976), discrimination in filling school vacancies, a violation of the Age Discrimination in Employment Act, was alleged. The board of education replied that the act deprived it "of its freedom to exercise integral State governmental functions." *Id.* at 719. The court did not accept this argument, saying it "construes *National League of Cities* to require a balancing of the State and Federal interests in employment policies and practices even where integral State government functions may be affected." *Id* at 720.

This concept appears to rely on the balancing approach of Justice Blackmun's concurrence in *National League of Cities*. Also, the *Board of Education* district court saw significance in the *National League of Cities* plurality's upholding of an earlier decision in *Fry* v. *United States*, 421 U.S. 542 (1975), saying it indicates "that the court will balance the respective interests of Federal and State governments in regulating economic activity." *Board of Education* at 719.

Another limitation placed on the *National League of Cities* holding has restricted it to Commerce Clause legislation. In *Arritt* v. *Grisell*, 567 F2d 1967 (4th Cir 1977), an action brought against a city under the Age Discrimination in Employment Act and section 16(b) of the Fair Labor Standards Act, the appeals court said:

"We note that the court limited its holding in *National League of Cities* to the commerce power explicitly distinguishing other sections of the Constitution such as the spending power, article I § 8 cl. 1, or § 5 of the 14th amendment as sources of congressional authority that might support intrusions into integral State operations which the 10th amendment would prohibit if grounded on the Commerce Clause." *Id.* at 1270.

Students of the *National League of Cities* case have found methods, similar to those of the lower courts, to limit its applicability. One law review article agreed with the *Arritt* limitations saying "Application of the 10th amendment to the exercise of the taxing and general welfare power can be distinguished from 10th amendment limitations on the exercise of the Federal power to regulate commerce." 45 G.W. L. Rev. 629 May 1977.

A test was established by another article to determine constitutionality, based on *National League of Cities*, of Federal legislation affecting State activity. The test places an emphasis on balancing interests in the following fashion:

"On the first tier, a court must inquire whether the governmental activity being regulated is essential to the States' separate and independent existence. If the activity is essential, a court must move to the second tier of the test, where the court must inquire into the degree of interference imposed by the Federal regulation. If the court finds that the regulation (1) imposes significant financial burdens on the governmental bodies subject to the regulation, or (2) displaces the States' freedom to carry out its essential activities, then the regulation unconstitutionally interferes with States sovereignty unless the interference can be justified by a sufficiently strong Federal interest." 51 N.Y. U. L. Rev. 1006 December 1976.

Where there is some dispute over whether financial burden is a factor to be considered (for a view opposing (1) of the second tier, above, see 77 Colum. L. Rev. 1069), most observors have read some type of balancing test into the *National League of Cities* opinion.

Congress' authority to mandate social security coverage for State and local employees could be derived from sources other than the Commerce Clause. The Supreme Court has not yet applied the *National League of Cities* standards to art. I, Sec. 8, cl. 1 powers (expressly declining to do so in footnote 17, p. 852),

and in fact, the Court has since upheld title VII of the Civil Rights Act damage awards against the States, allowing Congress to act under sec. 5 of the 14th amendments. *Fitzpatrick* v. *Bitzer*, 427 U.S. 445 (1976).

The Supreme Court could set new standards for legislation derived from Congress' taxing and spending powers. A social security tax on State employers could fall within this category. It is therefore helpful to review any proposed legislation according to the current understanding of the *National League of Cities* guidelines.

The first question to ask is whether any proposed legislation "operates to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions." *NLC* at 852. Any legislation being considered will take away some if not all of the State's options in structuring employee pension systems. It can be argued that this displacement is not as severe as the imposition of minimum wage and hour standards. Nevertheless, it probably would be a significant infringement on State decisionmaking, and this analysis should therefore proceed to balancing the State against the Federal interests.

The balancing test might display the difference between any proposed mandatory coverage legislation and the overturned *National League of Cities* FLSA amendments. For example, in mandating social security coverage for State and local employees, Congress can show a great Federal interest that was not present in *National League of Cities*. This interest is the preservation of a viable social security system through the elimination of abuses of the system. Some of these abuses are caused by government workers who become eligible for social security payments due to part-time private employment or their governmental entity's past participation in the social security program. Uniform nationwide involvement and the resulting strengthening of the social security system may be a significant enough Federal benefit to validate this legislation, although some States and localities may be able to respond with showings of considerable loss. At this juncture, it does not appear that *League of Cities* would stand in the way of mandatory coverage of noncovered public employee groups under social security, especially since the tendency has been to confine the reach of that case to Commerce Clause based legislation.

ITEM 3. PROBLEMS WITH STATE CONSTITUTIONAL AND STATUTORY PROVISIONS RESULTING FROM MANDATORY SOCIAL SECURITY COVERAGE OF STATE AND LOCAL EMPLOYEES; SUBMITTED BY NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS [1]

This discussion proceeds on the assumption that mandating social security coverage for State and local employees may be a constitutional exercise of congressional authority. Appendix II [item 2, page 337] outlined the balancing test standard that probably would be used by the Supreme Court in its determination of the mandatory coverage legislation's constitutionality. If harm to the State, a component of the balancing test, is to be minimized, Congress must legislate within the limitations set out by several State constitutional and statutory provisions.

Provisions creating contractual obligations in public employee pension plans are contained in Massachusetts Gen. Laws Chapt. 32 § 25 and in the following State constitutional declarations:

New York Const. Art. 5 § 7
Michigan Const. Art. IX § 24
Illinois Const. Art. XIII § 5
Alaska Const. Art. XII § 7

The interpretation that has been given these sections show the imposition that the Federal Government could place on these States if it were to begin social security coverage immediately. However, the provisions instead could be accommodated to create a system that eventually works efficiently.

The Massachusetts statute. Gen. Laws Chap. 32 § 25(5), states that earlier pension laws for public employees "shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alternations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder."

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[1] See statement, page 236.

The strictness with which the Massachusetts Court views this statute is apparent in *Opinion of the Justices to the House of Representatives*, 364 Mass. 847, 303 N.E. 2d 320, 1973. With the statutory provision in mind, the court disallowed proposed legislation that would raise compulsory retirement plan contributions by government employees from 5 percent to 7 percent of salary, with no increase in benefits resulting. In reaching its decision, the Massachusetts court said: "When the characterization contract is used, it is best understood as meaning that the retirement scheme has generated material expectations on the part of employees and those expectations should in substance be respected." *Id.* at p. 328. The expectations of the workers include the level of deductions, "as an increase in deductions is little different from a diminution of the allowance." Id. at p. 327.

Even though the Massachusetts legislature, in proposing the new statute, would only be setting aside an older statute, the court saw the older statute as creating a contractual right, and it therefore could no longer be set aside through the enactment of later legislation. Because of Mass. Gen. Laws Chap. 32 § 25(5), the public employee pension plan "is under the shelter of the impairment of contract clause, or what amounts to much the same thing, the due process clause of the Federal Constitution and State constitutional provisions cognate to the letter." *Id.* at p. 329.

In its opinion, the Massachusetts court did provide some openings for later legislation that would affect public employee systems. The court said that the State could alter its contractual obligations through its police powers, though it left undetermined the showing of need required. *Id.* at p. 329. Also, the court found no problem with prospective application of the new law. *Id.* at p. 331. Then, according to the language of the statute, anyone who is not yet qualified for retirement system membership may be affected by contractual changes.

Another State provision that has received some analysis is New York Const. Art. 5 § 7, which says, "After July first, nineteen hundred forty, membership in any pension or retirement system of the State or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." Case law involving this statute has helped identify members in the retirement system.

In *Birnbaum* v. *New York State Teachers Retirement System*, 5 N.Y. 2d 1, 152 N.E. 2d 241, 1958, a new mortality table, reducing benefits by about 5 percent, was made applicable to all employees who had not yet retired. The New York court invalidated this approach, saying, "By the constitutional amendment the people determined to confer contractual protection upon the benefits of pension and retirement systems of the State and of the civil divisions thereof, and to prohibit their diminution or impairment *prior to retirement*."

A second interpretation of the New York constitutional provision is of some interest to this problem, though its authority is very limited. It comes in the form of an opinion of the attorney general (1957, p. 310). The concern at that time, as it is now, was the extension of social security coverage to State policemen and firemen. The attorney general held that social security coverage must be in addition to existing benefits. He said, "It was not legally possible under the constitutional provision to diminish or impair retirement benefits to which such public employees . . . are entitled." *Id.*

While the constitutional and statutory provisions of New York and Massachusetts have been strictly interpreted, this has not been the case in Michigan. Michigan's constitutional provision, Art. IX § 24, states, "The accrued financial benefits of each pension plan and retirement system of the State and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." The emphasis this section places on benefits has been interpreted as limiting its applicability.

In *Advisory Opinion re Constitutionality of 1972 Pa 258*, 389 Mich. 659, 209 N.W. 2d 200, 1973, an employee contribution rate increase for some workers, without a benefit increase, was upheld by the Michigan court. The rationale incorporated within this opinion was stated as follows:

"Under this constitutional limitation the legislature cannot diminish or impair accrued financial benefits but we think it may properly attach new conditions for earning financial benefits which have not yet accrued. Even though compliance with the new conditions may be necessary in order to obtain the financial benefits which have accrued, we would not regard this as a diminishment or impairment of such accrued benefits unless the new conditions were unreasonable and hence subversive of the constitutional protection." *Id.* at p. 663.

Given the Michigan concept of the pension contract, social security could be substituted for all employees to create benefits that will accrue in the future. As long as past benefits remain intact, the Michigan notion of the contract would be satisfied. This technique, however, would not work in New York and Massachusetts, where expectations are considered the significant feature of the contract. If social security can be substituted, in whole or in part, into the public employee pension system without any change in existing workers' expectations, it could pass the test set in those States. If this is not done, the benefits and costs of social security will be placed on top of those already bargained for current employees and retirees.

There remains the problem of defining the employee group that is eligible for contractual protection. It is clear that the membership extends beyond those presently retired. It appears that once an employee is eligible for pension benefits, the contract applies. A strong argument can even be made that once an employee invests his first dollar in the pension system, the contract holds. On the other side of the line, the opinion of the Massachusetts justices, supra, indicates that the terms of the contract can always be altered for future employees.

Viewing mandatory social security coverage tactics within *National League of Cities* restrictions, it is again necessary to observe the balancing test. If the social security system is unable to step in and keep employee expectations intact with no burden to the State, some harm will be established, either to the State or its employees' expectations. This harm will not be evident if the social security coverage is to be applied prospectively.

If social security coverage is mandated for future State and local employees, arrangements can be made for local supplementation of benefits, which will fall within the several States' constitutional and statutory requirements. This accommodation is well suited for the *National League of Cities* balancing test. It therefore seems that, as long as mandatory coverage is not an immediate necessity, it would best be pursued on a prospective basis, applying only to employees newly hired for the first time after the date of enactment of the necessary legislation.

ITEM 4. "THE RETIREMENT TEST IN SOCIAL SECURITY," BY NELSON H. CRUIKSHANK,[1] PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS, INC.[2]

The original study of the retirement test in social security—approved by the national council's executive board—was conducted in response to a mandate of the eighth National convention of the National Council of Senior Citizens which was held in Washington, D.C., June 5–7, 1969. This revised and updated study was approved by the executive committee of the board in May 1977.

ABOUT THE AUTHOR

Nelson H. Cruikshank, president of the National Council of Senior Citizens, is an authority on social insurance and the social security system. Born at Bradner, Ohio, in 1902, he attended public school at Fostoria, Ohio, went to Ohio Wesleyan University. He graduated from there 1925, and from Union Theological Seminary New York City, in 1929.

During the 1930's, he conducted a relief program in New York for the Brooklyn Federation of Churches, a worker's education program at New York University and ran a migratory labor camp program for the Federal Government.

After service as a top official of the War Manpower Commission in World War II, he became director of social insurance activities for the American Federation of Labor, a post he held for 6 years. He then was named Director of the European Labor Division for the U.S. Economic Cooperation Administration, with headquarters in Paris, France.

Cruikshank served as director of the AFL–CIO social security department from 1955 until his retirement in 1965.

After retirement he held appointments as visiting professor at Michigan State University and Pennsylvania State University, and as lecturer in social work at the University of Michigan.

He was a member of the Government's statutory advisory councils on social security in 1948–49, 1958–59 and 1964. He was a member of a special consultants'

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[1] Now counselor to President Carter on aging, and chairman, Federal Council on the Aging.

[2] See statement, page 279.

group to advise the Secretary of Health, Education, and Welfare on social security in 1954.

Cruikshank has been a member of the Advisory Council on Employment Security, U.S. Labor Department, serving three terms in that post. He was an original member of the Health Insurance Benefits Advisory Council set up under the Social Security Amendments of 1965 to advise the Secretary of Health, Education, and Welfare on Medicare. In 1968, he was reappointed to this Council for a 4-year term.

A founding member, Cruikshank was elected president of the National Council of Senior Citizens in 1969.

THE RETIREMENT TEST IN SOCIAL SECURITY

The retirement test is just what the name implies, though it is often referred to by other names, such as, "earnings test," or "work test." It is a test basically in terms of dollars earned in a year to determine whether a person otherwise eligible for social security retirement benefits can be considered retired.

The reason for there being such a test rests on the fact that the old age survivors and disability insurance provisions of the Social Security Act are designed to insure individuals and families against the risk of a loss of earnings arising from retirement from work (either compulsory or voluntary) in old age or from disability or death. It is comparable in concept to unemployment insurance or on-the-job injury insurance (worker's compensation) under which the benefits are not payable unless the worker is actually unemployed or has suffered injury resulting in loss of wages. Just so, benefits are not payable under the retirement test provisions of the social security program to those between the retirement eligibility age and age 72 unless the worker can be considered substantially retired.

Confusion about the nature and purpose of this program frequently arises from comparing it with a straight annuity program where benefits are paid when a person reaches a specified age, regardless of any earnings the retiree may have. Such programs are quite different in basic concept from that of insurance against *loss of earnings* and require substantially more financial support than that provided under the social security tax schedule. In other words, to have made social security an annuity program permitting the payment of benefits to people with unlimited earnings after retirement would have required much higher contributions from workers and employers and the self-employed than they have been paying all these years. Alternatively, to adopt such a system now would demand the expenditure of between $6 and $7 billion for the first year (and more in future years) to benefit about 1 out of every 16 *aged* people in America. Those benefiting would be those who enjoyed the highest earnings and who, presumably, have less financial need in retirement. The question of what other benefits could be added for all social security beneficaries for the same amount of money that removing the retirement test would cost is the real heart of the issue. The reasons for this conclusion are set forth in the following sections.

HISTORICAL BACKGROUND

The test of retirement has undergone a series of modifications since social security was first enacted in 1935. These reflect some changes in the basic concepts of the program as well as modifications that Congress felt desirable because of changes in economic conditions.

The earnings test originally applied only to earnings in "covered" employment because it was not thought to be administratively feasible, with the limited coverage of the program, to apply the test to *all* gainful employment. Theoretically, this left an individual worker upon retirement from his regular job free to supplement his benefits by getting a job in agriculture, domestic service, city or State government, or any other employment not then covered by social security. The freedom to earn wages in noncovered employment, however, in depression days, was more theoretical than real.

In 1939, before benefits became payable, the act was changed to allow a limited amount of earnings in covered employment while still permitting a beneficiary to be considered retired. The limit was $14.99 a month. This amount was changed to $50 in 1950, and $75 in 1952 for employees, and at the same time, a test for the newly covered, self-employed was implemented on a comparable annual earnings basis ($600 in 1950 and $900 in 1952). The test for retirement for self-employed workers was made to rest more on the test of whether the individual rendered

"substantial services," though amounts of earnings are also considered in the determination as to whether he has actually retired.

In 1954, the law was changed so that the test applied to all earnings, not just earnings in covered employment and a combination annual and monthly test was instituted for both employees and the self-employed. The 1954 amendments set $1,200 as the amount a beneficiary could earn and get all of his benefits. If earnings exceeded $1,200, 1 month's benefit was withheld for each $80 or fraction thereof earned above $1,200. However, no benefits were withheld for any month in which the worker neither earned more than $80 in wages not rendered substantial services in self-employment.

The 1958 amendments provided that a beneficiary who earned above $1,200 in a year would not have a benefit withheld for any month in which he earned wages of $100 or less (rather than $80 as previously provided).

A major change in the retirement test was provided by the 1960 social security amendments. Under this change benefits were adjusted in direct ratio to the amounts of earnings above $1,200—$1 in benefits was withheld for each $2 in earnings from $1,200 to $1,500 and for each $1 above $1,500. As under previous law, no benefits were withheld for any month in which a beneficiary neither earned wages of more than $100 nor rendered substantial services in self-employment.

Further modifications were made in 1961, 1965 and 1967. In 1972, legislation provided that the annual exempt amount under the retirement test be automatically increased from time to time based on increases in general earnings levels. Under this provision, the exempt amount increased in 1975 and 1976, reaching $3,000 for 1977. Also, in 1973, the point at which $1 in benefits was withheld for each $1 in earnings was eliminated.

This is how the present provisions of the retirement test operate for an individual who is under 72 years of age and who is otherwise eligible for retirement benefits in 1977:

If he earns $3,000 or less during the year nothing will be withheld from his benefits. If he earns more than $3,000 in the year, for each $2 of earnings above $3,000, $1 will be withheld from his benefits. However, regardless of total earnings in the year, benefits are payable for any month in which he neither earns wages of more than $250 nor performs substantial services in self-employment.

ATTEMPTS TO REMOVE THE RETIREMENT TEST

There have been persistent attempts to repeal or drastically modify the retirement test. Many bills are introduced in every session of Congress for this purpose. The criticisms of the test have a wide appeal—especially to those who are not acquainted with the basic purposes and design of the social security law.

For example, critics allege an "inequity" in the fact that a retired person may derive substantial income from savings and investment without loss of any of his social security benefits while a worker who earns more than $3,000 in a year—even if it is only a small amount—has his benefits reduced.

The investor who gets social security retirement benefits can do so only when he has retired and thus he has suffered a loss of earnings—which was the risk insured against under the social security system. The question of his need as compared with that of a less affluent neighbor—does not relate to his eligibility. That's the way insurance works—including social insurance.

Another argument frequently advanced against the retirement test is that the worker has paid social security taxes most of his working life and, therefore, "has paid for" his benefit; it is an "earned" right and should not be denied him simply because he chooses to keep working.

The social security system accepts the principle of entitlement to a retirement benefit as an "earned right" only to distinguish the basis of entitlement from that resting solely on a person's need. In the case of government programs, need usually means a proven need and this involves a means test. The fact is that the typical full-time individual worker has not made contributions (paid taxes) into the social security system, even including those paid by his employer, that represent more than a fraction of the total amount of benefits due such a worker based on his normal life expectancy. So, in reality, he has not "paid for" his benefits though they are recognized as an earned right. The social security deductions that have been taken from his pay represent "premiums" that go to insure a portion of his earnings against loss resulting from retirement and he should not expect to draw his benefits without suffering a loss of earnings from work any more than he can expect to collect on his fire insurance when his house has not burned.

Another plea often made in support of removing the retirement test is based on the present level of social security benefits. The inadequacy of benefits, particularly for those who retired years ago and whose benefits reflect low-wage histories, cannot be denied. The answer to the need for greater incomes for the elderly, however, does not lie in permitting the relatively few who are still young enough and healthy enough to work and for whom there are available jobs to draw benefits while continuing to work—especially when to do so would be so costly to the system as to make it more difficult to obtain other needed improvements that would help all retired people.

Why are persons 72 and older not required to meet the retirement test? The answer is that though the insurance principle is fundamental to the social security system, it is not taken over without modification from private or commercial insurance programs. For example, there is a weighting of the formula for determination of benefit amounts in favor of the lower paid worker which is a departure from the rule that the amount of indemnity be directly related to the amount of the loss or the size of the premiums. Social security departs from rigid commercial insurance standards in a number of ways that Congress has determined enable the system better to meet its social objectives.

It must be borne in mind that many people beyond 72 years of age who are still working may never retire. The 7 years during which these people did not draw benefits because they did not retire represents a considerable saving to the system, not to mention the fact that they still continue to pay social security taxes on their earnings. Of course, many of those aged 72 and over who work have retired from their regular full-time job, or partially retired, but once having left their regular job, it is not likely their earnings will be very high in most cases. Based on such considerations of equity, those over 72 have been relieved of the retirement test.

WHO WOULD BE HELPED IF THE RETIREMENT TEST WERE REMOVED

More important than all considerations of the theory or principle on which the retirement test rests is the question of its impact on older people. Who and how many would be helped if it were removed, and who and how many would be injured?

The chart [on page 346] shows the number of people affected and the number not affected by the retirement test out of the total 21.8 million persons aged 65 and older and eligible for social security benefits in the year 1976—the latest year for which figures are available. In 1976, the level of earnings applicable to the retirement test was $2,760, rather than $3,000 which applies to 1977.

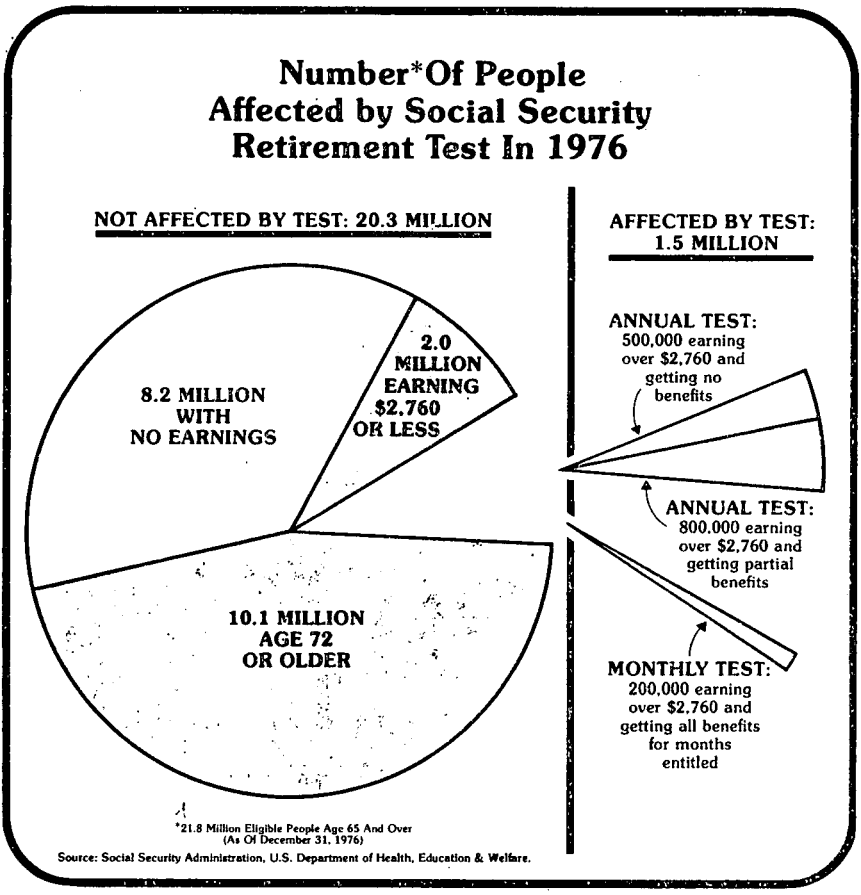
Actually, the number affected by the retirement test is quite small when considered as percentage of the total. The 21.8 million represents all those eligible for cash benefits, either as workers, or as dependents or survivors of a worker. Of the 21.8 million, only 1.3 million—about 6 percent—had any benefits withheld under the retirement test in 1976. There were 10.1 million aged 72 and older during all of 1976 and, thus, not subject to the test. (Beneficiaries under age 65 are not included in the chart; the percentage of beneficiaries under age 65 with benefits withheld is considerably less than for those 65 and over.)

There are 10.2 million people who were under age 72 and subject to the test but who earned less than $2,760, the annual exempt amount of earnings. Among these 10.2 million, 8.2 million had no earnings at all, and another 2 million had earnings of less than $2,760; almost all of the people in these two groups were probably either unable to earn as much as $2,760 a year or preferred not to work enough to do so.

There were about 200,000 people who earned more than $2,760 and had no benefits withheld. These were largely people who in the year in which they retired and started getting benefits had either no earnings or earnings not exceeding $230 a month after they retired. Others were self-employed but did not render substantial services in their businesses.

Another group of about 800,000 earned over $2,760 (or were dependents of persons who earned over $2,760) and received some but not all of their benefits. Many of these workers earned all that they could earn.

The remaining 500,000 includes workers who earned over $2,760 (or were dependents of such workers) and whose earnings were high enough so that no benefits were payable. Most of these workers undoubtedly had not retired and were earning as much as they ever did. If there had been no retirement test, they could have received full benefits.



The chart identifies the 1.3 million people who may be thought of as directly affected by the retirement test—those under age 72 whose earnings exceeded $2,760. Thus, eliminating the test would help about 6 percent of the people who are aged 65 and older and eligible for benefits, and these would generally be those least in need of additional income compared to those beneficiaries who either did not or could not work, or did not earn amounts in excess of $2,760.

Among the beneficiaries who work but earn less than the exempt amount studies made in the past suggest that for some people the retirement test may act as a disincentive to work. However, studies made by the Social Security Administration also show that this effect is very limited. The reasons for stopping or limiting work effort are varied and complex, including retirement policies, job availability, health and other reasons.

The retirement test does not compel anyone to stop working. It is a test of whether or not a person who is otherwise eligible has suffered a loss of earnings by reason of retirement. It is likely that most people with earnings at or near the exempt amount after they have substantially retired do not work more because of physical limitations or labor market limitations. In addition, since there is always a net addition to income from working—even with the reduction of $1 in benefits for each $2 of earnings after the exempt amount is exceeded—most people who value the extra income more than their leisure time, and are able to work, will do so.

WHO WOULD BE HARMED BY THE ELIMINATION OF THE RETIREMENT TEST?

The answer to this question depends largely on three factors: (1) What the cost would be, (2) how that cost would be distributed among taxpayers, and (3) what other changes in the program might be discarded because of the cost of this one.

The dollar cost to the present program of eliminating the test would be between $6 and $7 billion for the first year. The long-term level cost would be, according to actuarial estimates, about 0.39 percent of taxable payroll. Raising the annual exempt amount from $3,240 (estimated exempt amount for 1978) to $5,000, as some advocate, would cost about $1.6 billion for the first year with a long-term cost of 0.20 percent of taxable payroll.

It would, of course, be theoretically possible to eliminate the test and add the cost to the present social security tax schedule and, thus, require those who are still working (and future workers) to carry the load. This is, however, neither socially desirable nor politically feasible in the light of the figures cited above showing that, at the most, about 6 percent of the elderly would benefit and this group would be the least in need of additional income. Workers have shown a commendable willingness to pay social security taxes; but it is doubtful the same willingness would be shown toward a steep increase in taxes to pay benefits to people including the highest paid professionals and business executives who are still working.

Any degree of political realism leads to the inevitable conclusion that if such a costly change were made in the social security system, it would be very much more difficult to secure other changes which also entail increased costs. The question of what other benefits might be added to the program for the same or comparable cost brings us to the heart of the issue.

In a very real sense all the people, the widows, the disabled, and all beneficiaries who would benefit by alternative liberalizations, costing approximately the same amount, would be the ones who would be paying for the elimination of the retirement test.

When the same question is put in another way, the policy issue is even more evident. If we had $6 to $7 billion a year (the cost of eliminating the retirement test for the first year) to distribute among the elderly, where would we put it? It is hardly conceivable that we would distribute it only among about 6 percent of the elderly who make up the group now affected by the retirement test and which includes all those having the highest earnings. Surely, we would consider first the needs of the elderly who are unable to continue work. This, essentially, is the issue before us.

CONCLUSION

It would appear evident from the facts and figures cited above that the elimination of the retirement test in the social security progam is neither practicable nor desirable since it would help a comparatively small number who are least in need and deprive a very large number, including those most in need of the benefit, of possible improvements in the program.

This does not, of course, mean that the present earnings test of retirement ($3,000 annual earnings in 1977) is fixed for all time. Present law provides automatic liberalization of the test by increasing the exempt amount of earnings whenever there is a benefit increase based on increased cost of living. This provision has already operated to raise the amount of annual earnings permitted without reduction in benefits from $2,100 in 1972 ($175 monthly) to $3,000 ($250 monthly) in 1977—a 42.9 percent increase in five years. NCSC believes that increases in cost of living should be reflected in the earnings amount used to test retirement and accordingly supported the proposal when it was before Congress in 1972. Such automatic adjustment, however, is quite different from removing the test entirely or from liberalization of the test as steps toward ultimate removal.

In 1976, it was estimated that in the five year period 1976–1980 $460 billion would be collected in social security taxes under provisions of present law and $487 billion will be paid out in benefits and administrative expenses—a deficit of $27 billion if no additional revenues are added to the program. Eliminating the retirement test would in the next five years add a cost factor that would completely wipe out the trust contingency reserve for the payment of benefits. In fact, such a move would place the contingency fund in the impossible position of being nearly $15 billion in the red. Short of eliminating the retirement test,

raising the exempt amount of earnings beyond the automatic increases already provided would still result in substantial future withdrawals from the fund.

We do not share the alarms expressed in some quarters as to the ability of the system to make the necessary adjustments to enable social security to meet its future obligations. We do recognize, however, that these "adjustments" must include increases in revenues either through increases in contributions (taxes) or through support of the general revenues of government.

The NCSC has never proposed improvements in the benefits to be paid or other liberalizations of the social security system without also supporting realistic means of financing such changes. We wish those who blithely call for the elimination of the retirement test would also face up to the realistic problems of meeting the costs of their proposals.

ADDENDUM

Since this pamphlet was first issued, an important legal decision has been rendered which relates directly to the position on the retirement test taken by the National Council. A three-judge U.S. district court in Massachusetts unanimously ruled that charges that the retirement test was unconstitutional on the grounds of being unfair, discriminatory, and in violation of due process, were without foundation.

The following is quoted from the Court's decision:

"From its inception in 1935 the social security old-age benefit system was designed to provide insurance against the failure to receive a particular kind of earned income. This is shown by the provision in § 202(d) of the original act, 49 Stat. 620, 623, that then old age benefits were not payable for any month for which a person received wages in covered employment. It is a misunderstanding to treat this insurance system as though it were addressed to the risks of the aged poor as such. It is a system that covers both rich and poor insofar as they receive earned income in covered employment and *have retired from employment* . . . The test of a right to a benefit is not poverty nor even old age—but, in general, former employment in taxable occupations, plus attainment of a prescribed age, *plus present retirement from work.*" (Emphases added)

Those interested in pursuing further the legal aspects of this issue are referred to *Gainville* v. *Richardson*, 319 F. Supp. 16 (1970).

THE NATIONAL COUNCIL OF SENIOR CITIZENS

The National Council of Senior Citizens was organized in 1961 by Aime J. Forand, a retired Congressman from Rhode Island and pioneer advocate of what is now medicare.

The national council:

—Led the fight for medicare and strives for improvements in the program.

—Vigorously supports enactment of national health security, which offers comprehensive, universal health insurance for all, underwritten by the Federal Government, without the barriers of deductibles and cost-sharing.

—Is spearheading the drive to maintain a strong social security system, to eliminate remaining inequities and to provide adequate financing for the future.

—Pushes vital programs like housing for the elderly, the Older Americans Act, and a senior citizens community service corps to provide jobs for the low income elderly.

—Fights discrimination against older people.

—Is the link between older people and other nationally organized groups, both young and old.

Today's elderly are the men and women who lost jobs, homes and savings in the great depression. They survived the depression and helped build a period of unparallelel prosperity but, for millions of today's seniors, the depression never ended.

The National Council of Senior Citizens seeks legislation at the Federal, State, and local levels to assure them at least minimum comfort and security during the retirement years.

However, the national council is more than a special interest group for the elderly. Our organization seeks a better life for all Americans—old and young. We support clean air and clean water legislation, equitable and adequate income maintenance for the under-privileged in society, a national energy program, occupational safety and health measures, consumer protection and other legislation for a greater America.

ITEM 5. LETTER AND ENCLOSURE FROM ANNE E. BLAKELEY,[1] LIAISON ASSISTANT, NATIONAL INDIAN COUNCIL ON AGING, INC., TO WILLIAM E. ORIOL, STAFF DIRECTOR, SENATE SPECIAL COMMITTEE ON AGING, DATED SEPTEMBER 1, 1978

DEAR BILL: The attached is a copy of a presentation Larry Curley made at the Fifth National Institute on Minority Aging in San Diego earlier this year. Although intended for a different audience, we feel that the views expressed are informative and valid as background material. The National Indian Council on Aging will be submitting additional material which is now being prepared in Albuquerque.

Since I will be representing the National Indian Council on Aging at the hearing. on September 8, 1978, also attached is my resume, as per your request.

Respectfully,

ANNE E. BLAKELEY.

Enclosure.

RETIREMENT: AN INDIAN PERSPECTIVE

It is a pleasure to be here at the Fifth National Institute on Minority Aging. I welcome the opportunity to verbalize an Indian perspective into the proceedings of this institute.

My name is Larry Curley and I am the liaison specialist for the National Indian Council on Aging. I am a member of the Navajo Tribe and currently working in Washington, D.C.

When I was contacted by the institute approximately 2 months ago, I was instructed to be a "tone setter" for the proceedings of the next 2 days. As a "tone setter," I view my role as that of developing empathy to the American Indian and his reality—especially in the area of retirement and related activities to this concept.

The definition of "retirement," according to Webster's Dictionary, is "the state of being retired"; accordingly, the definition of "retired" is "withdrawn permanently from work."

I approached this topic, and how it could best be presented in a manner to enable people to become familiar with and develop empathy with the realities of the American Indian elderly.

I believe that in the discussion of the subject, I must qualify my statements by saying that my perspective is only one perspective. I will explain that statement later on in this discussion.

According to the 1970 Census statistics and as revised by those who have the intuition and skill, there are approximately 800,000 American Indians in the country today. There are over 290 Indian groups with over 300 identified languages. They are scattered across the various parts of the country, with approximately 50 percent residing in the Western part of the United States. They live in both rural areas and urban areas, with the majority of them living in the rural areas—mostly on reservation land.

Of the approximately 800,000 American Indians, there are about 64,000 elderly American Indians who are 60 years of age and older. They constitute roughly 8 percent of the total Indian population—as compared to the total national percentage of 14 percent. This population—referring back to the three perspectives—constitutes the first perspective on the concept of retirement.

For today's elderly Indian, most would have been born on or before the year 1917—approximately 30 years after the Wounded Knee incident. This incident was still fresh in the minds of American Indians—just as the memories of World War II are to a veteran of this major world war. The next generation, today's elderly, were taught and raised to distrust the white man. A lot of the mistrust was intensified by the policies of the Federal Government which was based on two assumptions:

(1) The American Indian was biologically inferior and would eventually die out; and

(2) That the Indian culture would not be able to survive the onslaught of the non-Indian society and also would die out.

By the 1920's, contrary to the assumptions just mentioned, the Indian and his culture was still in existence—however precarious. The Indian population by this time had dwindled to a fourth of the population it had one century earlier.

With this as background—my grandmother was born in the late 1890's. She is in her eighties today and still residing on the Navajo Reservation. I assume that

[1] See statement, page 321.

my grandmother is typical of an elderly Indian and Navajo woman today. Statistically speaking, she is a fortunate person to have lived these numbers of years, with the life expectancy at the time of her birth of at least three decades.

In 1926, the Institute for Government Research conducted a study of Indian policy and reported that "the income of the typical Indian family was low . . . only 2 percent of the Indians had incomes of over $500 a year. Partly as a result of this poverty, the health of the Indians, in comparison with the rest of the population, was bad. The death rate and infant mortality were high. Tuberculosis and trachoma were extremely high. Living and housing conditions were appalling; diet was poor; sanitary provisions were generally lacking. The system for Public Health administration and relief was inadequate. The educational system had no well considered broad educational policy.

These were the times of my grandmother. She didn't attend any schools nor did she pursue employment. She was raised by her grandmother who taught her to behold and revere the land that she walked upon. She was taught that there was an order and balance to everything. That she had a relationship with all living beings and with those that were inanimate—the mountains, the river, the trees, and the wind itself.

She heard about the white man, now busy killing himself somewhere else. Each morning, at dawn, she would open the gate for the sheep and goats to forage for food. These animals were the lifeline and played an integral in the family. They provided food, clothing, and social status. The more sheep you had, the higher up the social ladder you were. This was her employment—her education was that which cemented her relationship with the universe. Today, each morning, she tells her grandchildren to open the gate to let out the sheep. The sheep are still important. She is up before dawn to pray and to bless the new day—an activity that she had been taught by her grandmother that she must do. She is up at dawn because that is the best part of the day. That is the time when the good things are in existence—good health, increased wealth, and increased wisdom. She tells all these things to her grandchildren today. That, ladies and gentlemen, is today's elderly Indian. Now then, for purposes of this institute—how does the concept of "retirement" fit into this scenario: Or does it?

I don't think it does—in the strict sense. The concept of work does not fit into the activities that my grandmother undertakes. She does not consider it a job, but an activity one has to do. She hasn't retired from anything other than opening the gate each morning. She has undertaken a new role—that of teaching her grandchildren what her grandmother taught her. She is now in the position of being older and therefore in a position of wielding wisdom and knowledge. She is sought out when the order and balance of the world becomes undone. In essence, she has "retired" from the role of being the student to the role of being a teacher. She doesn't have to worry about planning for her "retirement," because it is a process that is inevitable and definite. Her sheep are still there, as is her religion, and her perspective of the universe. They provide her with the balance necessary to live. She has learned to tolerate the white man's way—however irrational it might seem and has even adapted his language—she says "goddana" for "god———it."

The second perspective that I will touch upon is that of today's middle-aged working Indian. This group will include the age range of 35–64. The Bureau of Indian Affairs estimated that 20 percent of the Indians living on or near reservations were in this specific age grouping. Specific data breakdown on this age cohort were not made available, but the Bureau of Indian Affairs estimates that the employment/under-employment rate for the Indian labor force was approximately 55 percent, with the unemployment rate of 37 percent. Although these statistics are spotty, they do provide a general understanding of the Indian employment scene. My description of this age group will be mainly addressing those in the 45–59 age range—mainly because they will be ones who will be "retiring" soon from the labor force.

Most of the people currently in this age group have attained more years of schooling than their parents. Most have been in the armed forces. On the Navajo Reservation, they constitute roughly 10 percent of the total population. As veterans of World War II or the Korean War, they are more aware of conditions external to the reservation and since the reservation does not offer many employment opportunities, they have left the reservation to find employment. It has been found by the American Indian Policy Review Commission that most Indians, upon retiring, return to the reservation.

This particular group was raised during a period of Federal policy that included assimilation. Most were told in Bureau of Indian Affairs schools to learn

the white man's ways because the Indian lifestyle was bound for extinction. This age group adopted some of these teachings and incorporated them into their personal philosophy. While attending off-reservation boarding schools, they lost contact with their tribal cultures and as a result retained little of what their parents had taught them.

Within this context, the reference and applications of "retirement" is appropriate. Most will "withdraw permanently from work." If they follow statistical trends, they will return to their respective reservations armed with the last minute instructions on how they should enjoy their retirement. Retirement to them would mean the same thing as it does to their non-Indian counterparts: no work. However, what they are retiring into or the application of the concept of retirement within this context is unknown. Upon their return to the reservation, they will encounter a new social structure. They will still be the sons and daughters of their parents who now have the monopoly on wisdom and knowledge. In other words, "culture shock." The everyday process of living on the reservation would be viewed by the new retiree as boring—unless he/she reorients himself.

Now finally, the Indian youth of today who are tomorrow's elderly. In contrast to their parents and grandparents, an Indian child born in 1969–71 is expected to live 65.1 years as compared with 70.9 years for the U.S. population. The Indian population is young; according to the 1970 census, the median age of the Indian community was 20.5 years as compared to the U.S. 28.1.

The Indian youth of today are better educated than their parents and grandparents. In 1974, the Western Interstate Commission on Higher Education reported that there were 13,300 students enrolled in 100 post-secondary institutions. But, this has been tempered by the fact that the high school dropout rate is approximately 42 percent at the secondary level. In 1969, the Navajo Tribe conducted a survey and found that 52 percent of all students entering college dropped out at the end of the first semester and approximately another 25 percent of the remaining, dropped out the following semester. It has been my experience as a student in 1969, that many of the Indian students did not have as much contact with their non-Indian counterparts as compared with the Indian students entering college in post-Watergate. I believe that a lot of the students entering college during this time period, had rekindled the pride of being Indian and as a result asserted themselves more. This renewed interest in Indian identity has resulted in such events as Wounded Knee in 1973, Alcatraz, and so forth.

With the shift of the pendulum toward ethnic pride and increased education, the Indian youths are returning to the reservations to work. Most return to work for the tribal government—most of which do not have retirement plans in effect. At this time, however, the unemployment rate is still the highest among all ethnic groups. It ranges from 63 percent in Alaska to 7 percent in Mississippi.

Is the concept of "retirement" applicable for today's Indian youth? Yes, it is. For those who are employed will eventually retire—as has been previously defined. Most of today's Indian youths have adopted some aspects of the non-Indian values and it would be foolish for me to try to disclaim that it hasn't happened. Whether they will enjoy the status their grandparents occupied, remains to be seen. In essence, how is the influence of the larger society going to impact on the Indian lifestyle?

These are the three perspectives that I had originally indicated that I would discuss with you today. With the three perspetctives, one must ask how do three perspectives affect the area of preretirement planning and postretirement planning?

In the area of preretirement planning, today's Indian elderly probably would not need to be counselled on how to enjoy his last remaining days. As for the middle-aged Indian—assuming he is employed—preretirement planning should include a reorientation to the tribal environment, and since this group includes some partially educated people, it should also include an analysis of educational opportunities in the area to which he will be retiring. The orientation should be done preferably by someone who is familiar with tribal government, tribal values, and opportunities. For today's youth, this question becomes moot, since we are educated in a system that expounds "success" and equates it with monetary gain. Since there is a high number of dropouts at the secondary level, it should be the responsibility of the schools to develop courses that deal with life insurance, wills (however, among most Indian cultures, to consider wills is to insure an early death), and so forth.

In the area of post-retirement planning, it is obvious that the Indian elderly know what they want to do with their time, and it would be fruitless to apply

this concept to them. However, to the middle-aged Indian it would be applicable. In this case, the responsibility of ensuring that the newly retired person's skills are utilized optimally, the tribe should develop a roster that describes the retiree's skills, abilities, and interest. I should caution, however, that I do not mean to advocate governmental personal files, but rather a system of utilizing individual skills.

The concept would apply equally to today's youth. However, this also should be the responsibility of Indian tribes to develop. Funding of various Indian groups to develop a model project that incorporates retirement planning with tribal values would not only ensure that the retiree is happy, but would assure him that he/she can "retire" within his/her reality. The youth will present new challenges; the need for adult education will increase, as will the need for health facilities and volunteer opportunities.

In closing, I would like to thank the institute and you out there who sat throughout my "tone setter." Again, let me state that what I have discussed with you today is my personal perspective and not meant to be all-inclusive. It is difficult to talk in specifics in the time frame allotted, nor do I feel that that was my purpose.

In conclusion, I believe that the following statement probably most accurately describes the feelings of the American Indian elderly and hopefully others as well, I am sure it also reflects the feelings of tomorrow's Indian elderly:

"Let me be a free man—free to travel, free to stop, free to work, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself. . . ."—Chief Joseph, 1879.

Thank you.

ITEM 6. STATEMENT OF LARRY CURLEY, LIAISON SPECIALIST, NATIONAL INDIAN COUNCIL ON AGING

The Indian Perspective: Retirement, Work, and Lifelong Learning

INTRODUCTION

It has been estimated by the Bureau of Census that approximately 25 percent of the total U.S. population will be 60 years of age and older. This increased population will undoubtedly have its impact on the economy and social service delivery systems, because it is this age group that has unique problems that must be dealt with in a unique and creative fashion. It is a question whether current service delivery mechanism will still be valid. It will also be a time when current philosophies regarding aging programs will be questioned and with approximately half a century of experience in this field, no doubt, the answer will be at hand.

In preparation for that inevitable moment, the Senate Special Committee on Aging, chaired by Senator Frank Church, held a roundtable discussion on September 8, 1978. It was the purpose of this meeting to discuss the issues surrounding the concepts of employment, retirement, and lifelong learning. It is the purpose of this paper to scrutinize these concepts from the Indian perspective.

THE SCENARIO

In 1976, according to the U.S. Bureau of Census, there are approximately 1 million Indians in the United States. Approximately 56 percent of these individuals resided on reservations. There are approximately 466 federally recognized tribal lands, bands, and groups that exist within the continental United States, along with 200 recognized native villages in Alaska. The median age of the Indian population in 1970 was 20.4 as compared to the 28.1 of the total U.S. population. The median age for Indian males was 19.9 and for females, 20.9. The Indian population increased approximately 51 percent between 1960 and 1970. It is estimated by the Bureau of Indian Affairs that approximately 48 percent of the Indians living on reservations are below the poverty level. The median income level in 1970 was $5,832; for the U.S. population it was $9,590. It is estimated that the unemployment/underemployment rates on reservations average at 55 percent of the Indian population. This average, however, does not depict the 78 percent rate in Alaska nor the 68 percent rate of California reservation Indians.

Fifty-five percent of those over 16 who were employed, worked in urban areas with 9 percent employed in the professional and technical ranks.

The educational level of the Indian population was considerably less than U.S. population—9.8 years of schooling versus 12.1. It should be noted that there have been no studies that we could identify, which assesses the quality of education that is received by the Indian population. Additionally, 25 percent of males between the ages of 16 and 21 were school dropouts. On reservations, 58 percent of Indian children drop out of school before they can complete the sixth grade.

THE ELDERLY

According to the 1970 Census, as updated, there are approximately 64,000 Indians age 60 and over. This population represents approximately 8.4 percent of the total Indian population. It should be noted that in 1970, there were 88,809 Indians age 55 years and over. Conceivably, in 1976, they are the ones who now comprise the 60 and over group. In essence, we are talking about an estimated 89,000 target population.

Most of this population reside on reservations, over 51 percent. There have been no studies done to date that identify the income level of the elderly, but based on the unemployment rates of the younger cohorts, the education levels, it can only be estimated that as many as 75 percent have incomes below the poverty level. The educational level of older Indian persons has not been determined as well.

DISCUSSION

In the introduction section of this paper, it has been noted that projections indicate that 25 percent of the total population will be considered elderly or near elderly in the year 2000. In the year 2000, the young people that comprised 50 percent of the Indian population will be 50 years and older. This will be approximately half a million, an increase of almost 800 percent. At current migration estimates, most will eventually return to live on their respective Indian reservations. Most will be educated at the ninth grade level, living on income derived from their past earnings—mostly lower paid employment throughout their earning years, which would not produce the maximum allowable income from the social security programs. Some will benefit from private pension programs, but most will not benefit from these programs since the life expectancy of Indian persons born in 1950 was approximately 50 years of age. Unless health care is drastically improved, over 25 percent of the Indian elderly will be deaf, partly due to youth related illnesses like otitis media, which afflicted many while they were young. In 1975, it was estimated that Indian people are eight times as likely to contract tuberculosis as their non-Indian counterparts. With this type of medical legacy, it is highly possible that most will be handicapped in one form or another.

Retirement to that group or "eligibles" will mean a time of searching and developing a definition of existence. It will mean a time of isolation since most of the young people will be in the urban areas pursuing their occupations. As a result, the traditional natural system of cooperation and assistance will have eroded to mere romantic reminiscence (this even seems to be the case in 1978).

Work for these individuals will connotate a concept that they have just parted with and would not even "toy" with the idea of them returning to "work" so soon. This assumption is based on the fact that over 70 percent of the 1970 labor force were employed in demanding menial jobs.

It is a characteristic of the Indian community to believe that learning is a lifelong process that ceases, in this lifetime at least, upon death. Whether that "learning" is to be associated with the more familiar educational institutions is another question. It must be remembered that 58 percent of those in the year 2000 will not have completed the sixth grade. With the migration of the more educated group back to the reservations, there will likely be conflicts between the two groups. One group will view themselves as the more educated and progressive, while the less formally educated will view themselves as the guardians and keepers of the "true" Indian values. In a recent study to determine middle-class black and their attitudes toward certain issues, it was determined that middle-class blacks were frequently much more conservative than their white counterparts. Extrapolating the results and projecting these results on the Indian community would seem to indicate similar results. If this indeed is valid, obviously this will determine the programs and priorities established by the tribal governments. It will be at this juncture that these two divergent philosophies will collide. The more educated will opt for abstract policy position, while the traditional group will opt for concrete and empirical results (that is, services to the elderly).

For the Indian elderly in the year 2000, it will be a time of conflict, not only, among their peers, but across and between generations, as well. In 1900, life was simple for the Indian community in that traditional culture and language were easy to retain. There were no automobiles to accelerate mobility, no television to influence lifestyles, et cetera. Scarcely a half century passed when the automobile became a common sight on reservations and radios became a centerpiece in the Indian home. It is not uncommon in 1978 to find homes on reservations with a television antenna protruding from the roof of homes. It would be foolhardy to think that similar changes will not occur between 1978 and 2000. The youth in 2000 will be living at a time when space travel is common. Undoubtedly, philosophical outlook will be affected. Their ideas of being "Indian" will be different than those being expounded by today's Indians. (That is, in some of the Indian tribes today, one must be half blood to be a member of that tribe. They will not accept a person who has less than that amount. Even though he/she could be a full-blooded Indian with one-fourth one tribe, another one-fourth from another tribe, and so on, he/she could conceivably be a non-Indian. It is also possible that some tribes might "blood quantum" themselves into extinction unless they change their criterias.)

1977, the year of anti-Indian feelings across the country. There is even an organization called the Interstate Congress for Equal Rights and Responsibilities (ICERR) that was formed to combat the legal gains made by Indian tribes. It has also been the year of the "Oliphant case," the "Bakke case," and proposition 13. It is an alarming chain of events that will adversely affect millions of people and especially the Indians. At a time when the country is reeling from inflation and the energy crisis, there is fear that the net effect of these events will result in the reclassification of Indian lands so as to enable the country to "benefit" from the enormous gas and oil resources that are on Indian reservations. As a result of this move, tribal governments will be dismantled and Indian people will be subject to State control. In either case, the Indian elderly of the future will be affected. They will not be able to return to their reservations since the reservation system could have long been abolished. Without their spiritual homelands, most will elapse into a hopeless depression resulting in alcoholism, suicide, or institutionalization.

However narrow the legal interpretation was in the Bakke case, those limits will continue to be challenged until all remnants of special programs for minorities are relegated to the National Archives. Employment programs benefiting Indians will be adversely affected and will result in the Indian not being employed. This will result in the elderly Indian of the future being in no better condition than his grandparents, the end result, continuous poverty.

This is what the future holds for those Indians unfortunate enough to live to the year 2000. Understandably, they are predictions that are less than optimistic. We have intentionally dealt with the future because we feel that the actions taken today and tomorrow will have a multiplier effect and culminate in a condition that will be less than desirable for the Indian community.

SUMMARY

On the preceding pages, we have written our forecast as to what the future holds for the American Indian. We believe that there are steps that can be taken between 1978 and 2000 that would avert the scenes depicted in preceding pages. These steps could be classified in relation to time: Today's elderly Indian; today's middle-aged Indian; and the future Indian elderly.

Today's elderly Indian was born in the year 1918. Shortly after World War I and almost 30 years after the last Indian war. They are the targets for most of today's aging programs. As earlier indicated, most have limited formal education and represent the must culturally traditional group in the Indian community. In the area of retirement, work, and lifelong learning, most have "worked" in one form or another. Whether this "working" would meet the non-Indian's definition is questionable. Most "jobs" held by the today's elderly Indian were those jobs that enabled the family unit to exist. Sheepherding, planting crops, etc. Most of these jobs would not be able to contribute to the social security program, if it existed at that time. For this grouping of older persons, the concept of retirement, work, and lifelong learning is basically just that—concepts. We can only recommend that those services that are now available to other older persons should be available to the Indians as well. These services should be delivered by tribal government who should have the freedom to make cultural modifications in the programs.

In the subject area of this paper, most of the activities would have to be oriented towards today's middle-aged Indian and the future elderly. Where do we place our priorities?

As Indian people, we have been told by our forefathers that we are one with the cosmic balance and that this cosmic balance begins with the land. Land or Mother Earth brought us to where we are; it fed us, clothed us, and nurtured the ideas we now have. In light of this background, Indian tribes must be given reassurances that they will retain their quasi-sovereignty status. They must be reassured that the provisions of the various treaties will be upheld and will continue to be upheld. The Federal Government must reaffirm their trust responsibility to the American Indian through the reaffirmation and application of "the Self Determination Act, or Public Law 93-638." The U.S. Government must provide these reassurances to today's middle-aged Indian so that they may not continue to plan to return to the reservation, if they so desire. upon retirement.

In order to effectively plan for their eventual return, the Federal Government must consider the educational needs of these two target groups. They should increase the funding of adult education courses and the establishment of Indian community colleges on the reservation. Funds should also be made available for Indian students to enter the profession of adult education. The training of Indian health professionals will become a necessity. The reservations will become a haven for older Indians and as such, trained Indian health professionals to deal with the elderly will become a necessity. As a result of the Indian person returning to the reservation after many years of absence, a common result will be "culture shock." It will be difficult for many to get readjusted to reservation life. To deal with this situation, the Federal Government must establish a network of comprehensive mental health centers on Indian reservations to assist them.

Housing units should be increased so that those Indians returning to the reservation will have decent housing available. Currently, over 58 percent of Indian households are considered substandard and overcrowded. This situation will worsen by the year 2000 unless specific measures are taken to avert this situation.

In conclusion, the highest priority among the Indian community is their land and their unique status as "Indians." They must be reassured that their lands will not be used as sacrifices to meet the needs of "the general society." They must be reassured that they, as Indian people, have a right to maintain their respective governments as quasi-sovereign entities. They must be reassured that the ultimate policy of the Federal Government is not assimilation, but rather the enhancement of cultural plurality.

ITEM 7. STATEMENT OF JOHN F. MCCLELLAND, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, BEFORE THE LABOR SUBCOMMITTEE, U.S. SENATE COMMITTEE ON HUMAN RESOURCES, ON THE ELIMINATION OF MANDATORY RETIREMENT, JULY 26, 1977; SUBMITTED BY CHARLES L. MERIN [1]

Mr. Chairman, I am John F. McClelland, president of the National Association of Retired Federal Employees (NARFE). The association is 55 years old and composed entirely of retired Federal employees, their spouses and survivors. We have a dues-paying membership of 275,000 and represent the interests of nearly 1.5 million Federal annuitants and survivors. We appreciate the opportunity to appear before this committee because of our ongoing commitment to seek a more meaningful and productive life for our Nation's retired citizens.

On behalf of our membership, I most enthusiastically endorse congressional attempts to eliminate mandatory retirement and end age discrimination against persons over 65. It is our view that the arbitrary elimination of the oldest and most experienced workers from the ranks of the actively employed is capricious, irrational, and wholly inconsistent with the constitutional principles of fairness and equal opportunity.

We are particularly interested in H.R. 5583, a bill recently reported unanimously by the House Education and Labor Committee to abolish mandatory retirement in the Federal service while raising the mandatory retirement age in the private sector to 70. While we support, in principle, all five bills under consideration in this committee, we urge that the final committee report include the broadest possible concept of fair employment and equal opportunity.

[1] See statement, page 293.

We believe that the country is best served by the fullest utilization of older Americans and their vast talents and skills. We feel that retirement should be based exclusively on a careful evaluation of a worker's health and continued ability to contribute effectively through his job. By enacting the legislation under consideration, the Federal Government would be taking the lead in wiping out one of society's most vicious injustices.

The message older Americans are sending to this Congress is that they want to work. They want to continue to be viable, productive contributors to society. They do not want handouts, they want jobs.

Recent surveys have indicated that as many as 40 percent of those forced to retire at age 65 were willing and able to continue working. But, because of mandatory retirement, and a related myth that everyone over 65 is useless, these people are for the most part banished from the national work force.

The impact of this trend on the future should not be underestimated. By the year 2020, the U.S. Labor Department anticipates that nearly one American in five will be 65 or older. These people will be the healthiest and best educated older population in our history. And yet, if the present retirement practices are not altered, millions of these able-bodied men and women will be denied the opportunity to make substantive contributions to the Nation's work force.

I think it is important to note that the concept of retirement based on chronological age is unique to 20th century, industrialized societies. It first became part of our country's public policy in 1935 with the passage of the Social Security Act. The new law, which limited the practice primarily to industrial workers, was simply an attempt to control the Nation's 25 percent unemployment rate. The designation of 65, and later 70, as the mandatory retirement age was purely arbitrary. There was little public debate over the concept, just as there were no substantive studies of the long-range social and economic consequences of such a law.

It was not until 1950 that the mandatory retirement concept gained widespread acceptance in the private sector. Statistics from that year indicate the dramatic effect these laws have had on the national work force. In 1950, 24 percent of those 65 and older were working. According to the U.S. Department of Labor, by 1985 that figure will have dropped to 13 percent, even though the number of persons in that age group will have doubled.

Obviously, the impact of these laws over the years has been to legislate nonproductivity from society's most experienced employees. It is ironic that a nation which prides itself on productivity would at the same time squander one of its most valuable resources through archaic employment policies.

A few moments ago I said that older Americans want to work. Let me go a step further. If present economic trends continue, people 65 and older will have to work. The mandatory retirement of able-bodied workers is rapidly becoming a luxury our society simply can not afford. The overall impact of this policy has been to strip older workers of their economic independence, forcing them into idle reliance on younger, active workers for their well-being. Income security programs in the public and private sectors already are swollen beyond their fiscal limits. Each year thousands more will continue to bloat retirement rolls when they could and should be working. By the year 2020, nearly half of the Nation's population will be below 18 or 65 and older. With students staying in school longer and people retiring sooner and living longer, the prospect of a future society, where a smaller work force cares for a greater nonproductive sector, is very real. The advent of such a society is only hastened by the proliferation of mandatory retirement.

Mr. Chairman, it is clear that this problem is more than a matter of concern for the elderly. It involves our entire society. Clear and decisive action by the Congress to reduce the number of Americans living in "statutory senility" would significantly limit the social and economic consequences of this approaching crisis.

History is full of the deeds of many great leaders who came to prominence long after they were 65 years' old. German Chancellor Konrad Adenauer, who led his country through 14 of its most difficult years, was elected at age 73; Pope John XXIII became the head of the Catholic Church at 77; Michelangelo produced some of his greatest works in the years just prior to his death at 89, while Pablo Casals performed, conducted, and taught until his death at 96; Col. Harlan Sanders, broke at age 65, parlayed his first social security check into a multi-million-dollar fried chicken empire by age 73. I am sure that the members

of this committee are not unaware of the many distinguished accomplishments of their senior colleagues in Congress. Yet, Mr. Chairman, how would these people fare in today's job market? Could they find meaningful employment in our society, or would they simply be cast aside with the millions of others over 65?

Obviously, mandatory retirement based solely on age is an unjust and capricious waste of human talent. The notion that people magically become incapable of useful labor on the day they attain a predetermination age is absurd. For both humane and practical reasons, our organization urges that this concept be discarded.

Mr. Chairman, to conclude our testimony, I would like to add that, while we believe many older workers capable of continuing beyond "normal" retirement ages, we are not unaware that these people encounter unique problems as they advance in age. NARFE feels that this Congress is moving in a realistic direction by examining preretirement counseling programs and alternative measures which would help evolve a more creative approach to retirement in our society. We have been encouraged by the interest of Representative Patricia Schroeder and her Subcommittee on Ethics and Utilization in legislation to create possibilities for phased-in and gradual retirement programs (H.R. 2732, H.R. 2930, and H.R. 1627). We welcome the Congress' continued concern in developing more progressive alternatives for older workers.

Thank you.

ITEM 8. STATEMENT OF ROBERT M. BEERS, VICE PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, BEFORE THE SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT, U.S. HOUSE SELECT COMMITTEE ON AGING, CONCERNING ALTERNATIVES TO RETIREMENT, JUNE 15, 1977; SUBMITTED BY CHARLES L. MERIN [1]

Mr. Chairman, I am Robert M. Beers, vice president of the National Association of Retired Federal Employees (NARFE). The association is 56 years old, and composed entirely of retired Federal employees, their spouses, and survivors. We have a dues-paying membership of nearly 300,000, representing the interests of the 1.5 million Federal annuitants. We welcome the opportunity to appear before this subcommittee because of our ongoing commitment to seek a more productive and meaningful life for older Americans.

Mr. Chairman, in today's society the word "retirement" has come to suggest a negative and highly inaccurate view of the older population of this country. When we talk of someone "retiring," the image often is that of an enfeebled old person sitting in a rocking chair with his grandchildren, or tending flowers in her backyard. For some retirees, that is a valid, if not necessary, way to spend their remaining years. But for most retirees, this is not the case.

Rather than succumbing to the popular notion of retirement, today's retiree is looking for a lifestyle in which he can continue to be a productive contributor to his society. He has a lifetime of experience and training, and eagerly looks for opportunities to share his knowledge with his community. For this person the word "retirement" means a chance to expand his vocational interests, develop new creative pursuits, and seek out new horizons and ambitions. Our membership believes that the Federal Government can take the lead in promoting this more constructive and realistic concept by passing current legislation which would remove longstanding obstacles to the creative and full retirement experience older Americans are seeking.

Along these lines, our organization has urged the complete elimination of compulsory retirement age laws, specifically the passage of H.R. 1115, a bill by Chairman Pepper to end mandatory retirement in Federal service, and H.R. 3504, a bill by Congressmen Drinan and Edwards to protect older Americans from discrimination in employment.

We also have urged Congress to act swiftly on H.R. 2732, H.R. 2930, and H.R. 1627, which would permit flexitime and part-time employment in the Federal service, laying the groundwork for the creation of gradual and phased-in retirement programs.

We believe the speedy passage of these bills is essential if the Fedral Government is to develop a new, more realistic policy toward retirement.

Mr. Chairman, I would also like to take this opportunity to urge the subcommittee not to overlook the enormous potential that preretirement counseling

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[1] See statement, page 293.

offers. As the country's largest employer, the Federal Government has an obligation to develop and promote such prgrams in its agencies and departments to ease the transition of its employees out of government service.

Our organization is vitally concerned with this issue and, in recent years, our members have assisted Federal agency personnel officers throughout the country in planning, organizing, and conducting hundreds of preretirement counseling seminars. We are glad to provide this service at no cost to the government.

Federal employees are no different from those in other occupations in that many approach the prospect of retirement with apprehension and anxiety. They are alarmed at the idea that they have nothing to do for the rest of their lives. We believe that the Federal Government should take the initiative in making its employees aware of the vast opportunities and fulfilling experiences they can have after leaving government service.

In our preretirement counseling work, we help the government's prospective retirees evaluate their lifestyles, personal interests, their goals and leisure activities, with a view to making their retirement years a time of fulfillment and happiness.

We regard our participation in the government's preretirement programs as one of the most important services we render. As Federal retirees who have weathered the transition from active employment to retired status, we feel that we are qualified to set forth a series of constructive, practical and optimistic alternatives to those in Federal service who have reached the point where retirement is about to become a fact of life.

Thank you.

ITEM 9. STATEMENT OF THE NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, ON H.R. 12438, MAY 10, 1978; SUBMITTED BY CHARLES L. MERIN [1]

The National Association of Retired Federal Employees (NARFE) is a 57-year-old association with a dues paying membership of approximately 300,000, composed exclusively of retired employees of the Federal Government, their spouse or survivors. As the major spokesman for civil service annuitants and survivors, our organization represents the interests of some 1.5 million of this Nation's retirees.

For more than 10 years, persons retired from Federal service have recognized periodic adjustments in their annuities based on changes in the Consumer Price Index (CPI). Over the years, the specific CPI increases or the time periods necessary for triggering an annuity cost-of-living adjustment have been dictated by Federal statute. In the past decade, other retirement and wage benefits have been linked to the CPI. Today, it is estimated that half of the population of this Nation is dependent, directly or indirectly, on the CPI for various benefit adjustments. Many of the benefits, from social security to our food stamp program, are governed by Federal statute.

The government has computed and published a single Consumer Price Index recognized by all sectors of the economy for cost-of-living adjustments. This index has been based on the cost of a specific market basket of goods and services, typical of those utilized by urban wage earners and clerical workers. The index was estimated to reflect the buying habits of approximately 40 percent of the urban population.

Commencing with January 1978, the Bureau of Labor Statistics began issuing a trio of Consumer Price Indices: the former (unrevised) CPI of urban wage earners and clerical workers; a revised CPI of urban wage earners and clerical workers; and a new, all-urban CPI designed to reflect the buying habits of all segments of the urban population, from the professional and self-employed to the elderly and those on welfare. The all-urban index is said to cover approximately 80 percent of the urban population, compared with the 40 percent covered by the urban wage earners and clerical workers index.

It is our understanding that the provisions of H.R. 12438, now being considered by this committee, would have all programs based in Federal statute use the all-urban CPI cost-of-living benefit adjustments as of July 1, 1978. The all-urban index would therefore become the one index officially recognized by the Federal Government for programs governed by Federal law.

While NARFE does not formally oppose the use of new all-urban index for future cost-of-living adjustments, we are concerned that this new index has de-

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[1] See statement, page 293.

emphasized two categories of major importance to the Nation's older population—food and medical care.

The elderly are generally acknowledged to be a low-income group. Since 1960, the elderly have consistently had income levels approximately one-half that of the younger population. Double-digit inflation has wreaked havoc on the limited purchasing power of elderly persons living on fixed or relatively fixed income. A common assertion holds that the economic needs of the elderly significantly diminish in retirement. In reality some expenses greatly increase in old-age. Increased costs are typically realized in those categories most directly affected by inflation, among them food and medical care.

Senior citizens account for almost one-third of the Nation's health care expenditures, largely due to the increased likelihood of medical assistance need and the costly nature of pronounced illnesses to which they are susceptible. They require more physician time and frequently experience longer hospital stays than younger persons, and are the primary users of long-term care facilities. Though the elderly comprised only 10 percent of the population in 1974, they consumed almost 25 percent of all prescription drugs manufactured in the United States, for a gross expenditure of almost $2.3 billion. The average older person spends more than $100 per year for prescribed and over-the-counter drugs, and averages more than 13 prescriptions and renewals annually. The average annual health bill for persons over 65 was $1,360 in 1975, more than six times that of the under 19 age group, and almost three times that of the intermediate population (aged 19–64). Medical expenses continue to rise, victims of the rising cost of health care.

In 1976, the Department of Labor released a consumer expenditures survey which examined among other things, annual expenditures for various commodities based on age. Persons aged 65 and over were found to have annual pre-tax incomes equal on the average to only half that of the age group 55–64 years. Despite this dramatic difference in income, senior citizens spent 16.3 percent of their income on food, while the younger group spent only 12.3 percent. A recent Bureau of Labor Statistics report dramatically illustrates the importance of these figures.

In the 4-year period September 1972 to September 1976, the percentage increase in the cost of food as measured by the CPI was 45.6 percent. This increase was second only to the spiraling cost of daily hospital service charges at 47.5 percent. Both food and hospital costs rose significantly faster than the overall CPI for the same period (37.6 percent). These statistics underscore our concern over the deemphasis placed on food and medical expenses by the new all-urban index.

The number of Americans aged 65 and over comprise almost 10 percent of our population. By the year 2020, however, the percentage of aged persons is expected to rise to as much as 25 percent of our population. Changing demographics and inflation's victimization of the ability of many older persons to meet their most essential needs, argue compellingly for the establishment of a separate CPI for the elderly. A special index of this nature has been the subject of legislative discussion in past Congresses, and would effectively serve as an adjustment mechanism for all public retirement programs. We urge this committee to mandate that the Bureau of Labor Statistics engage in a study about the feasibility of such a separate index.

We appreciate this opportunity to submit our views for the record.

Appendix 2

NEWSPAPER ARTICLES RELATING TO HEARING

ITEM 1. "LONGEVITY IMPERILS EARLY RETIREMENT," FROM THE IDAHO STATESMAN, JULY 24, 1978

WASHINGTON (UPI)—The Nation may not be able to afford the current trend toward early retirement, especially when the post-World War II baby boom becomes the senior citizens boom, two top administration officials and other experts say.

Witnesses at recent hearings of the Senate Special Committee on Aging, including two Cabinet members, put forward challenges to early retirement with its increased social security costs and loss of skilled workers.

Thirty years ago, according to the testimony, nearly half of all men 65 and over were employed or seeking jobs. Today, among people 65 and over, only one man in five and one woman in 12 are in the work force.

One clear reason for the trend is more and more Americans are able financially to retire early.

Social security benefits have been expanded, with full pensions paid at age 65, and some retiring at 62 with reduced benefits.

Nearly half of all workers in the private economy are covered by pension plans, many with retirement at ages 60, 55 and 50.

Federal civil servants and employees of many State and local governments can retire at age 55 after 30 years, and the number of these public employees has soared. Military personnel can retire after 20 years of service, regardless of age.

Secretary of Health, Education, and Welfare Joseph Califano told the committee while Americans are retiring earlier, other changes are taking place that may require the Nation to reconsider its whole policy toward work and retirement.

People are living longer. In 1940, the average life expectancy at birth was 63.5 years, lower than the age for full social security retirement benefits.

Now, Califano said, life expectancy is 69 for men, 77 for women. Three-quarters of the population now reaches age 65 and, once there, live on the average to age 81.

"We are at the dawn of the first four-generational society in the history of our Nation," Califano said.

The baby boom following World War II, Califano noted, will become a "senior boom" in the early 21st century. In 1940, 7 percent of the population was 65 or over; today it is 11 percent; by 2030 it will be nearly 20 percent.

Today, six active workers support one in retirement. By 2030, the ratio is expected to be 3-to-1.

Califano testified that under present trends, the Federal Government will have to spend $635 billion by 2025—up from $112 billlion this year—for social security, other pensions, medicare, welfare, food stamps, and various other services.

This would be a growth from 24 percent to 40 percent of total Federal outlays.

"There are reasons to wonder aloud whether the trend toward ever-earlier retirement is a trend in the right direction," Califano said.

Dr. Harold Sheppard, director of the Center on Work and Aging of the American Institutes for Research, said the coming senior boom will include a large increase in the number of Americans over 80—by 2000, there will be 8 million of them, 1.7 million more than had been projected as late as 1971.

Sheppard asked how the increasing proportion of Americans in their early sixties in the next century are going to support these octogenarians if they themselves are retired.

Labor Secretary Ray Marshall said it may become increasingly difficult to insure older Americans a comfortable retirement by relying primarily on "transfer payments"—shifting money through social security, welfare, and other programs.

He said it would be necessary to expand employment opportunities for the elderly.

Congress took one step in that direction last April when it raised from 65 to 70 the age at which a private employer can require a person to retire solely because of age, and removed the upper age limit of 70 for most Federal workers.

ITEM 2. "A FAST-GROWING POPULATION," FROM THE NEW YORK TIMES, JULY 30, 1978

(By Philip Shabecoff)

WASHINGTON—A quietly ticking social time bomb—America's rapidly aging population—is due to explode in 20 years or so with potentially revolutionary impact on the nation's economy.

So far, except for a few Band-aids applied to the social security and private pension systems, little has been done, or even discussed, to prepare the country for that particular future shock.

At hearings before the Senate Special Committee on Aging earlier this month, Stanley M. Babson, Jr., a financial consultant, summed up the problem: "The present retirement practices and trends of our society, coupled with the increasing longevity of our population, will create an enormous economic future burden on our society." Said the chairman of the committee, Senator Frank Church, Democrat of Idaho: "The United States has no retirement policy."

Moreover, the problems created by an inexorable demographic trend toward an older—considerably older—population are being exacerbated by slower economic growth, inflation and social changes such as early retirement and soaring demand for medical care.

The Nation, in the view of those who have considered the impact of these trends, will have to come to grips not only with the economic needs of this older population but also with the changes wrought on the economy in general from a shortage of younger workers, increased demands on health resources and other social service changes in the structure of tax revenues and shifting demands on the market place.

The Secretary of Health, Education, and Welfare, Joseph A. Califano Jr., outlined during the hearings some of the key factors in the population shift, including these trends:

The average life expectancy, about 62.5 years in 1940, has risen by about 10 years and now stands at about 69 for men and 77 for women. The population aged 80 and above is widening rapidly and biomedical advances indicate that the life span will continue to lengthen.

The post-World War II baby boom will appear early next century as a "senior boom," Mr. Califano noted. By the year 2030, some 55 million people, nearly one-fifth of the population, will be 65 years old or older.

THE AGING OF THE BABY BOOM

	Average life expectancy in years	Ratio of total population to those 65 and older	Average monthly social security payment
1940	62.9	14.7	$22.10
1945			23.50
1950	68.2	12.3	42.20
1955	69.6		59.10
1960	69.7	10.8	69.90
1965	70.2		80.10
1970	70.9	10.2	114.20
1975	72.5		201.60
June 1978	72.8	9.2	254.00

Note.—Not all data available for all years.
Source: Social Security Administration and Census Bureau.

While people are living longer, they are also retiring at an early age, a fact that Mr. Califano found "ironical." Thirty years ago nearly half of all men 65 and over were in the work force; today, in that age group, only one man in five and one woman in 12 hold jobs or are actively seeking work. There is no sign that this trend will abate.

The ratio of active workers to retired citizens will change "dramatically" from six to one today to only three to one in 2030. This figure is significant because it indicates how many income earners are available to support programs for the elderly through taxes.

Meanwhile, social and economic policies involving the elderly have been changing. Workers are permitted to retire at 62 instead of 65 and collect reduced social security. Social security payments have risen sharply and are pegged to living costs. Private pension plans have expanded rapidly, though many of them are underfunded. Programs such as medicare and medicaid, food stamps and housing subsidies have been created to cushion older citizens against poverty.

But Secretary of Labor Ray Marshall, in testimony before the Senate committee, said that while these programs have substantially reduced poverty among older citizens, many Americans still have difficulty living on their retirement incomes. And he added that the demographic trends mean that considerable strain will be placed on the economy just to continue current retirement income levels, much less improve them, particularly in the face of erosion of income by inflation.

Although Congress strengthened the financing of the social security system last year, current actuarial projections indicate that the social security tax rate will have to be increased another 4 percentage points by the year 2035 just to maintain the system's solvency at existing benefit levels, Mr. Marshall warned.

Where will the money come from? Mr. Califano reported that six major programs for the elderly run by his agency—old age insurance, survivors and disability insurance, medicare and medicaid, supplemental security income and black lung benefits—will pay out more than $94 billion to Americans over 65 this year.

Another $14 billion will be paid to this group under civil service, railroad and military retirement programs. A total of $4 billion will go to the over-65 population through housing subsidies, food stamps, social and employment services—all adding up to $112 billion or 5 percent of the gross national product and 24 percent of the Federal budget for the 1978 fiscal year.

By the year 2010, spending on these programs is expected to more than triple to $350 billion, Mr. Califano said.

By 2025, when the "senior boom" is in full swing, the total will be around $635 billion and constitute more than 10 percent of the gross national product and 40 percent of the Federal budget.

These problems impact directly on the public sector economy and will be felt by the private sector chiefly through the tax system. But the population trends will also have a direct effect on the private economy in many ways.

The shortage of younger workers, for example. Secretary Marshall commented that employers will find themselves competing for the services of workers, including older workers, and in so doing, possibly bidding up wage rates. One approach to this problem was suggested by the recent congressional action in raising the minimum age at which employers can require workers to retire from 65 to 70 years.

The demographic and social trends are also likely to work profound changes in the marketplace. Today a large part of the economy is oriented toward a youth market. An aging population will have broad implications for such industries as apparel, entertainment, recreation and travel. Older citizens will put far heavier demands on the health care industry than they do today. The home building industry will have to face up to fewer new households being started. The list is endless.

Secretaries Marshall and Califano along with other witnesses had ideas for dealing with the impending changes. Nearly all the witnesses said that ways should be found to delay retirement and extend working life as a means of easing the strain on the social security, pension and social welfare systems as well as on the labor market.

Mr. Marshall and others, for example, proposed consideration of flexible working arrangements that would let older citizens work part time or on schedules that suited their needs. Education and training to make older workers valuable to employers was also recommended.

Mr. Califano wondered whether private pensions should be encouraged or whether it might not be more equitable if the social security system did not have a "layer" of private pensions on top of it.

Because the crisis lies in the future, the economic problems presented by an aging population may seem somewhat abstract to many Americans. But as Secretary Califano noted, "The elderly are ourselves and our children."

ITEM 3. "'SENIOR BOOM' OUTLOOK CONSIDERED BY SENATE," FROM THE NATIONAL COUNCIL OF SENIOR CITIZENS' SENIOR CITIZENS NEWS, SEPTEMBER 1978

What happens when the "baby boom" boys and girls of the late forties and early fifties become the "senior boom" of the 21st century?

That question emerged as a subject for speculation—and concern—at recent Senate Committee on Aging hearings on "Retirement, Work, and Lifelong Learning."

Senator Frank Church, committee chairman, began the hearings by asking whether the United States should be dismayed, or even fearful, over a process so often described as the "graying" of our population.

"My own personal answer to that question is 'no'," he said. "It would be a sad day, indeed, for this Nation if the older persons among us were to be regarded as a drain, rather than as a rich reservoir of experience, wisdom, and creative energy.

"But my answer would also include a caveat—one which has caused these hearings to be called—a warning that we must look into issues which have concerned the Senate Committee on Aging for some time, but which now take on new urgency," Church told witnesses.

"Contributing to the urgency is the debate over social security financing and the deepening concern over the high cost of public and private pensions. Do we know what we are committing for future retirement income, and are we proceeding in the wisest way?

"Is there already a pension elite who benefit from several sources of income support, while those most in need of a genuine supplement to social security income are those least likely to enjoy it?

"Another of the most crucial questions: how is inflation compounding the cost of retirement as it is practiced today?

"We are concerned about retirement for many reasons, the most immediate of which is new legislation which deals a major blow at traditional mandatory retirement practices.

"I'm referring," he said, "to the raising of the upper age limit in the Age Discrimination in Employment Act from age 65 to 70."

Church, then introduced the first witness, Secretary of Health, Education, and Welfare, Joseph Califano, "who is quoted in the latest annual report by this committee as saying at a recent speech: 'We should remind ourselves that support for older Americans is support for all Americans. When medicare pays an older citizen's hospital bill it protects that family's savings to pay for college tuition, or a new house, or their own retirement.'"

"Today," said Secretary Califano, in his testimony, "Social security benefits are wholly exempt from taxes. It seems at least open to discussion whether a wealthy lawyer, doctor, or business executive with a $50,000 pension should receive tax free social security benefits.

"At the other end of the scale, we have to consider the plight of those for whom social security benefits are the sole source of income, and whose earning record may not entitle them to the greatest amount," he went on. "Today, the ratio between contributions and benefits is not fixed for low income workers, the ratio is 61 percent, to help make benefits more adequate; for high income workers, it falls to 35 percent. This is one strategy for helping to reduce poverty among older Americans.

"But are we doing enough? And should we do more? Is this the best way to bring people out of poverty, or is a system like supplemental security income—which focuses income only on those at the low end of the income scale—a more efficient method? How do we compare the value of efficiency and the resources it frees for serving unmet needs, against the genius of the social security system—that it brings independence to many people who would otherwise be poor, and does so with dignity, with no means test?"

Secretary Califano also addressed himself to the subject of early retirement. "There are reasons to wonder aloud whether the trend toward ever-earlier retirement is a trend in the right direction," he said. "A 1974 poll, for example, indicated that 4 million people 65 and over wanted to work, but were not doing so. With increased life expectancy, improving health, and steady increases in the education level of the elderly, this attitude could doubtless spread."

The trend toward early retirement was a concern of other witnesses, as well. Dr. Harold L. Sheppard of the American Institutes for Research's Center on Work and Aging addressed a different aspect.

"Given our current retirement age policy, will expected developments in demographic, biomedical, and economic matters be of such a nature and magnitude as to create relatively intolerable levels of support costs for a growing population of nonworking older Americans?" Dr. Sheppard asked. "And, to what extent will efforts to find solutions to this issue include reconsideration of current retirement age—especially of early retirement trends?"

Another witness, consutlant Ewan Clague, saw still other problems arising from early retirement.

"Retirement systems for organizations with high growth rates in employment have a favorable financing factor which conceals some basic problems. New employees start at the bottom of the ladder, retirement comes later. It is when the employment expansion slackens and finally comes to a halt that the reckoning comes. And an actual cutback in employment would produce a crisis in the retirement program," Clague said.

"In this situation, early retirement may be the time bomb that will upset the system. Employees young enough to get other jobs will take the retirement benefits and hunt other work, in which they can have both earnings and benefits. The older employees will be entitled to benefits which cannot be met by the contributions. The alternatives are failure to pay benefits or increases in contributions and taxes."

If older workers are to reverse the early retirement trend, witnesses agreed, more attention will have to be paid to employment opportunities.

One exchange on this subject took place between Senator Lawton Chiles (D-Fla.) and Labor Secretary Ray Marshall:

"Mr. Secretary, I just had an opportunity to see this publication entitled 'Senior Aides,'" Senator Chiles said, "which describes the program that is being funded through your Department, and administered by the NCSC. We have six of those projects funded in Florida and as I have gone around the State I see very clearly the sort of enthusiasm that older people have for this work opportunity and the kind of fulfillment and justification that they get from it.

"I don't know of a better return that we are getting for our dollar, and I just certainly hope that the Department would continue and would be broadening these programs. I think they have tremendous support in the Congress, too."

"I agree," Marshall answered. "I have worked in those programs myself and I think that it is a very good program from all perspectives, and I think that it is the next best thing that can be done for older people. The best thing is to keep the people in the economy and employed in things that they have an ability to do."

Senator Chiles took exception to this statement. "Many of these people don't want that full-time job. What I find is that a lot of these elderly people are women, for example, and they are only looking for part-time work. They will quickly tell you that with their age, or other kinds of things that they have going, they are really looking for some fulfilling hours, and they are not looking for full-time employment. I find the same true for men."

Marshall agreed that options should be open. "We also need to encourage the CETA," he added. "They now provide jobs for about 100,000 older workers and we think that as the overall level of unemployment declines, that the participation by older workers in the system should and probably will increase."

These committee hearings were the first in a projected series. "We are casting a wide net for information and ideas and perspective," Senator Church concluded. Only in this way can we seek the most helpful answers in our search for what we want retirement, work, and lifelong learning to be in this country."

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THE FEDERAL-STATE EFFORT IN LONG-TERM CARE FOR OLDER AMERICANS: NURSING HOMES AND "ALTERNATIVES"

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

CHICAGO, ILL.

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CONTENTS

Page

Opening statement by Senator Charles H. Percy 1

CHRONOLOGICAL LIST OF WITNESSES

Benton, Marjorie, president, Better Government Association, Chicago, Ill 7
Brunner, J. Terrence, executive director, Better Government Association, Chicago, Ill., accompanied by David Protess, research coordinator 8
Klein, Barbara, staff attorney and investigator, Better Government Association, Chicago, Ill 15
Karl, Peter, investigative reporter, WLS-TV, Chicago, Ill 22
May, F. Lynn, executive director, Illinois Health Care Association, Chicago, Ill 25
Canaday, Hugh, executive director, Illinois Council for Long-Term Care, Chicago, Ill 31
Waltmire, Richard, administrator, Bethany Terrace Nursing Home, Morton Grove, Ill., a division of Bethany Methodist Hospital and Homes, Chicago, Ill 35
Scheibly, James A., administrator, Champaign County Nursing Home, Urbana, Ill 39
Weiss, Suzanne, director, Accom-O-Day Care Center, Chicago, Ill 44
Jost, Dean Timothy, project director, Legal Services for the Mentally Disabled of Uptown, Uptown Legal Services, Chicago, Ill 48
Stec, Edward, Chicago, Ill., director, region V, Office of Health Standards and Quality, Health Care Financing Administration, Department of Health, Education, and Welfare 55
Quern, Arthur, director, Illinois Department of Public Aid, Springfield Ill. 57
Ahrens, Robert J., director, Mayor's Office for Senior Citizens and Handicapped, Chicago, Ill 62

APPENDIX

Letters and statements from individuals and organizations:
Item 1. Statement on behalf of the William Rainey Harper College, Palatine, Ill 71
Item 2. Statement of Irene M. Smith, executive director, Hyde Park Neighborhood Club, Chicago, Ill 73
Item 3. Statement of Lynn G. Brenne, acting executive director, Suburban Cook County Area Agency on Aging, Chicago, Ill 73
Item 4. Statement of Paul Q. Peterson, M.D., director, Illinois Department of Public Health, Springfield, Ill 75
Item 5. Statement and attachment of Pat Harrison, executive director, North Shore Visiting Nurse Association, Kenilworth, Ill 79
Item 6. Letter from Jean R. Cleland, North Shore Senior Center, Winnetka, Ill., to Senator Charles H. Percy, dated September 8, 1978 85
Item 7. Letter from Dr. Bernard D. Perlow, president, Belmont Rest Home, Inc., Chicago, Ill. to Senator Charles H. Percy, dated September 14, 1978 86
Item 8. Letter from Mark Pick, administrator, Ballard Nursing Center, Des Plaines, Ill., to Lawrence Grisham, legislative assistant to Senator Charles H. Percy, dated September 14, 1978 87

THE FEDERAL-STATE EFFORT IN LONG-TERM CARE FOR OLDER AMERICANS: NURSING HOMES AND "ALTERNATIVES"

WEDNESDAY, AUGUST 30, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Chicago, Ill.

The committee met, pursuant to notice, at 9 a.m., in room 204–A, Everett McKinley Dirksen Building, Chicago, Ill., Hon. Charles H. Percy presiding.

Present: Senator Percy.

Also present: Kathleen M. Deignan and Nancy M. Coleman, professional staff members; Jeffrey R. Lewis, minority professional staff member; Lawrence Grisham, legislative assistant to Senator Percy; and Theresa M. Forster, fiscal assistant.

OPENING STATEMENT BY SENATOR CHARLES H. PERCY, PRESIDING

Senator PERCY. I am very pleased to convene this hearing of the Senate Special Committee on Aging and ask the witnesses who comprise our first panel to take their places.

I'd like to make an opening statement that will set the framework for this hearing and put it into perspective. However, before I do, I would like to announce that we are pleased and honored to have one additional witness. At the last minute, we were able to prevail upon the president of the Better Government Association, Marjorie Benton, to be with us this morning. I think we all know her as a civic and political leader in Illinois and in the Nation, and in the last year or so, her diplomatic endeavors as a delegate to the United Nations "Special Session on Disarmament" have overshadowed even her civic activities. She will be asked, if she would—I know you haven't had much chance to prepare for it—to make an introductory comment.

The Chair would also like to express appreciation to Terry Brunner, who has interrupted a long-planned vacation with his family. Generally, I would say that that takes precedence almost over anything, but the committee felt that his presence here today was absolutely essential, and we specifically—the committee—asked if he could interrupt that vacation. We're very grateful, Terry, that you interrupted your schedule; and to the members of your family, I want to express my deep appreciation on behalf of the Senate Special Committee on Aging.

This hearing was approved by the chairman of our committee, Frank Church, and by Senator Pete Domenici, the ranking Republican

member, and it is one in a series of continuing hearings this committee has held.

It's been our feeling that we made considerable progress from the early hearings that we had in Chicago in 1970, and I think corrective action was taken. However, the revelations that were brought to our attention by the Better Government Association investigators and by WLS television, the ABC affiliate in Chicago, caused considerable concern among those of us who have devoted many years to this issue. This hearing was called, then, to give an opportunity to the nursing home industry and to the State, local, and Federal Government to assess this situation.

I have had sharp criticism through the years from nursing home owners for my criticism of the industry. As recently as yesterday, I was confronted by a nursing home owner who said, "I am here from California. I'm going to attend this hearing, and I just want you to know that conditions are outstanding in California."

Well, the committee has held numerous hearings across the country over a period of 8 years. I offered to take him, if he had the time, right then and there, to a cross section of a few of our nursing homes that I know will not meet the kind of standards that we feel are necessary. He excused himself, saying that he didn't have the time for it right then.

We've been conducting a series of investigations into issues related to long-term care of the elderly, particularly institutional care. As I've mentioned, earlier this month, the Better Government Association and WLS–TV reported on the results of a 4-month investigation into the quality of care in some Chicago area nursing homes. This hearing is being convened as a result of that reporting.

I cannot help but think, as I have seen investigation after investigation by the BGA, that the concept for this organization went back a few years to when we really only had one-party government in Cook County. The last minority party member had just been defeated.

I was explaining to my son, Roger, who I had on a hunting trip at the time, why the two-party system is so important in order to have a check and balance in Government.

He said, "Dad, you've got no check in this thing now." I said, "That's right. Something ought to be done about it."

At that time, I contacted Roy Ingersoll, president of the Borg Warner Corp. The two of us formed a committee and raised $100,000 within 1 week to entice the BGA to shift its emphasis from endorsing candidates in elections to opening an investigative arm. We went to everyone in the media, indicating that if they would assign investigative reporters, virtually unknown in those days for journalism, we would work closely with them. So, when the BGA works with news media, both entities assigning investigative reporters to the task, they are really promoting the two-party system of government, a system that really hasn't operated effectively and well in Cook County.

Again, on behalf of all of my colleagues that believe in a strong two-party government, we commend the BGA for what it has done through the years. It has set a striking example of what can be done when the spotlight of public attention is placed on problems in society.

Since I became a member of the Special Committee on Aging in 1972, I have personally participated in over 30 hearings on conditions

in nursing homes across the country. The activities of the committee have already resulted in significant improvements. For example, they have led to the indictment of some of the worst people I've ever dealt with in my life, particularly a couple in New York who have been jailed. The exploitation of the poor, particularly if they're elderly, was about the most reprehensible crime that I had seen, and we revealed sufficient information to convene grand juries at that time. Indictments were brought down and jail sentences were served by some people.

In another area of improvement, last year, the Medicare-Medicaid Anti-Fraud and Abuse Amendments Act was signed into law. This law will strengthen the capability of both the Federal and State governments to detect, prosecute, and punish instances of fraud and abuse in these programs.

In addition, in the near future, the Senate will consider the Medicare-Medicaid Administrative and Reimbursement Reform Act. This bill would simplify reimbursement formulas, make the U.S. Department of Health, Education, and Welfare the final certifying agency for nursing homes serving medicaid patients, and remove some of the restrictions which discourage the provision of home health care.

As many of you know, part of the purpose of this hearing is to discuss nursing home abuse. I first want to stress that I know there are many good quality nursing homes here in Illinois. During the 3 years that I researched and wrote a book called "Growing Old In The Country Of The Young," I constantly, in depicting some of the deplorable conditions I found in many nursing homes, a great many of them right here in Illinois, interlaced that with the good side of the story. Of course, all the attention and the headlines were given to the other side.

Just yesterday, I happened to visit again St. Joseph's Home for the Elderly in Palatine, Ill. This home is run by the Little Sisters of the Poor. It serves 200 residents.

It is such an outstanding home that when I took a poll of the people, over two-thirds of them didn't come from the area at all. They had heard about the excellent care. If every single patient left that home, there would be enough applicants on the waiting list to fill the entire home. Over 200 people are waiting to get in.

Over half of the residents have incomes below the poverty level and are receiving public assistance. There's not one iota of difference in the way they are handled.

Mother Celestine, who runs the institution as its administrator, advised me that public assistance only covers about 75 percent of the cost. Private contributions absorb 25 percent.

But this home, if anyone doubts that there can be good homes, is immaculate. It's beautiful. It's clean. The residents receive genuine loving care from the staff. The relationship between the staff and the residents is unbelievably fine.

I'm sure that there are many other such nursing homes. I've been in them across the country, and as we spotlight and focus attention on poor ones, we can just as easily find good ones that are well run, where people really care about the people that are in them. They're there because they want to help, not because they want to exploit and make a fast buck.

Unfortunately, as we saw in the BGA/WLS–TV investigation, abuse of patients continues to persist in some nursing homes. In its earlier investigations, the committee found unsanitary conditions, poor food, and poor food preparation in many nursing homes. These conditions still exist.

We found negligence on the part of nursing home staffs, negligence which often led to injury or death. These conditions often still exist.

We found that up to 40 percent of the drugs administered in nursing homes were given in error, either in the wrong dosage, or to the wrong patient.

We also found a disturbing lack of trained medical personnel in many nursing homes.

Although some improvements have been made, many committee recommendations, such as better training and of higher qualifications for nursing home personnel, have yet to be acted upon.

In today's hearing, I want to explore two issues, because many of you in the audience are experts in these fields: intergovernmental mismanagement of existing laws and regulations relating to the quality of care in nursing homes, and the necessity for alternatives to institutional care.

Who is responsible for monitoring, evaluating and certifying nursing homes? HEW has certain responsibilities. So do a number of different State agencies.

In addition, in many areas, various municipal and county agencies have also been involved in regulating nursing homes.

With so many bureaucrats in so many different places responsible for regulating nursing homes, why does patient abuse continue? It could very well be that we have too many bureaucrats doing too many different things.

Perhaps we need to streamline bureaucratic procedures and place a single agency in charge of regulating nursing homes.

Regarding alternatives to institutional care, Senator Pete Domenici, the ranking minority member of the Senate Special Committee on Aging, and I introduced legislation, S. 2009, designed to encourage the provision of home health care services.

This legislation would remove restrictions in the medicare and medicaid programs which discourage the provision of such care. Senator Domenici and I agree that legislation is long overdue to effectively assist older persons to remain independent in their own homes. Of the thousands of nursing home residents whom I have talked to, so many of them say they came to an institution as a final resort. They'd much rather stay in their own neighborhood, their own home. However, they simply couldn't do it. They needed some degree of attention and care.

We strongly agree, Senator Domenici and I, that home health care with available support services would be an effective and cost efficient alternative approach to institutional care.

In addition, we believe that a strong national home health care policy could work to deter unnecessary hospitalization and premature institutionalization.

In addition, the elderly nutrition programs, initiated by myself and Senator Edward Kennedy, continue to grow. It was only a few years ago that we both struggled on the floor of the Senate to convince

the Appropriations Committee to give us an experimental amount of $1.8 million.

Today, that program has grown to $300 million and is one of the most cost efficient and finest programs that Senator Kennedy and I have introduced.

Through the congregate meal service provided by many senior centers, elderly persons not only have the opportunity to receive a nutritious meal, but also, just as important, nourishment for the soul. They receive a welcome companionship to take away the loneliness that they find in their elderly life, their so-called golden years.

The meals-on-wheels program provides meals to those elderly and handicapped persons who are unable to leave their homes. When we first introduced this program as an experiment, just as I have visited hundreds of the congregate meal centers, I went out for a day on the Near North Side of Chicago and into Uptown and delivered meals-on-wheels to our recipients out there.

It was a thrilling experience for me, and I am happy to report that the Older Americans Act amendments, which recently passed the Senate with Senator Domenici's and mine and Senator Church's strong support, contained additional money to expand both of these nutrition programs.

Most elderly persons want to stay in their homes. We should be facilitating this instead of continuing programs and regulations which force them into unwanted and often unnecessary institutional care. This is not only better for the individual, but it's also less costly.

Improving the quality of nursing home care is a valid role of government. When owners and staffs of some nursing homes are negligent to the point of patient injury and death, tax dollars are being used in the most perverse sense. The human misery caused by patient abuse is appalling. The deception of families whose loved ones are abused in nursing homes is cruel. We simply must stop it.

We must stop funneling Federal tax dollars to unscrupulous nursing home operators. Illinois nursing homes received $225 million in Federal medicaid payments last year alone.

It is time that people began receiving better care for their money. We must consider possible actions. For one, I maintain where patient abuse is discovered in a nursing home, the owner should be put on probation for 30 days, under day-to-day monitoring.

If abuse persists, such as the failure to provide patients with a nourishing diet, then Federal funds should be cut off and the nursing home's license revoked. Patients and their families would then receive assistance in seeking an alternative nursing home.

The issues to be addressed today are very serious ones. Solutions to the problems which have been brought to our attention will require the enlightened cooperation of both Government officials and the community.

Whether the problems exists at the Federal level, in Congress, at the State level or at the local level, let's find out where these problems lie, and let's do something about them. We cannot allow these problems to persist. We must address these problems and develop some effective solutions.

We have new administrations in Washington, Springfield, and Chicago. The time is ripe now to involve these new administrations and move forward.

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Through the years, I've worked with Mayor Bilandic, and I have seen some improvement. I also worked for many years with Mayor Daley, and sometimes I was pleased with the attention given to elderly issues, and sometimes not as pleased. I'd say to Mayor Bilandic, you have a new administration, and you have a gigantic number of problems to cope with.

What I think the Senate Special Committee on Aging is really saying to you, and I speak on behalf of every single member of that committee, just as we in the Senate have seen fit to create a special committee and move it to highest priority in the Senate—and I gave up the Joint Economic Committee, which I dearly loved, in order to serve on this committee—we hope the city of Chicago, under a new administration, will place the highest priority on these problems. We look forward to working with Mayor Bilandic, who is a humanitarian who's done a great deal for the city already, particularly in working with the elderly. I have been thrilled to see revenue-sharing funds diverted to building senior citizen centers in this city that would do credit to the finest that I've ever seen in the State of Florida.

I say to my friend, Jim Thompson, that he has a lot of problems and a lot of priorities. Everyone's after him for something; but I've had complete cooperation in working on this problem with him.

We're trying to focus new attention on the elderly, to develop a new sense of priority, Governor Thompson has outstanding administrators working on it. We want to hear from them today, but we're not here to criticize. We're here to assess. We're here now to say that we do have a set of conditions that should be better.

We're not holding anyone responsible for it today, but we will if we don't have corrective action a year from now. The same thing is true, of course, of the Carter administration. That is a relatively new administration and must also cope with a lot of problems. We just want to raise this problem to the highest level.

I want to thank every one of you for taking the time to attend the hearing this morning, and I especially want to thank our witnesses for taking the time from their busy schedules to be with us.

I would like to introduce members of the Special Committee on Aging staff who are here, and also a personal staff member of mine, Lawrence Grisham, who specializes in the field of education and health with me. He was just, and I'd like to publicly announce for the first time, selected by Ebony Magazine as one of the 50 outstanding future black leaders of America. I have found him to be one of the ablest staff members that I've ever worked with.

On my left is Jeff Lewis, a minority staff member, with whom I have worked very closely.

Kathy Deignan, Nancy Coleman, and Theresa Forster are members of the Aging Committee majority staff who will be here to help any witnesses or any other members of the audience equally interested in this problem, so that I can follow through on your queries and suggestions.

Now, that's what's known in the Senate as a filibuster. You ought to know what it's like when we start a hearing and we have nine members of the Senate, each of whom has an equally long opening statement. Sometimes we adjourn for lunch before the witnesses even start.

Mrs. Benton, we're honored to have you here this morning as our first witness.

STATEMENT OF MARJORIE BENTON, PRESIDENT, BETTER GOVERNMENT ASSOCIATION, CHICAGO, ILL.

Mrs. BENTON. Thank you, Senator.

The Better Government Association's recent investigation of nursing homes with WLS–TV is the most recent example of our commitment to monitor Government programs for the sick, the elderly, and the poor.

This is not the first time we've examined the nursing home industry. BGA investigations, in 1971 and again in 1975, revealed serious problems in nursing home care.

We launched our latest investigation to check on what progress had been made in providing care for the elderly. We were also responding to complaints from citizens who were concerned about their relatives and friends who had suffered abuses from unscrupulous nursing home operators.

Our findings confirmed the fears about the abuse and neglect of the elderly.

Public policy toward the elderly has advanced in recent years. Medicaid and medicare provide the elderly with needed support, but money alone will not solve the problems we uncovered.

Despite an increase in expenditure for elderly citizens, the Government's response ultimately translates into the euphemism "Out of sight and out of mind." We must find ways to rely less on impersonal institutionalized residential care for the elderly. We should make every effort to make it possible for the elderly to stay with their families and in their own homes.

Of course, nursing homes will continue to be needed; they provide an essential service. But we must find ways to make the nursing home operators more responsive to the needs of their residents. They should not profit at the expense of the old and the poor.

We greatly appreciate the opportunity to testify here today. The Senate committee's effort is tremendously important. What you do will affect the lives of thousands of dependent elderly citizens. We don't envy your task.

Senator Percy, over the last several years, no one has demonstrated a greater commitment to improving the lives of the elderly than you have. Bold and imaginative leadership is needed to reform nursing home care. I believe that you can supply that leadership now as you have in the past.

And Senator, if you don't mind a personal note, I'd like to introduce my son, Scott, who is here today. He is going back to college at noon. He was an intern at the Better Government Association this summer, and he worked on this nursing home investigation. I just want to say to my son that I was very proud of his commitment and the kind of work that he turned out this summer. He's sitting right back over there.

Senator PERCY. Scott, I wonder if you'd stand up. [Applause.]

Mrs. BENTON. Now, Senator, I'd like to introduce J. Terrence Brunner, the executive director of the Better Government Associa-

tion. Terry will outline our efforts and recommendations, and he and our staff will answer any questions that you might have. Thank you very much.

Senator PERCY. Thank you very much.

STATEMENT OF J. TERRENCE BRUNNER, EXECUTIVE DIRECTOR, BETTER GOVERNMENT ASSOCIATION, CHICAGO, ILL., ACCOMPANIED BY DAVID PROTESS, RESEARCH COORDINATOR

Mr. BRUNNER. Thanks for all the nice, kind words. I think on behalf of the BGA, we ought to say right up front how we've appreciated—not only this year, but over the many years—the interest that you and the committee have shown for the care of the aging in Illinois, not only in the sort of hearings we had over the medicaid series in Washington, but those Sunday mornings when you and I went out cold and called on various nursing homes on the North Side and talked to people firsthand to find out what it's really like.

I don't think there are many public servants in this country who would take their valuable time to do that sort of thing, and certainly BGA has—we really appreciate it.

Senator PERCY. I might say sometimes we were not always welcome. We made a habit of not letting people know we were coming, and the door was barred at one time to us until I became rather insistent—that I felt the local police district would see to it that I got in unless they offered us the courtesy of investigating it.

But a surprise visit in a nursing home terrifies some operators. Some of them welcome us. Some of them are terrified by it because of the conditions you find when you walk in.

Mr. BRUNNER. Senator, today I have with me Dave Protess, who is our research coordinator, and Barbara Klein, who is an attorney on our staff and worked for a period of time in one of the nursing homes. She is going to testify to her experiences.

Also with us are Peter Manikas, Lee Norrgard, and Mindy Trossman. All had a part one way or another in the project; Peter Karl, from WLS–TV, led that project, along with Doug Longhini, who used to be with us and is now with WLS–TV.

I hope that the testimony today and the work of the committee will lead to substantial improvement in the lives of hundreds of thousands of nursing home residents in Illinois and throughout the country.

This March, the BGA and WLS Target Seven Investigative Unit began a 4-month probe of the nursing home industry in Illinois. The investigation was the second major inquiry into nursing home conditions known in a 7-year period.

Senator, I'm sorry to report that the quality of resident care in Illinois nursing homes continues to be grossly inadequate. Superficial improvements in the facilities have worked a cruel hoax on patients and relatives by raising their expectations above the facts.

The lives and happiness of our aging and ailing citizens have been subordinated to an assortment of profiteers, ill-trained, or disinterested professionals, and an invisible and ineffectual bureaucracy that spends billions but cannot even measure the quality of care delivered.

The questions are: How many newspaper and television exposés will it take before change is brought about in this industry? How many outcries of public indignation? How many public hearings? How many well-intentioned legislative reforms?

The instances of abuse and neglect we found in nursing homes are so fundamental and so wide spread that one is compelled to question whether nursing homes themselves are capable of providing good care.

There is no substitute, obviously, for tender loving care at home. Yet almost all of the Government incentives are for institutional care that is more costly and impersonal.

Caring for our elderly at home has become less and less the norm. Since the enactment of medicare and medicaid in 1965, the numbers of nursing homes and nursing home patients have proliferated. The Federal Government spends billions of dollars for nursing homes but comparatively little for alternatives to nursing homes: Day care centers, group homes, meals-on-wheels, visiting nurses. There are no tax benefits to assist families with the financial burden of a home-bound elderly loved one.

For a very high price, we have bought a public policy of killing our elderly by neglect.

Now, Senator, as you know, we have a long history of involvement in these issues. Our concern for the plight of nursing home residents is traceable back to 1971, when the BGA and the Chicago Tribune joined forces to investigate and expose shocking abuses in Illinois nursing homes. Our investigative reporters worked undercover in 20 nursing homes at that time and documented filth, inadequate food, patient neglect, and fraud.

Numerous governmental reforms were enacted in the wake of that 1971 investigation. Federal and State legislation strengthened nursing home standards and enforcement procedures, the State enforcement staff doubled in size, the Illinois Department of Public Health promulgated comprehensive new regulations in 1975, and the city of Chicago stepped up inspections.

Several of the worst homes were closed by the State, and others were voluntarily closed by owners after funding was withdrawn.

The investigation has been largely credited with prompting many of these reforms. Yet despite this overwhelming governmental and public response, the BGA committed its resources to a followup probe of nursing home operations in 1978.

Scores of telephone calls coming to our office and channel 7, letters reporting continued abuses and neglect in nursing homes, caused us to question whether these apparent reforms had been effective.

So this time, we went about choosing a little bit of a different methodology. Our investigation was even more in-depth than the original probe. This time, BGA investigators worked undercover in eight proprietary nursing homes.

Before going to work, each investigator studied the State regulations and the current law and literature on long-term care facilities. Our investigators didn't stay in the homes for just a few days. Our average stay was over 2 weeks. I think we had eight investigators totaling 13 weeks in nursing homes this time, whereas in the past we had people in for just a day or two at a time.

In some cases, we worked for more than a month in a particular home. Investigators worked in a variety of responsible positions as activity directors, social rehabilitation workers, nurses' aides, and cooks, as well as maintenance workers and orderlies.

Thus, we were able to minimize the possibility that the regulatory violations we witnessed were transitory or isolated occurrences. We were able to study nursing home operations from the inside from a variety of perspectives, and recorded our findings on the film that we'll see today.

Our on-the-scene observations were buttressed with an analysis of Federal inspection reports for 75 of Chicago's 89 licensed skilled and intermediate care facilities, and interviews with Government officials, nursing home employees, and community experts in the long-term care field.

The final report was aired in an eight-part series on WLS–TV between July 13 and 21. Millions of viewers in Chicago watched that series. This was one of the largest audiences in the history of Eyewitness News.

In fact, I think the initial night, Karl, was the highest audience rating they've ever had on channel 7.

Mr. Chairman, this is what we found. The grossest abuses are not as prevalent as they once were, and physical plants are improved. However, our study of State and Federal inspection reports reveal that 6 of 10 homes still violate personal care regulations, almost half provide insufficient nursing and medical care, and most are not prepared for medical emergencies.

Senator PERCY. How extensive a sample did you make to come to these conclusions?

Mr. BRUNNER. Well, that was on the basis, Senator, of 75 of the 89 reports on file with HEW. In other words, every one that was on file, we looked at, and that was buttressed, of course, by the eyewitness accounts that we're going to see on the film and from Barbara.

State inspections conducted under contract with HEW focus on "bricks and mortar"—the size, layout, and recordkeeping at a home, not on patient care. HEW has not even defined patient care standards for medicare and medicaid certification, even though nationally, HEW funds are half of all nursing home revenues.

Regulation by the eight State agencies with oversight responsibilities for nursing homes is characterized by overlap, lack of coordination, and buckpassing. Enforcement of regulations is so lax that not a single home was closed by the State last year.

What we saw on the inside was even worse. BGA investigators working in homes witnessed an 80-year old woman beaten and gagged by laughing nurses' aides, residents going hungry while aides ate their food, and administrators paying themselves more in salary than they spend to feed their residents.

We saw residents left in their beds all day and all night, lying in their own wastes; improper food preparation; inadequate control of drugs; and fraud in the charting of services not rendered.

Senator, I could go on and on reciting these abuses. I think the film tells that story better than I can. However, I only want to emphasize to you that the problems are as real as they are widespread.

We're also going to have more, as I mentioned, from Miss Klein on her firsthand experiences in the home.

Some of the recommendations——

Senator PERCY. Before you get into recommendations, could I ask whether you know of any other areas subject to certification inspection where the proportion is so high of failure to meet regulations?

Mr. BRUNNER. No, I don't, Senator.

Obviously, what disturbed us, or what we couldn't understand, was how the State of Illinois—in effect, the Federal Government—could sit with these reports done by their inspectors in their files showing that almost—you're talking about 75 of 89, I believe the number is, reports on nursing homes in which their own inspectors are telling them conditions are terrible, and yet nothing is being done.

We went around and looked and talked to the Government officials involved. They all said, "Well, gee, that's their problem. That's their problem." It was as if there were nine people in a circle all pointing to the next person in line, it being their responsibility.

There's a complete and utter lack of anybody accepting the responsibility, and these are not findings that we made. Our findings merely buttressed the findings of the State and Federal agencies involved.

Senator PERCY. In this case, the buck just doesn't stop anyplace.

Mr. KARL. I'd like to point out, too, that our investigation has been continuing, and when we went back to the Department of Public Health and reexamined some records, looking for other things, personnel from the Department of Public Health talked to our investigators and researchers, and said that they would have liked to have known that we were conducting this investigation because they could have told us about some homes that we could have really gone into and found a lot of things. Apparently, if the people in the various departments know that this type of thing is going on, it just bewilders me. As was mentioned in our report, not one home was closed last year.

Senator PERCY. The whole purpose that I found of public hearings, in 12 years as a Senator, is to flush out these things, to alert people that we are anxious to have this information, to let public officials know we're going to have a body of information soon on this that will be overwhelming, and that they better start to do something about it.

One other question, before you continue. You mentioned conditions of people who are bedridden.

Yesterday, when I talked with Mother Celestine, the administrator of the St. Joseph's Home for the Elderly, I asked her about the Illinois point system. I would like to advise the State officials that I will ask them for their judgment in this matter. They didn't create it. They're not responsible for it. They're just administering what is now the system. Mother Celestine indicated that, in her judgment, the system is set up to provide incentives for people to do exactly what shouldn't be done with the elderly.

She said, "We try to keep them active, out of bed, doing things. We have all kinds of activities, so that they will develop a good, healthy appetite, want good meals, and so forth."

The opposite seems to be the effect of the point system in Illinois, where the more bedridden patients there are, the higher the payment that is made to the nursing home.

Now, when we subpenaed the records, we found a very high proportion of drugs or sedatives. Why were those older people given so many sedatives? They can't sleep because they're too inactive. A person sleeps after a day of activity. But if patients are in bed a great deal of time, they get bedsores, and the nursing home gets paid for more bedsores. You dope them up with sedatives, you don't have to feed them as much, you don't attend to them as much, you don't need as much care for them, and they just sit there like vegetables day after day, reaping profits for the unscrupulous owner.

Now, how do you overcome that? Do you find that this is a problem that we've got to cope with and that those people from the State, local, and Federal governments following you in the witness chair should respond to?

Mr. BRUNNER. Senator, one of the recommendations we make is that somehow we've got to take the profit out of the point system. We must change it around in providing incentives and rewards for quality care, as opposed to bad care or poor care or care which ends up with people being as sick as possible to get the most reimbursement.

I think that Barbara Klein is going to talk more about that in a firsthand way—her actual observations, what our testimony is all about. I think what we found this time was the fact, though everything looks a lot nicer than it did last time, the quality of care for people has not improved. That should be what we're really striving for, as you suggested, not the "bricks and mortar."

Senator PERCY. Why don't you just continue?

Mr. BRUNNER. Thank you, Senator.

I'd like to devote the remainder of my testimony to discussing the root causes of failure in nursing home reforms and recommending some avenues that this committee might consider taking to change the situation.

The most significant action the committee can take is to continue to press vigorously for alternatives to nursing home care, as you've suggested in the bill that you've sponsored with Senator Domenici.

For example, the Federal Government should consider tax incentives—loans and subsidies to families with elderly residents to help keep the elderly in their own homes.

Financial support for neighborhood projects that provide supportive services for the elderly is sorely needed.

We must act now to reverse the flow of Government incentives from institutional care to home care. Such a major shift in public policy cannot be accomplished overnight, so we must begin now to seriously experiment with a combination of strategies to improve home care.

Of course, there will always be a segment of our population for whom nursing home care is the only alternative. Nursing homes will continue to be necessary. Therefore, Government must set as one of its most urgent priorities the task of bringing nursing homes up to standards and making sure they stay that way. Any further delay is intolerable.

We concluded in our study that the major causes of failure in nursing home reforms are the lack of enforcement of existing regulations, the Federal Government's failure to develop meaningful guidelines for quality patient care, and a reimbursement system which

encourages financial abuses and cost-cutting at the expense of patient's needs.

I'd like to discuss enforcement, bureaucratic buckpassing, and delay that we found.

Illinois nursing homes are regulated, Senator, by eight State offices, 22 Federal offices, and several local agencies. The primary responsibility for inspecting nursing homes rests with the State's department of public health.

Now, HEW has delegated to them the responsibility for inspecting nursing homes to insure compliance with medicare and medicaid standards, but HEW's region V staff is only capable of validating 3 percent of the State reports.

With respect to intermediate care facilities which can only receive medicaid funds, HEW has completely abdicated any meaningful oversight or regulatory role. Federal bureaucrats perfunctorily approve the recommendations of the State for recertification. HEW says that since the State pays half the bills for medicaid in intermediate care facilities, the Federal Government has no jurisdiction.

Let me give you an example of how this abdication of responsibility works in practice. BGA investigators compared the HEW/State inspection report dated September 1977 for the Belmont Rest Home to the city of Chicago inspection report for the same period.

The HEW/State form listed only a few violations in recordkeeping. The city of Chicago report documented page after page of serious problems. HEW didn't even know that the Belmont Rest Home, an intermediate care facility, had been threatened with revocation of its city license.

We had our own investigator at Belmont. He kept a 50-page log of his 3 weeks as an activity director at the home. Among the things he saw at Belmont were rodents in the kitchen and a patient who burned herself with cigarettes while the staff at the home stood by and did nothing.

Even when serious patient care problems are documented by inspectors, nothing much is done about them. Reports full of abuses sit in the files collecting dust. Inspectors' recommendations for delicensure or decertification are almost uniformly overidden by departmental superiors.

Senator PERCY. Do you know if a State license has been revoked anyplace in Illinois this past year?

Mr. BRUNNER. No; we do not, sir.

Mr. PROTESS. In fact, none have.

Senator PERCY. Not a single one?

Mr. PROTESS. Not a single one.

Senator PERCY. This is like President Carter who, when I sat next to him, said there were 2 million civil servants in the country and only 226 out of 2 million had been dismissed last year for incompetence. What he didn't know is 142 of them since then have been restored to the Federal payroll with backpay. It appears we have here about the same sort of situation which called for civil service reform, which passed the Senate last Friday. That will shake up, I think, the Federal bureaucracy. Maybe it will shake it up here, also.

Mr. BRUNNER. Senator, so far the response of the agencies involved has been buckpassing, redtape, and delay. Everyone says that it is some other agency's job to enforce the laws.

Current proposals before HEW would have nursing-home operators inspect their own facilities, thereby further delegating authority from public agencies to the private sector. These proposals will only aggravate the problems we have witnessed.

The Federal Government must assume a more assertive and meaningful regulatory role with respect to both intermediate and skilled facilities. We're not advocating that HEW conduct routine inspections, but rather, that the Department be prepared to intervene when there is a void at the State level with a full panoply of remedies. If we need new laws to do this, let's get them.

I think that we'd like to focus for a moment, Senator, on a thing called QES. The Federal standards and State inspections focus on "bricks and mortar," not patient care. Implicit in this policy is the false assumption that if a home has the potential for quality care, quality care will be delivered.

Our investigators discovered that you don't have to look very deep beneath the surface of many first-class physical plants to find horrible problems. Now, HEW has no system for meaningfully evaluating the quality of care in a home.

QES—the quality evaluation system—is a survey procedure designed by an Illinois hospital to assess the quality of patient care in nursing homes.

In 1974, HEW gave the Illinois Department of Public Health a $1 million grant to adapt and test QES as a regulatory tool in nursing homes. Everyone seems to agree that QES proved to be an effective means of assessing patient care in Illinois nursing homes, but QES isn't being used in Illinois.

The regional office of HEW says that QES doesn't tell them what the regulations say they need to know, even though they admit QES does validly measure patient care.

Washington officials of the Office of Nursing Home Affairs commended QES, but eventually yielded to the decision of the regional office.

Now, HEW hopes to come up with another quality evaluating tool by 1980. In the meantime, QES is sitting in the files collecting dust. "Bricks and mortar" inspections continue.

HEW should take a second look at QES. Patient care is too important for implementation of QES to be unnecessarily delayed. We also urge that comparative rankings of nursing homes be made available to every interested member of the public.

We have a couple of other suggestions, Senator, those being that obviously nursing homes should be dealt with by individuals who are personally interested and committed to improving nursing home care, and that they should be continuously involved in this operation.

Therefore, nursing homes receiving public funds should be required to establish, we believe, advisory boards composed of the residents' relatives, neighborhood leaders, health care professionals, nursing home personnel, as well as nursing home residents.

We further suggest, as I mentioned previously, that we've got to take a hard look at the point system in Illinois. We've got to come up with a point system that looks rather to quality care as opposed to financial incentives for people who are in the worst physical condition.

In conclusion, we'd like to say that the main thrust of our testimony today is that nursing homes do not provide substantially better care for the residents in 1978 than they did in 1971, despite numerous reform efforts by government.

Unfortunately, the improvements we've observed are largely cosmetic, primarily related to the appearance of the structure and facilities that house the residents. That's not to say that nursing homes have not changed, however.

The enormous expansion of governments' role in financing and regulating nursing homes has led to the creation of a massive institutional setting for providing care. The placement in nursing homes of the mentally ill, crippled children, and other dependent groups who have been removed from public institutions has significantly altered the face of the nursing home population.

In little more than a decade, many nursing homes have come to resemble 19th century almshouses for the poor. They have become institutionalized, publicly supported dumping grounds for society's castoffs.

Federal policy does not presently address this reality, which accounts for much of the governmental fragmentation at the State level.

We need a comprehensive national policy to meet the needs of our dependent population, more and more of whom reside in nursing homes.

This committee can help in the development of such a policy so that the bleak story of nursing home abuses shall not have to be told.

At this time, I'd like to again introduce Barbara Klein, who is a lawyer on our staff and had some firsthand experiences in a nursing home.

Senator PERCY. I'd like to say, from a personal standpoint, that Barbara Klein is well known to me. She served in my Senate office in Chicago. She did research and legal work, was an absolutely outstanding member of my staff, and I deeply resent her being stolen away.

STATEMENT OF BARBARA KLEIN, STAFF ATTORNEY AND INVESTIGATOR, BETTER GOVERNMENT ASSOCIATION, CHICAGO, ILL.

Ms. KLEIN. Thank you very much for those kind words, Senator.

From May 16 until May 29, I believe, I worked in the Ballard Nursing Center in Des Plaines as a nurses' aide, and I just want to describe to you a little bit of what I saw there.

I could only characterize conditions at the home as unconscionable neglect and lack of preparedness for any kind of emergency.

You mentioned earlier your questions about reimbursement. Well, we've been told by employees of nursing homes that it is not uncommon for nursing home personnel to label a patient in the entrance records or the nursing notes as belligerent when they are cooperative, forgetful when they are alert, or incontinent when they could use the bathroom with assistance.

At Ballard, I found that charting for range-of-motion exercises—which is a simple movement of the joints to keep the arms and legs as flexible as possible—were not given, but they were charted.

I also found in the home no towels or washcloths in any of the patients' bathrooms. Patients were often not kept clean and dry. Some were left all day and all night lying in their own wastes.

There was a lack of control of drugs in that there was, I think, what's called borrowing drugs, where the nurse will take a prescription from one patient and give it to another patient.

Senator PERCY. What's the purpose of that, Ms. Klein?

Ms. KLEIN. Well, it's for the convenience of the nurse. If they don't happen to have enough, say, liquid Valium in one patient's medicine chest, they will just take it from another patient's supply. There's really nothing harmful about it.

Senator PERCY. Do they keep the medical history of the patient receiving the drugs complete and adequate?

Ms. KLEIN. Well, I really couldn't say overall how this affects control of drugs, but it is a procedure that is not considered proper under the regulations.

Senator PERCY. Is it true that under medicare and medicaid simple things like aspirin are supposed to be covered in the basic costs, but the nursing home is reimbursed for all the costs of drugs?

Ms. KLEIN. Right. I'm not sure about that, Senator. When I was working at the home, one patient needed some talcum powder, and I went to the nurse and asked if there was any available. She said no, that that is something that they must supply themselves, and so there was no talcum powder for this woman who had a rash.

Senator PERCY. In other words, maybe talcum powder isn't allowable?

Ms. KLEIN. It is an extra.

Senator PERCY. As an extra cost. It's supposed to be in the basic cost, but the nurse simply said "We don't have it. It is up to the patient to bring it himself."

If we come to conclusions in these hearings, I'd appreciate hearing from somebody in the audience having different information. We want to make this record as accurate as we possibly can, and sometimes we come to conclusions that possibly are wrong. I certainly don't want to do that.

Ms. KLEIN. I suspect that perhaps aspirin and Tylenol are not included in the basic costs because most of these are only given to patients on prescriptions from their doctors.

The first night that I worked in the home, another aide left early, and I was left to care for 50 patients on the floor, 20 of them needing skilled care.

I had never had any experience as a nurses' aide before and, as I said before, this was my first night, so I did the best I could, but I think that's representative of the attitude of many aides, "Let someone else do it."

The nurses exercise very little supervision over the auxiliary staff and, in fact, in the home where I worked there was a problem in that some of the nurses were unable to speak English well enough to communicate with patients. When I had a problem with the patient and I went to the nurse, I had to give the number because they couldn't understand the name.

Senator PERCY. Is it also true among some doctors?

Ms. KLEIN. Not any doctors. I observed no doctors during my 2 weeks at the home.

Senator PERCY. If they'd had a legal problem, you might have been qualified, but if they had a stomach ache, you were not sure of what to do.

Ms. KLEIN. I told them when I started work I had been to 1 year of law school.

I told a patient there—he was so delighted—he said, "Well, can you help me get out of here, since you have some legal knowledge?" I told him to perhaps call the legal aid foundation and they would be able to assist him.

Senator PERCY. Well, when you were given such responsibility, the sole person in charge of the care of 50 patients, what time of day was that?

Ms. KLEIN. This was about 7:30 at night.

Senator PERCY. From 7:30 at night until when?

Ms. KLEIN. Until 11 o'clock at night.

Senator PERCY. Until 11 o'clock, the sole person taking care of 50 people, any one of whom might have had some medical problem at that time. What qualifications did you tell the nursing home you had?

Ms. KLEIN. Well, I told them that I had never worked in a nursing home before, that I was a college graduate with a major in philosophy and 1 year of law school and no medical experience of any kind.

I was very terrified when I was left to care for these patients, and I began demanding that some of the other aides assist me. This is when I observed the worst case of abuse and neglect in our entire investigation.

Two other nurses' aides came to help me put an 80-year-old woman in bed. She was somewhat upset about being put in bed and was cursing at the aides and myself.

They took her and slapped her, strapped her down in the bed in a posy vest. I noticed they slapped her on the buttock, which was inflamed with a rash, and they took pieces of Kleenex tissue and shoved it in her mouth and cursed at her—swore at her. Of course, while they were doing this, they were laughing and seemed to be enjoying abusing her, so that was the assistance that I got.

It was most disturbing to me my first night.

Senator PERCY. What was your salary when you were hired?

Ms. KLEIN. I believe I made $3.50 an hour as an aide. That was the regular starting salary.

And I just would like to add that this was a first-class physical plant, a very modern, well-equipped nursing home, but when you look beneath the surface, you find there was one mop for three floors, there was no oxygen available on two floors, the nursing staff was very much overworked, and there were just quite a few problems.

Senator PERCY. Have you put into the record the name of this place?

Ms. KLEIN. Yes, I did. It's the Ballard Nursing Center in Des Plaines, Ill.

Mr. BRUNNER. Senator, if there are any further questions of Ms. Klein, what we'd like to do at this point is show you the film. It's undercover photographs taken within the home. I think it's obviously one of the best television pieces of its kind that's ever been done.

In the past, I think there's always been a criticism that, "Well, it wasn't really that bad," this time, we've been lucky enough to capture on film through some very innovative techniques the actual television footage of what went on in these homes, and it's very revealing.

I'd like to turn it over to Peter Karl of WLS at this time.

Senator PERCY. I'm very grateful for this, because I was not here, and the members of the staff were not here, at the time of the showing of this film. I would very much like to see it.

I would suggest for those in the audience who cannot see the television screen, please feel free to come up anyplace. It's a short film. How long is it, Mr. Brunner?

Mr. KARL. Fourteen minutes.

Senator PERCY. Fourteen minutes, so just come up and stand anyplace that would be convenient to you, including right up here on the platform with us.

[Whereupon, a videotape presentation was shown.]

Senator PERCY. Thank you very much. If we could resume our seats. I want to thank WLS television for that.

I've probably been in more nursing homes than almost anyone in the country, and the conditions depicted in the film are not exaggerated for many of the homes that I have visited.

The first question I'd like to put to Mrs. Benton is what prompted BGA to enter the nursing home investigation, and how did you come together with WLS television?

Mrs. BENTON. Senator, as I mentioned in my statement, this is simply a followup to earlier investigations, one we did in 1971 and again in 1975.

Recently, the BGA has tried to not just investigate and expose conditions, but to continually follow up and see if needed improvements in legislation are taking place. So with that philosophy in mind, we like to keep going back to investigations that we made to make sure that we're getting the results that we want.

I frankly cannot answer how this time we got hooked up with WLS. Maybe Pete can tell us how we did that.

Mr. KARL. I just received a phone call from a person who was very distressed about the lack of oxygen, and I went to meet with Terry. We were kind of hesitant at first because other investigations had been conducted, but then, as I think he mentioned in his opening remarks, we wanted to see if anything had been done. We were prepared at that time, if we devoted resources and time to it, if we could find that a lot of things had changed, that we would then report that or report whatever we found. We went to homes, and you saw the result.

Senator PERCY. What was the methodology used by BGA in selecting nursing homes for your investigations?

Mr. BRUNNER. Well, it was really done on a random basis, Senator. I think we felt as many other people did, before we began the investigation, that the situation in Illinois was probably pretty good.

As you know, since the 1971 exposé by the BGA and Tribune, there have been a lot of reforms and State publications with language indicating how good things were as a result of that investigation. There have been spot checks. You yourself had done them with us, and we really felt things were probably pretty good, so on a basis of looking at priorities and what ought to be investigated by an organization like the BGA, it wasn't nearly at the top.

Peter came in with this particular story of Alma Weny who died because of an apparent lack of oxygen, and we agreed with him to take

a look at that particular situation. But as we got into it, we kept putting more people into more homes and found it was very easy to get positions that were not just janitors, as we had in the past, or people working on the night crew, but people who were like Barbara—nurses' aides with responsible positions. What we did was leave the people in a lot longer than we ever had before in an undercover sense, and the results, as we've shown you, really were rather startling.

Senator PERCY. How many nursing homes did you actually investigate?

Mr. BRUNNER. Well, maybe Dave Protess, who is our research coordinator who directed it, would give you the exact numbers.

Senator PERCY. Would you identify yourself, please?

Mr. PROTESS. I'm David Protess, research coordinator for BGA.

We, Senator, went into eight nursing homes, stayed an average of time of 2 weeks, although we stayed as long as a month. The homes were chosen in part out of the phone book, in part from tips from citizens who complained of conditions in those homes.

I think one of the important things to consider about those homes and about our working in them is that in response to a question that you asked earlier of Barbara Klein about her qualifications, we had seven investigators working in the eight homes. None of the seven investigators had any kind of experience or training in the health care field. None had any knowledge whatsoever how to deal with patient needs, yet they were immediately placed in positions of responsibility, and six of the seven investigators who worked in the homes did not even have reference checks. The one investigator who had experience in the nursing field ended up working a larger home.

Senator PERCY. Were any of the investigators put in a position where they had access to drugs or could administer drugs to patients?

Mr. PROTESS. Yes; as a matter of fact, several were in that position. A very common condition was to have drugs left out in the open where either patients or any personnel, including nonmedical personnel, could administer them to patients.

Senator PERCY. In other words, if they'd wanted to be a pusher, they would have been able to get these drugs without a prescription? They could have used these drugs or sold them outside?

Mr. PROTESS. Absolutely.

Senator PERCY. Could they have administered them to patients?

Mr. PROTESS. Prescription drugs were left on carts in the hall unattended, where anyone could have easily obtained them and sold them elsewhere or administered them to patients themselves.

Senator PERCY. Mr. Brunner, in the text of your testimony you describe nursing homes as providing poor quality of care. I wonder if you could expand on what you consider to be poor quality care?

Mr. BRUNNER. Well, Senator, I think Barbara has indicated that her firsthand experiences—maybe Dave would like to elaborate on that point from the standpoint of the other investigative reports he directed.

Mr. PROTESS. I'd say the main problem as far as quality of care goes is not so much a question of abuse, it's a question of inattention.

When patients need to have attention for anything, including going to the washroom, having their meals prepared, there's essentially two problems. There are not enough people around to meet those needs,

and second, the people who are available to meet those needs are untrained; 90 percent of the care that people receive in nursing homes in the Chicago area is provided by nurses' aides, and there are no standards that nursing home owners have to be obliged to follow for hiring qualified nurses' aides. Many of them are just high school students.

We often found that they were abusive in their treatment to the patients, but the main thing is that they were unqualified.

Senator PERCY. When I went into nursing homes, beginning, I suppose, 8 years ago, on an intensive basis, I found peeling paint, the stench of urine, and really despicable sanitary conditions.

When the word got out that I was in nursing homes virtually every weekend, and it spread rather rapidly, I understand there was a tremendous sale of paint. [Laughter.]

There was a lot of clean up and painting being done. In fact, it was seldom in subsequent weekends that I wouldn't go in and see painting being done on Saturdays and Sundays, on an overtime basis.

Maybe they were nonunion workers doing a little offduty work. I'm not sure, but I do know that there was an awfully lot of painting.

Now, the cosmetic improvements were done. Are the physical facilities somewhat improved, or much more improved, than they were before?

Mr. PROTESS. We found that perhaps the single most important change in nursing home operations in terms of improvement were the cosmetic changes in the "bricks and mortar" sense.

Nursing homes looked better. The physical plant is generally cleaner.

On the other hand, that creates additional problems, because these changes have often been superficial and have nothing to do with resident care. People who were often thinking of placing a resident or family member into that home were tricked into thinking the home is a quality home and provides quality care.

There is a substantial difference between a quality physical plant and health care center that meets residents' needs.

Senator PERCY. Now, the eight homes that you picked on a random basis to make thorough investigations, spending a couple of weeks in each one of them, how many would you say were classified by your own definition as providing poor quality care?

Mr. PROTESS. I would say all of them provided poor quality care. In fact, we found numerous instances in each one of the homes that would cause the State, under its own regulations, to remove the license or the certification for the home. Yet not in one case, in any of the homes in the State of Illinois, was that done.

Senator PERCY. Now, I have testified on there being good nursing homes, and I've tried to really balance that out as an incentive for others and to prove that all is not despair.

Could any of you comment on good homes that you have been in to balance this record out and indicate the prevalence of them? Also, is there a great problem in that the Federal Government is not providing sufficient money to enable a nursing home operator to meet all his expenses and still have a reasonable profit, which I support—that a reasonable profit should be obtainable in a proprietary nursing home?

Mr. KARL. We went into the home that you talk about, except we went to the one in Chicago, Little Sisters of the Poor, St. Augustine's. They are a not-for-profit home, as you're aware of.

Senator PERCY. That's right.

Mr. KARL. The conditions there were unbelievably clean. The patients all seemed to be relatively happy.

The same cameraman who did our undercover work is also the cameraman who went there. We went unannounced, came in and talked to the nuns, told them we'd like to do a story right about mealtime to see how they were preparing meals. We were welcomed and went in.

After talking to the nun, Sister Madeline, we found that the not-for-profit home operates with a half a million dollar deficit every year. The amount of money that they spend on a breakfast meal, for example, would equal what most homes spend for all three meals.

We also talked to her about the types of people that were on her staff. They have 13 or 16 nuns who receive no salary from the nursing home whatsoever. They run a half a million dollar deficit without paying any administrative or any major costs in terms of personnel, and they provide a good service.

And I'm sure that there are other nursing homes that provide good service. We took our sample and we went into the homes, and we just reported on what we found in the homes that we went into.

Mr. PROTESS. But I think it's important to point out that in addition to the eight homes we were in, we also reviewed virtually all the inspection reports for all homes in the city of Chicago and that those homes contained numerous findings made by the inspectors themselves that indicate tremendous inadequacies.

Senator PERCY. I haven't reached a conclusion yet on whether we've gone the wrong route on proprietary homes. I came out of the private sector, and I happen to believe that incentives and so forth are adequate many times to provide goods and services to this country.

I have been in some good proprietary homes, and to the members of the Nursing Home Association here today, the professionals in that field, I cordially invite you to give us the names of some of the proprietary homes in the Chicago area that you are proud of, that can be inspected at any time of day or night. I invite the investigators to take a look at some of those homes.

I have been in some that were very good, one in particular on the Northwest side, which is run by a Czech refugee driven out of his own country, who has a dedication to taking care of old people. He operates an extraordinarily good nursing home and makes a profit on it.

So I wouldn't want to come yet to the conclusion that we went the wrong route, because it would be terrible to abandon the whole thing. What we want to do is make it better.

As a result of your investigation, is it your opinion that there is a preponderance of poor quality nursing home care in the Chicago area?

Mr. BRUNNER. Yes, certainly, Senator.

Senator PERCY. What types of reactions have you received from the general public?

Mrs. Benton, you have a broad contact with the general public. What reactions have you had back from people, and others of you, also?

Mrs. BENTON. I think, again, people are appalled and dismayed at how our society handles its elderly. I think there's been a certain amount of, "What can we possibly do to right this?" And I think for the first time, the BGA has come up with a list of recommenda-

tions that might finally make the difference in how we can take care of the elderly in our society.

The response of our board has been—we've been very proud of this investigation, very proud of WLS–TV, and I think the response we've gotten, the phone calls and letters and financial support for the BGA, has been very, very encouraging.

Mr. BRUNNER. Senator, I'd like to add one other point. I think that, as you know, I've been at the BGA for 7 or 8 years now, and it's very discouraging to have done an investigation like this and had the sort of results we've done and seen the reform and then go back out and see it all over again. Therefore, I think that the sorts of recommendations we're suggesting this time are in line with the kinds of ideas that are in the bill you mention, by yourself and Senator Domenici—an attempt to go a different route to come up with some other sort of solution other than to say, "We simply need more regulation." Obviously, we've gotten more regulation, and the standard of medical care within these homes has not improved. So what we're trying to do, as I'm sure you on the Committee on Aging are trying to do, is grasp for other solutions to the problem.

It becomes very apparent that the whole idea of putting older people in institutions is intrinsically not a very good one in comparison with keeping them in their own home. Yet all of the incentives are in that direction. Therefore, the recommendations which we made, I think, are those of an organization that's come up and found that our previous ideas that we suggested, many of which were implemented by the State and Federal governments, didn't really work very well to solve the problem.

I think that Peter Karl ought to comment from the standpoint of the media on the public response to the series, which was your question.

STATEMENT OF PETER KARL, INVESTIGATIVE REPORTER, WLS–TV, CHICAGO, ILL.

Mr. KARL. I think that we, in our newsroom, haven't had a response to anything like we've had a response to this, and we're continuing to get calls.

One of the biggest concerns that we have found from the callers and the letters that we have received—some against the series, saying that we weren't being objective and that type of thing—but the biggest concern I think that people have is that when they have to face the reality of placing someone in a nursing home, that they don't exactly know where to go. They go to the government offices and say, "Well, here's an inspection report," and they say, "Go take a look at it." You have to make your own decisions, because there's no way to rank the nursing homes.

I think we tried to point that out. This is what QES at least attempts to do, and people are very frustrated. They can go to a nursing home and they can see the first floor where most of the ambulatory patients are, and that type of thing, and feel that this is a good nursing home, but only find that they could be dismayed in the future.

I don't want to sit here and say there are no good nursing homes, either. I've been in several that were outstanding. The question, I think, is the motivation of the staff, and I think that that's one of the toughest things to do in order to provide good quality care.

The people, though, that call us really have a hard time determining how to find out if the quality of care is good and if the home itself is good.

Senator PERCY. When people call in and talk about problems that they're having in nursing homes, where do you refer them? Is there one agency that you can turn them over to that can help them?

Mr. PROTESS. There is no such place right now, Senator. There is a largely voluntarily staffed ombudsman within the State office of aging but the information is that that ombudsman is not related to the quality of care nursing homes in Chicago can provide.

If a citizen in the city of Chicago wants to find out how good a particular nursing home is, he has no place to go to find that answer.

If he goes to the city of Chicago and asks to see public inspection reports, he'll be told the public inspection reports made by the city of Chicago are not a matter of public record and not accessible to him.

I think the single most important problem that people have in trying to evaluate nursing home care for the people that they're considering placing in a nursing home—a family member, a loved one—is that there is no place for them to go.

Senator PERCY. You mentioned the nursing home run by the Little Sisters of the Poor right here in Chicago, the same group that runs the one in Palatine.

I've been in that home. It is immaculate. It is beautiful. A great deal of work through the years has been done to keep it up. It is an older building, but far more serviceable and livable than many of the newer buildings and structures that meet the building code for this type of facility.

Now, the problem is the code has been written in such a way that that building must be now abandoned, and the beautiful structure given up because it's one floor too high or something of that kind. There are certain standards, safety standards, that it does not now meet.

It's being sold, as you know. Government regulations require that it be abandoned, and the Little Sisters of the Poor have to raise money to build a new structure.

There are strong feelings that this building should not have been abandoned, that there should have been some flexibility in the regulations.

I have received several notes, one from a paralegal assistant that says:

> Barbara Klein is telling it very well. I have worked in hospitals and am a paralegal with the Champaign County Legal Assistance Foundation, plus I have 2 years of nursing and have worked in nursing homes myself. Often I, as a nurses' aide, was left alone with close to 200 people by myself. Thank you. Carol Krawier.

I also have a note from the Champaign County home stating, "The State has just started to look through and revise the point counter system."

Mr. KARL. Senator, one other thing, if you don't mind me interrupting you, is during the course of our investigation, time and time again, one of the things that we have found is that when inspectors on the State level come to a home, there always seems to be knowledge beforehand that the home is going to be inspected—several days beforehand.

Though many people in the administrative positions say no, we have talked to many former administrators and people who have worked in homes, and they have indicated to us that when inspectors are coming, somehow the home knows.

Senator PERCY. We will put those questions, and Mr. Grisham, if you will draw up the questions, to the witnesses who will appear this morning from the State, as to what they have done to prevent it, because audits should be without notification.

I served on the Audit Committee of the Harris Trust & Savings Bank, and any employee who advised any department head that we were coming in on a Tuesday night at 8 o'clock to audit that account would have been fired. It would have been absolutely a breach of ethics for them.

An audit has to be a surprise. That's the whole nature of it.

My inspections have to be surprise inspections. No one was ever notified when I was coming to a nursing home. It's ludicrous to have inspections with plenty of advance notice. They can always clean the homes for 24 hours, until the inspection is over. Then they go about their ordinary sort of business.

I would like to ask the staff if they have any further questions; Jeff?

Mr. LEWIS. I have one question to Barbara.

Barbara, did you find it was true that the foreign nurses—could they also read English?

Ms. KLEIN. Well, the only reading that they seemed to have to do was the drug prescriptions, because their jobs seemed pretty much limited to passing out drugs.

Some of them who—many of the nurses where I worked came in on a temporary basis. They weren't permanent employees. They might come in one evening a week or fill in for someone else. There was a great deal of that, and so even though I looked through medical files for patients in the homes, I couldn't see whether they were able to write English, whether they were able to keep up with the progress notes, so I really can't answer the question from firsthand knowledge.

Senator PERCY. Thank you very much.

Any questions? [No response.]

I want to thank all of you. Sometimes, as you drive home, you think "If I only thought of that to say." If you do so, just put it in writing, and I will hold this record open for any subsequent statements any of you would like to make to amplify your comments.

I will not insert in the record at this point a correction I have received, or comment, from Lynn May, because he is a witness on the next panel. I'll put it in the record at that point.

If you'd like to stay on, we would like to find chairs for you to sit as near the front as possible.

I wonder if members of our staff could make available chairs in the front row here for our first panel.

Fine. The witnesses from the next panel will be leaving, so you can just take their chairs, if you like.

The chair would call now as witnesses Lynn May, Hugh Canaday, Richard Waltmire, James Scheibly, Suzanne Weiss, and Dean Jost.

We're going to recess for 3 minutes while we change our tape and we remove the equipment.

I would like to thank ABC television very much for providing the videotape for us. It added greatly to the hearings.

[Recess.]

Senator PERCY. We will resume our hearing now, and I'm going to ask our witnesses, because we have taken an unusual amount of time for our first panel, if you could limit your statements to 5 minutes or less. Obviously, your full statement will be put in the record as if given in full, and then that will allow us a little more time for questions.

Mr. May, I wonder if you'd mind just commenting in your opening statement on the question that you gave to me here.

Why don't I just read it into the record:

> Nursing homes do not prescribe drugs. A physician must do so.
> Reimbursements for drugs for medical payments is made to the pharmacist, not to the nursing home. Thus, the nursing home receives no financial benefits from prescriptions filled.

Could I ask the previous panel if they ever had any evidence that there was collusion between the nursing home owners and drugstores, and whether there was any incentive for the nursing home owner, through joint ownership or through kickbacks or sharing of profits, for them to prescribe drugs that were paid for by the Federal Government?

Mr. PROTESS. You want me to do it up here?

Senator PERCY. You can do it right from there.

Mr. PROTESS. We didn't find that. We were not in a position to find it, however.

I think it's important to be aware, though, that in Illinois, in the past year, there were a number of Federal indictments against nursing home owners for accepting kickbacks from a pharmacist, several of whom were prosecuted successfully, one of whom, in fact, was the owner of a nursing home that we had an investigator in. We heard regularly that they were cleaning up their act for a period of time because of the pressure from the Federal level.

That's the thing that we heard over and over again, but we didn't have any direct evidence of that.

Senator PERCY. Well, the evidence, I think, was available to many of us. It was available to this committee that that did occur.

We'll start with Mr. May as our first witness, and we welcome all of you very much.

STATEMENT OF F. LYNN MAY, EXECUTIVE DIRECTOR, ILLINOIS HEALTH CARE ASSOCIATION, CHICAGO, ILL.

Mr. MAY. Thank you, Senator Percy.

When the Better Government Association and WLS–TV issued their report, I did meet with Terrence Brunner and Peter Karl. I tried to get the full nature of the facts they had—the information that they had.

Senator PERCY. I'm sorry. Could you, for the record, identify yourself?

Mr. MAY. I'm sorry, certainly. I'm Lynn May. I'm executive director of the Illinois Health Care Association. We represent some 300 long-term-care facilities, both proprietary and nonprofit.

Senator PERCY. Both proprietary and nonprofit?

Mr. MAY. That is correct.

I was unable to obtain a complete list of the allegations or the facts in the case from the Better Government Association or WLS–TV. They indicated these would be coming out in the reports, and there was an indication that perhaps they'd be issued on white paper in the future, but seeking to find out more information, I received permission from the facilities implicated in the BGA report to send administrators from my association into these facilities to try to really determine the nature of the allegations.

And while these facilities were not members of our association, they readily assented to admit our people in, make their records available, answer any questions, and make their employees available to us. We found a pattern in the nature of the BGA allegations, we think, that largely, although not all, many of them were based on hearsay or incomplete exposition of actual facts.

For example, there were indications of abuse or mistreatment of individual patients. We checked on the allegations themselves. We found at times that the people who were supposed to be involved in the mistreatment were not working at that time, or the others had outstanding records of patient care.

In regard to the incident about serving cheese sandwiches on stale bread, we went back to the records and also talked to the dietary people of that facility and found that not only were cheese sandwiches served, but they were served on fresh bread that was delivered daily, and the menu also included hot soup, vegetables, dessert, salad, and a beverage.

So, I think that there is a general pattern here that there's a lot of sound and fury in the BGA report, but very often it doesn't hit upon actual events.

I'm very concerned about their exposition of the incident in Brookwood. They have no proof that that woman died as a result of not receiving oxygen. She died from other causes, and even today, they have not——

Senator PERCY. Do you have proof of those other causes?

Mr. MAY. Yes; they can be obtained through a death certificate, sir.

I'd also like to comment on the nature of the television coverage for the BGA study. I think it has to be faulted for too little factfinding and too much reliance on the exploitation of the visual impact of infirmities and debilities of the aged residents in the nursing homes. The disease, neglect, the vicissitudes of life have caused many of these people to become or to result in the poor health that they're currently in. Their life in nursing homes did not necessarily lead to this condition.

In fact, very often, the very environment that they can exist in, or perhaps show an improvement, is in a nursing home. I'm sure many people were shocked at what they saw in that film compilation, but the shock, I think, arises from a sudden confrontation with the disfigurement and ailments of old age and not necessarily is that prima facie evidence of poor care delivery, and I think that the television coverage should be faulted for that reason. At least there should be some question as to the nature of the journalism involved.

Now, I do not mean to portray that the BGA and WLS reports were completely groundless. We did have admission that some of the allegations were factual, that there was indeed poor judgment shown by staff, particularly in the nature of restraints that were ordered for patients or other aspects of care, but I think there's a very limited

number of actual events that could have been proved and were shown in this report. Yet the investigation went on for over 4 months, so I think the conclusion of our summary or investigation indicates there are some specific allegations of BGA really that don't demonstrate overt abuse by providers as much as they reflect the misunderstandings and realities of long-term care.

Now, while we found much error in the BGA allegations, we support most of its recommendations for improved long-term care in Illinois. We, too, believe that State regulations are chaotic, jumbled, confusing, often contradictory.

A forthcoming study mandated by the Illinois House of Representatives, I think, will show this very clearly, that there are too many agencies trying to do too many things, and the result is a wash. It doesn't achieve much.

One of my members recently furnished me a journal where over a 6-month period, every 2 days out of 5 there was some kind of survey or inspection going on in his facility, taking away staff time and nursing care time from their duties, and most of it doesn't really achieve much.

Now, we believe that the Thompson administration has recognized this fact, and they have taken the first steps toward correcting it, and my association has drafted legislation which we hope to introduce in the State next year which will require consolidation of surveys, so that they're more meaningful and useful.

Now, we also concur with the BGA that most or many of the existing Federal and State laws are cosmetic, and we really need to address the root of problems dealing with level of care.

One of the things that we have been working with the department on aging in the Lieutenant Governor's office is development of legislation that will mandate nurses' aide training, not only the training itself, but will provide funding for that.

Now, we think it's true, nurses' aides which make up the large bulk of employees in the nursing home, who have the most direct relationship to patients, are not trained at this time. We feel that a nurses' aide training program that is flexible, is fully funded, will provide immense benefit to the patients, and will help our industry do a better job.

We're also negotiating and talking with public health officials to develop legislation that will permit evaluation of patients where there's a clear and present danger to their safety and health. Currently, the State feels it cannot act, and there are difficult legal problems involved, but we think there is a solution so the State can act and take action in cases like this.

We're also interested in translating current patient rights regulations existant in Federal rights and translating them into State legislation. Now we worked to defeat a bill that would have done more than that in the last session of the legislature, but some of the patient rights that they wanted to establish were just clearly unobtainable.

We think it is necessary, at least to translate the Federal rights into State law and protect those residents of facilities that are not covered by medicaid or medicare.

Finally, as already has been mentioned, we have been working for many months now to develop an effective patient assessment tool that will assess patients' needs and provide the level of care necessary.

The Federal Government and the State have been working on these for many years. It's very difficult to really determine and measure the quality of care. We think we've made a really good start along those lines, and we hope that we're going to develop an effective program.

We wholeheartedly support the BGA's recommendations perhaps to provide alternatives to institutionalized care. Elderly citizens need the wherewithal to stay in their own homes as long as possible. However, we do not believe, as some studies have shown, that alternative care would necessarily reduce the rolls of nursing homes. In effect, I think it's going to open up a whole new kind of care to constituents that probably need it, that probably would not go into homes if they had some alternatives, but it isn't going to affect the rolls. It's going to be very expensive, very expensive, and we're concerned that in the rush—a very popular political move—to develop these programs, in an era of limited resources, that we're going to see a diminution of support of maintenance of elderly nursing homes.

I also agree with the BGA that there's a need for greater public involvement in nursing homes. We intend next year to implement a pilot project of establishing advisory councils along the lines that they recommend for our membership.

We've just started this, and I can't give you any timetable right now, but we think it's an idea that's worth exploring.

What we've found, however, is that in rural and suburban areas community involvement is good, and the neighborhoods are far away; where close family ties do not exist, you don't have it, and no matter what you try to do, you try to achieve it.

There's one final thing that I don't think the BGA really went into.

Senator PERCY. I think this is the third final point you've had. I'm going to ask Mr. Grisham to advise us when 4 minutes are up for each of our witnesses. Otherwise, we just won't get to the questions at all.

Mr. MAY. I'm sorry, Senator. You're right.

Senator PERCY. You'd make a great Senator in a filibuster.

Mr. MAY. Can I have 2 more minutes to address this issue?

Senator PERCY. Would you split it in half and make it 1? You've been going for 10 minutes now.

Mr. MAY. Fine. The BGA did not really look into the question of reimbursement.

The State of Illinois reimburses medicaid patients at the rate of $19.50 per patient a day. They also support their residents in penal systems at $17.50 a day. If there is a cost——

Senator PERCY. Let's not forget that 65 cents a day one nursing home is paying. Those are actual records, 65 cents a day.

Mr. MAY. Nevertheless, Senator, the cause of lack of care and the economic base of that has to go back to the State, to the Federal Government, and failure to adequately support and provide levels of care to the patients in long-term care facilities.

Senator PERCY. You're not testifying that 65 cents is the State allowance for food, are you?

Mr. MAY. No, sir, I'm not.

Senator PERCY. That one case is an isolated case.

Mr. MAY. Yes, sir.

Thank you.

[The prepared statement of Mr. May follows:]

PREPARED STATEMENT OF F. LYNN MAY

Approximately 1 month ago, the Better Government Association (BGA) of Chicago, and WLS–TV, channel 7, announced that they had jointly conducted an undercover investigation of several nursing homes in and around Chicago and found conditions to be "horrendous." During the week-long reporting period, they alleged a number of instances of poor health care delivery or outright abuse of patients. The BGA went on to state that it saw little improvement in nursing home care since 1971, the date of its earlier investigation of long-term care facilities.

I subsequently met with Terrence Brunner, executive director of the BGA, and Peter Karl, the WLS–TV investigative reporter, to obtain more information about their allegations. I urged them to release the full details of their study to me so that we could work together to resolve the problems that they had uncovered, but they declined, indicating that they would issue a report in the future describing the many abuses they claim to have witnessed.

In the meantime, I arranged for several nursing home administrators who are members of the Illinois Health Care Association to inspect most of the facilities implicated in the BGA investigation. While not members of the association, most of these facilities readily agreed to our survey and gave our people free access to records and employees. We found that many of the BGA allegations appeared to be inaccurate or were incomplete expositions of actual events.

(1) For example, one facility was accused of only serving cheese sandwiches on stale bread for lunch. In fact, the documented lunch served in that facility on the day in question included cheese sandwiches made with fresh bread, soup, hot vegetables, dessert, and a beverage.

(2) Two employees of another facility were accused of striking and gagging a resident. Documentation showed that one of the employees was absent the day of the alleged occurrence and that the other one had an excellent record with the patients.

(3) An employee in a third facility was seen smoking marijuana. That employee was summarily terminated, a fact that was not mentioned by the BGA.

As for the televised coverage of the BGA study, it must be faulted for too little factfinding and too much emphasis on the visual impact of the debilities of aged and infirm residents of nursing homes. Disease and neglect reduced many of the people shown to poor health long before they entered nursing homes. Many of these were confused or incompetent. Several had to be restrained by doctor's orders for their own protection. I am sure many people were shocked by the images they saw, but this shock arises from sudden confrontation with the ailments and disfigurations of old age. They are not, however, prima facie evidence of improper care.

I do not mean to portray the BGA/WLS–TV reports as completely groundless. There were reported instances where facilities admitted to bad judgment on the part of staff, like inappropriate restraint of a patient or use of unnecessary force. But the limited number of these transgressions belie the universality attributed by the BGA. The conclusion of our investigation indicates that the specific BGA allegations do not demonstrate proof of overt abuse by providers as much as they reflect misunderstanding of the realities and exigencies of long-term care treatment.

While finding much error in the BGA allegations, we support most of its recommendations for the improvement of long-term care. We too believe that State regulation of nursing homes is ineffective and chaotic. A forthcoming State study of long-term care regulation mandated by a resolution of the Illinois House of Representatives will document the inefficiencies of this bureaucratic nightmare. Currently, one agency funds welfare residents, another licenses and inspects facilities, a third interprets fire and safety codes, and so on. Not long ago, one of my members furnished me a 6 month's journal which he kept in his facility. It showed that a Federal or State inspection of one kind or another was in process on an average of one out of every 2½ days. The cost of this wasteful bureaucracy to the providers and the taxpayers is incalculable. We believe, however, that the Thompson administration has recognized this problem and is taking steps to improve it at the State level. My association has drafted, and hopes to introduce next year, a bill which would require the development of a single survey instrument to be used by all State agencies regulating long-term care facilities.

We also concur with the BGA that many of the existent Federal and State laws and regulations affecting nursing homes are cosmetic, addressing only the physical nature of facilities. We believe that regulation should be directed at improving the quality of care, not paper compliance with irrelevant regulations. Accordingly, we have developed a bill in cooperation with the State Department on Aging

to mandate and fund nurses' aide training, which would enhance the performance and professionalism of the employees who make up the bulk of the work force in a nursing home and who work most closely with the patients. We have also held exploratory discussions with public health officials to develop legislation which would permit evacuation of patients where a clear danger exists to their health and safety. We are also interested in translating current Federal regulations requiring patients' rights into State law, and thereby protecting those residents in facilities that are not participants in medicaid or medicare. Finally, we are meeting on a regular basis with representatives from State agencies and the Governor's office as well as other provider organizations to develop an effective patient assessment tool to eliminate the cumbersome point count system which was justifiably criticized by the BGA. We believe that this effort will ultimately produce an evaluation system which will accurately determine patient needs and assign appropriate levels of care.

IHCA wholeheartedly supports the BGA's recommendation for more programs to provide alternatives to institutionalized long-term care. Elderly citizens should be encouraged to remain in their homes as long as possible. However, we question whether alternative care will greatly reduce the numbers of residents in long-term care facilities. We suspect that only a relatively small percentage of current residents could return to their homes under any circumstances. Rather the alternative care programs could service a new constituency which need home health care as a check on early debilitation. The cost of home health care is high if all the elements like visiting nurses, meals, transportation, etc., are included. We are fearful that in an era of limited tax revenues that a rush to alternative care will limit resources necessary for the maintenance of nursing home patients.

Despite our concerns, we advocate more alternative care programs. We also urge that rational, effective regulation of home health care programs be expedited by Federal and State agencies before fraud and scandal vitiate the public's tolerance of these programs. We also urge the amendment of Federal regulations to allow proprietary concerns to participate in title XX programs. Proprietary nursing homes, particularly in rural areas, could serve as the most efficient and qualified agencies for delivering a visiting nurse and meal services.

We also agree with the BGA that there is a need for greater public involvement in nursing homes. We have found that in rural and suburban areas community participation in volunteer programs and other activities is usually high. However, the lack of nearby neighborhoods and the absence of close family ties greatly reduces this involvement in large urban areas. We plan to implement a pilot project next year among the members of our association to examine the feasibility of the BGA's recommendation for the establishment of advisory boards comprised of residents' relatives, community leaders, nursing home personnel, and nursing home residents. We are hopeful that this experiment will lead to meaningful public participation in long-term care.

There is one glaring omission in the BGA's analysis of nursing homes in and around Chicago. It failed to explore the economic basis of long term care facilities and its impact on the quality of care. Approximately 70 percent of all long-term care residents in Chicago are supported by medicaid. Another 10 percent or more depend on medicare. Government reimbursement levels, established by law and regulation, are an overwhelming factor in determining the amount and effectiveness of long-term health care. Today the average medicaid reimbursement in Illinois is $19.50 per patient per day. The State also spends $17.50 per day to support prisoners in its penal system. If long-term care delivery is inadequate, the Federal and State governments must share the blame for failing to provide funding beyond a minimal level.

Several years ago, the U.S. Congress effected Public Law 92–603, which mandated that medicaid reimbursement must be "reasonably" cost-related to insure sufficiency of care. In March of 1978, HEW approved an Illinois reimbursement plan which only paid for costs at the 50th percentile of all facilities. The State, according to Governor Thompson, implemented this plan to meet its budgetary restrictions. The plan is forcing care down to the median level. It is compelling facilities to deliver mediocre care in order to stay in operation. While making allowances for differences in efficiency levels, in general, facilities which spent more on their patients now must spend less, while facilities which spent little are being reimbursed over and above their costs. While the Illinois plan is particularly restrictive, the pattern is the same elsewhere. HEW and the State governments have evaded the intent of Congress by implementing reimbursement plans which superficially meet the requirements of Public Law 92–603 but

undercut the welfare of long-term care residents and shortchange providers on reimbursement for costs.

I do not believe the BGA's assertion that there has been no progress in the delivery of long-term care is correct. Despite failures and mistakes by individual providers and inadequate government regulation and reimbursement, long-term care facilities have made great advances in recent years in improving health care delivery and the quality of life for their residents.

Senator Percy, I commend your outstanding legislative record in supporting programs for the aged. I appreciate your interest in long-term care problems in Illinois. I urge you to support such regulatory reform legislation as S. 1470, the Medicare/Medicaid Administrative and Reimbursement Reform Act which would establish much needed improvements in the medicaid program. I also urge you to examine the implementation of Public Law 92-603 by HEW in Illinois and in other States. Easing taxpayer burdens and limiting government expenditures is a worthwhile goal, but it should not be accomplished by ignoring the legitimate long-term health care needs of the elderly and handicapped.

Senator PERCY. Thank you very much.

Mr. Canaday, would you identify yourself?

STATEMENT OF HUGH CANADAY, EXECUTIVE DIRECTOR, ILLINOIS COUNCIL FOR LONG-TERM CARE, CHICAGO, ILL.

Mr. CANADAY. Certainly, Senator. I'm executive director of the Illinois Council for Long-Term Care. It is an association of proprietary facilities, approximately 10,000 beds, about 8,000 of which are in the Chicago area.

Senator PERCY. And how many different homes?

Mr. CANADAY. Fifty-two facilities.

Senator PERCY. You count a facility as one facility, not a group of five owned by one group; 52 separate facilities?

Mr. CANADAY. Fifty-two separate facilities.

Senator PERCY. And they're all proprietary?

Mr. CANADAY. All proprietary—28 in Cook County.

The Illinois council does support day care and alternative programs. We have talked with the State of Illinois, both public aid and the department on aging on these programs.

We also would support changes in some of the regulations for long-term care. I don't believe regulations are the big problem. I think a commitment is the problem. I think there must be a commitment by both the State and Federal Government to the regulations which they promulgate, and to support those regulations, both administratively and financially.

The State agency——

Senator PERCY. When you say administratively, do you mean the Federal Government, which obviously provides a lot of the money but who in our Federal system of government much prefers to have the delegations of supervision to State and local governments? Are you saying that the Federal Government should directly administer and provide the inspection service and not delegate that to the State and local governments?

Mr. CANADAY. No, sir. I am not going that far, although I would not rule that out as a possibility.

I am saying that the surveyors who do the validation surveys must be provided to the Department of Health, Education, and Welfare, that they must be funded and have an administrative responsibility.

The Illinois Council for Long-Term Care is directly opposed to both the content and manner of presentation of the news series on nursing home abuses presented by WLS–TV. We feel this series was a disgraceful distortion of fact and an irresponsible condemnation of the entire nursing home industry.

Even though the entire industry has been indicated as not being included, they only said it once during the series. There were many indications of the industry abuses.

I will not speak to individual abuses found in facilities. I have not been involved in those abuses, and I have not had any additional information to check.

Senator PERCY. How do you come to the categorical conclusion, then, that what they have presented is distorted, if you have no firsthand information about it?

Mr. CANADAY. I have no firsthand information on the abuses in the five facilities which they indicated. However, there were many misstatements and half-statements in the news releases, if I may continue.

Senator PERCY. Sure.

Mr. CANADAY. The reporters indicated the industry wants to patrol itself. The industry should patrol itself, not to the exclusion of any Federal or State agency.

In written testimony at the hearing in Chicago on July 11 of this year, the council said in writing, "Certification survey is a regulatory function, and as such, should be conducted by representatives of the State or Federal Government."

The channel 7 series indicated exactly the opposite. The only total rate quoted in the entire series was $82.50 a day by an unidentified speaker. There was no mention of the fact that the rate paid by the department of public aid in Illinois is approximately $19.46 a day.

Senator, if I may, I believe the 65 cents was a per-meal figure, not a per-day figure. I do not have that in my statement, and I wouldn't say for sure.

The two corrections made during the series is an indication of both the lack of knowledge of the subject being investigated and the shallowness of the investigation.

A picture of a foreign nurse who is, in fact, a U.S. citizen, shows a lack of any in-depth investigation. The quotation of a rate of $187 per month for range of motion shows a complete lack of knowledge regarding the system being criticized.

The statement of correction is even incomprehensible when it says that $187 figure is a total amount which can be paid per patient under the current Illinois point system. I challenge anyone to explain to me rationally what that statement means, even the correction.

The reference to 1970 is sensationalism. The BGA did not go to any legal and constitutional authority. They had various reports which they cited which indicated that conditions were much better than in 1970. They did not go to any of these agencies. They did not even bother to attend the HEW hearing which was being held the same week that they broke their story. Instead, they felt qualified to be policemen, judge, and jury, and aired their unsubstantiated allegations smearing the industry, charging bureaucratic bungling, or at least buck-passing and legislative inaction.

No one has been helped by the sensationalism. The elderly and infirm have had their privacy invaded by hidden cameras. That is their home.

Senator PERCY. Was there any objection registered by any of these homes that you know of?

Mr. CANADAY. Not to my knowledge, no. Again, I have not been in contact——

Senator PERCY. Is it an invasion of privacy when they obtain the permission of a home to come in and televise?

Mr. CANADAY. I would consider it an invasion of privacy unless they had the permission of the residents whom they filmed and who they showed on television. That is that resident's home, and I frankly do, yes, consider it an invasion of privacy.

Senator PERCY. In a proprietary area, the home is owned by the owners, of course, and the patients are there just by leave of their applications having been accepted.

On that particular point, Mr. Brunner, would you testify at this point as to what steps were taken by you and by WLS—they can speak for themselves—to obtain permission to enter the nursing homes and to do the filming?

Mr. BRUNNER. Well, Senator, there were a lot of—I really don't want to talk for WLS, because there were a lot of techniques used with the cameras, and in a sense, by the investigators, that were unique to WLS in this particular investigation, and quite frankly, they've asked us not to reveal that.

I can tell you in many instances—Ms. Klein and other lawyers in our staff have written extensive memos on the right to privacy.

Of course, we had the investigators, and many of them were lawyers themselves, research that issue quite thoroughly and they found no problem.

Senator PERCY. All right.

Mr. CANADAY. Nursing home residents, elderly persons who may soon be needing care and families of both have been frightened unreasonably by unsubstantiated allegations and innuendo. Persons needing nursing home care may refuse and have certainly postponed their entry into this portion of the health delivery system.

Conscientious employees have again been slandered and demoralized by those who do not recognize their accomplishments. These are the people providing care to 80,000 aged and infirm residents in Illinois.

This is the bottom line, the total impact on the individual needing care. The long-term care industry is open for inspection. Survey reports are public information. Cost reports and ownership information are on file with the State. Any local, State, or Federal regulatory or properly authorized investigative agency has access to any facility.

Last but of tremendous significance, every facility is open daily for visits by friends and family of the residents.

I believe in freedom of the press and would not suggest abridging that freedom. However, I do ask that this committee request the news media to act in a responsible manner and to take future findings to legally constituted authorities for objective investigation before those findings are made public.

Senator PERCY. I'm not sure I should ask them to always deal with nursing home owners and operators as objectively and fairly and on

balance as they do with politicians, but for the most part, I've found their use in politics pretty fair, pretty reasonable, and I don't have any quarrels or complaint, and I would hope that you wouldn't. I would hope that your testimony would be read by all the media and taken to heart to be sure that they do lean over backwards.

We will keep the record open in any case if BGA or WLS would want to respond to that. The record will be kept open for them to do so. [See next page.]

[A supplemental statement of Mr. Canaday follows:]

SUPPLEMENTAL STATEMENT OF HUGH CANADAY

On behalf of the council, I would like to submit additional comments on three issues which were raised at the committee's hearing August 30, 1978, in Chicago.

First, the council strongly supports alternatives to long-term care such as adult day care, home health services, and other programs aimed at helping people in their own homes. In cases where an individual can receive adequate services in the community, the individual should be encouraged and helped to remain in the community as long as possible. The advantages to the individual in staying near family and friends in familiar surroundings are obvious. In addition, we recognize the need for cost control at both the State and Federal level, and the need for alternatives to help control the cost of long-term care.

Second, in response to Senator Percy's question on improvement of enforcement of regulations by both the State and Federal agencies, I would like to reiterate my statement that a commitment by both the State and Federal government is required. There needs to be a clear delineation of authority and responsibility between the State and Federal agencies. Clear, reasonable, and enforceable regulations need to be developed. Finally, those charged with enforcement must be supported administratively, financially, and if necessary, by legislation.

Everyone wants alternatives to long-term care, but where is the commitment? Ten years ago the Federal Government almost destroyed home health care by stringent requirements and retroactive denials of payment under medicare. Today, adult day care is going the same way because of a lack of State funding and red-tape. Everyone wants quality care, but the Illinois reimbursement system, approved by DHEW, does not encourage quality care. Payment is tied to a median cost, so service will seek a median level. Everyone wants regulations enforced. Frequent turnover and reorganization at both the State and Federal levels, hiring freezes, salary freezes, and actual staff reductions make a good, ongoing enforcement program difficult to develop.

I would like to call particular attention to a statement which I believe was made by a BGA representative in response to Senator Percy's question regarding the primary indication they found that quality care was not being provided. The response indicated it was not so much actual abuse as a lack of attention by properly trained (or qualified) staff. This statement is much easier for the council to respond to than the previous indication of widespread patient abuse throughout the industry. The qualifications, training, and even numbers of staff are to a great extent not specified by either State or Federal regulations. Requirements for minimum licensed nursing staff in Illinois ICF's exceed Federal requirements. However, except for minimum levels of licensed nurses, key administrative staff, and some program directors, the regulations are silent. This includes licensed nursing personnel above the minimum, nurses aides, and staff for special programs. The numbers of such personnel are at the discretion of the facility and the Illinois Department of Public Health. Required training is minimal, I believe, consisting of orientation and periodic inservice.

The "cost related reimbursement system" in Illinois is based on median costs by HSA. Even the point system allowances for nursing care are based on aggregate costs using a regression formula. Given this payment system, there is no recognition of the increased cost of hiring additional staff or providing additional training except as these costs effect the median in future years.

In summary, requirements for both numbers and training of staff are very limited. The payment system discourages, and may even prohibit, a facility from hiring additional staff or providing additional training. The State of Illinois, by its payment system, has identified an "acceptable" level of care the State will pay

for. DHEW, by approving the system, has concurred, or at least indicated the system meets Federal requirements. The industry has pointed out the danger of payment at a median rate. However, the State has determined that payment will be made at the median for an "acceptable" quality of care. If the quality of care in Illinois is not acceptable to the committee, or you find it is not acceptable to the people of Illinois, I hope you will make recommendations for changes which will correct the situation.

[The response from the Better Government Association to testimony of Hugh Canaday follows:]

RESPONSE OF THE BETTER GOVERNMENT ASSOCIATION

Mr. Chairman, the Better Government Association welcomes the opportunity to respond to the testimony of Mr. Hugh Canaday, executive director of the Illinois Council for Long-Term Care. Mr. Canaday expressed his concern that the BGA/WLS–TV investigation and exposé of patient abuses at nursing homes interfered with the nursing home residents' right of privacy.

The BGA has long been concerned with the plight of nursing home residents and has focused upon their problems several times during the past 10 years. On each occasion, the BGA has demonstrated an extensive concern for protecting the residents' rights of privacy. In this regard, it should be noted that:

(1) The law of privacy is intended to protect individuals, not corporations or other commercial enterprises, from unwarranted publicity concerning intimate details of private life which would be offensive to a reasonable person and are not of legitimate concern to the public. The right of privacy does not include the right of business to secrete from public scrutiny unsavory practices or violations of law.

(2) The photographs of nursing home residents which appeared in the televised reports were carefully cropped, and the eyes of the residents were blocked out, to prevent identification of the individual and preserve that person's right to privacy. The names of the residents were not used to avoid any embarrassment that might result.

(3) BGA investigators were legitimately in the nursing homes as bona fide employees of the homes. As we testified previously, of the 11 nursing homes which employed BGA investigators, only 1 conducted a background check prior to employment.

Since the findings of our nursing home investigation were aired on WLS–TV's Eyewitness News, the BGA has received scores of telephone calls and letters from viewers reacting to the exposé. Almost every response was favorable to WLS–TV's format; not a single phone call or letter was received from a nursing home resident objecting to the use of his or her photograph in the televised series of reports.

The BGA also wishes to take this opportunity to respond to two other comments of Mr. Canaday. Mr. Canaday stated that no BGA staff member was present at the HEW hearings on long-term care facilities held in Chicago in July of this year. A BGA investigator, Miss Gail Feiger, did attend those hearings. Mr. Canaday also criticized the BGA alleging that we have not cooperated with government and law enforcement officials responsible for nursing homes. BGA has and will continue to cooperate with any government or law enforcement agency interested in our findings.

Once again, we thank the chairman for affording us this opportunity to elaborate upon our previous testimony.

Senator PERCY. Mr. Waltmire, would you identify yourself, and would you pass that microphone down?

STATEMENT OF RICHARD WALTMIRE, ADMINISTRATOR, BETHANY TERRACE NURSING HOME, MORTON GROVE, ILL., A DIVISION OF BETHANY METHODIST HOSPITAL AND HOMES, CHICAGO, ILL.

Mr. WALTMIRE. Senator Percy——

Senator PERCY. I'll ask the staff members to just hold up the 1-minute point signal.

Mr. WALTMIRE. I am Richard Waltmire, administrator of Bethany Terrace Nursing Home in Morton Grove, Ill., a division of the

Bethany Methodist Hospital and Homes of Chicago. I will speak this morning strictly as an administrator representing administrators in the field.

Although we are a part of the Illinois Association of Homes for the Aged and the American Association of Homes for the Aged, and I am a member of the American College of Nursing Home Administrators, my words are my own impressions, thoughts, and they do not represent those organizations.

When the investigation by the Better Government Association started, I made a call to WLS–TV and to BGA to inquire or to find out where the investigation was going and the point that they were hoping to accomplish. One of the comments that I received was their emphasis on the point system in the State of Illinois, to show that it was impossible to provide proper care under the point reimbursement system. Through this procedure, in going into the homes, they found all these other types of problems, and that became more prominent, I think, than the emphasis on the point system.

I invited the BGA people to our home. They accepted the offer. They came out to spend a very short period of time, and if I recall the facts, they were there for probably 2½ hours and were free to go through the home. They had an enjoyable visit with a 100-year-old-plus gentleman who they just happened to meet in our corridor. He asked them to come back again for his 101st birthday, and they hoped that they would be around to enjoy it with him.

I would like to say that one of the problems, of course—and this was mentioned many times—is we're confronted with paper care instead of patient care, and the interpretations of regulations, whether they be Federal, State, joint commission, or whatever. Many people do not know the figure I had about 2 years ago. But if the nurses and personnel taking care of the residents in a nursing home were to chart and take care of everything for that patient, it would be necessary for them to make 133 entries in a nursing chart per day. That meant, Senator, that when I left my home this morning with 250 residents in it, my nurses would have to chart 32,250 entries today in order to see that the patients were properly covered with all the necessary requirements and needs that were required, as far as documentation is concerned.

I think the law of averages would say that if you missed 3,000 of those entries—which average 12 per chart—you would have minimal errors. I can see when there's any kind of a check on charts, some errors or omissions possibly can happen.

As we begin to add regulations and add to the disciplinary workings of nursing home care, I think many times the State and Federal people have forgotten about this element, as additional disciplinary care adds dollars.

When we begin to add and talk about the physical therapy people, the occupational therapy people, the speech therapy people, the theological people, discharge coordinator, nursing personnel, and so forth, that we are required to have, depending upon how and what you do with them, they mean dollars. They are not cheap dollars, and when you begin to add to these disciplines this adds to the cost of care which we are not getting back in our reimbursement.

I can only speak for myself, but I think what goes on in a nursing home has to be the philosophy of the administrator, of himself or herself, in conjunction with the board for whom they work.

In my case, I have been brought up through some very, very strict feelings concerning the nursing home work, and I will settle for nothing less than total quality care.

The State of Illinois rules and regulations, as an example, says you must have sufficient staff to handle your people. I think if we took a poll of all of us sitting around the table in this room to define the word "sufficient," we would probably get all kinds of different answers.

Having come to the State of Illinois some 4 years ago, serving a number of years in Wisconsin, and having knowledge of other States, I know the definition of care is defined as so many nursing hours per patient per day. That can vary, of course, depending on the kinds and levels of care that you have. But in the State of Illinois, we have no such definition. Only "sufficient."

So, one can be criticized and another one can be praised by the number of personnel they have on board. I think these are some of the things that present us with a great problem.

When we also think about the problems that can exist in homes, we have lost track of the fact that the doctors are never pressed by any of the investigations that go on to know what the various problems we have in getting them to care for the residents. I think it is very, very important, to enforce visits each 30 days for the first 90 days and each 60 days thereafter, or as it's required, and some of the doctors do not care for these regulations.

In our case, if a doctor does not take care of the residents properly, we ask the family to change physicians or ask for the discharge of the resident. They have their choice of physicians, and we enforce that.

We have over 80 doctors that come to our particular facility, and I'm sure that other facilities have the same.

These are some of the problems we face. We have not heard about any deficiencies that occur in the homes because the doctors have not come in. What has the government done with the doctors? Not a whole lot. If anything, their peers have done very little, to our knowledge, to enforce that. The doctors will say, "Fine. Get another physician."

We think about the work of the utilization review procedure in the homes. A utilization review committee consists of three physicians and personnel within your home. We pay these physicians to do this work. They are physicians who are not employees of our home. We then have the medicaid people come in from the public aid offices and sit down, go through and check on your chart work, score your residents points, and assess your care points for you. The utilization review committee have spent hundreds of dollars to determine that the patient is skilled care or intermediate care. You then have a clerical individual coming from public aid, with whatever their skills may be, and some are not totally skilled medically, and will assess the individual at a skilled or intermediate level. Their point assessment can totally reverse the utilization review committee. So why do we pay the physicians, and why do we pay the personnel to sit and go through utilization review when

somebody else comes in and changes your level of care so your cost of reimbursement is affected?

This can go on and on. We are aware that the point system is designed to keep people sick, and this is also true in our facility. We are totally against that. We feel that the patient should be up and about and constantly in some activity or work, receiving the various kinds of medical, social, and spiritual care, as is needed for that individual.

We like to feel that the individual is a person that we want to be totally involved with, regardless of who's paying their bill. We know what's happening to them, and this cannot be done in a lot of the homes that are strictly getting their reimbursement from title XIX. Governmental agencies reimburse us for paper care but have not yet found the formula to reimburse us for quality geriatric nursing home care.

Thank you, Senator, for this opportunity to testify. If I can be of further help to you and your committee, please do not hesitate to ask. I will offer my time and services.

Senator PERCY. Thank you very much.

I would like to just ask you to say a little bit more about your own home, Bethany Terrace Nursing Home. I happen to know it to be a fine home.

Could you tell us the size of the home, how many residents you have there, what proportion of them are on public aid, and what proportion are privately financed?

Mr. WALTMIRE. Senator, our home is licensed for 265 people. We have trilicensure. Twelve are of residential care and the other license is divided into intermediate and skilled care.

We consider ourselves full with 250 because of private rooms, isolation rooms, and the other necessity for rooms. In that figure, we have 22.3 percent of our residents on public aid. We also have approximately 102 people who are on private or life-time contracts, which we are receiving $100 or $200 a month. The rest of the people are on total private pay arrangements. So we have close to, I think this morning or yesterday, 52 people receiving public aid. This means in our home, we must underwrite close to $24 a day of their cost, and that comes to $35,000 per month, or $420,000 per year.

Senator PERCY. Is full overhead allocated?

Mr. WALTMIRE. That's right.

Senator PERCY. Nonrecurring expenses. You still have to, then, subsidize?

Mr. WALTMIRE. Yes, sir.

Senator PERCY. The allowance would not be adequate?

Mr. WALTMIRE. That's correct, sir. Yes, Senator.

Senator PERCY. You could not run a home of the same standard if 100 percent of your patients were public aid, then, could you?

Mr. WALTMIRE. Not in the way—not in what we feel is our intent to provide the kind of care we feel a person should be entitled to.

Senator PERCY. Were you invited by this committee to testify, or did you volunteer to testify?

Mr. WALTMIRE. I was invited to come, Senator.

Senator PERCY. You were invited because we want to have a balanced testimony. We knew of the outstanding work you've done, and certainly, it's our intention to see that both sides of the story are told.

Mr. WALTMIRE. However you got my name, I can't tell you.

Senator PERCY. Well, the reputation goes ahead of you.

Mr. WALTMIRE. Thank you, Senator.

Senator PERCY. I have received an anonymous note which I am reluctant and will not put in the record unless someone identifies and signs it. Whoever wrote this note, you'll recognize it. If you care to come up and sign it either now or later, I'd be happy to insert it in the record.

Our next witness is James Scheibly, administrator of the Champaign County Nursing Home, Urbana, Ill.

Mr. Scheibly, you are welcome.

STATEMENT OF JAMES A. SCHEIBLY, ADMINISTRATOR, CHAMPAIGN COUNTY NURSING HOME, URBANA, ILL.

Mr. SCHEIBLY. Senator Percy, the Champaign County Nursing Home is owned and operated by the county of Champaign as a nonprofit nursing home. We have 269 beds, in which we incorporate skilled care, intermediate care, day care, home health and sheltered care services, all under one roof.

I would like to address the subject of alternatives to long-term care for a few minutes.

Adult day care and home health services do not refer to a single service but to a broad spectrum of services designed for the elderly with varying levels of need.

In order to maintain the elderly in the community and home environment as long as possible, we must have a philosophy and commitment to a full spectrum of therapeutic, rehabilitative and social support services. This involves our current available resources, such as acute care and long-term care—we don't feel we can do without these—home health and senior citizens recreation and nutrition programs.

At the present time, there are omissions in these available services which prevent the elderly from remaining in their homes longer. Home health services need to be expanded to include additional homemakers, home maintenance services, and nutrition counseling, to mention only three.

Providing adult day care for those who need it in a setting that provides health services and social stimulation would fill a gap that now exists, and I feel would be a step in maintaining the elderly in a community and home longer.

I won't go into all of the problems of the elderly, because I'm afraid everybody here I know is very well aware of them.

At Champaign County Nursing Home, we offer multidisciplinary services in both the nursing home and adult day care and the home health services. To prevent inappropriate institutionalization, we must identify the components comprising the continuum of care and establish new services as required.

Once the clients' needs are assessed, proper and appropriate services can be provided by one or a combination of major components.

When there are gaps in this continuum, we often see placement of elderly in the more extensive level of care because of the erroneous assumption that skilled and highly technical health services can only be provided in an institution or clinical setting.

Also, another reason why inappropriate placement of elderly in long-term care facilities occurs is because their needs fluctuate over the entire range of services, and where the needs requiring the highest skill is offered, no matter what percentage of time this service is needed, is where the client is placed and sometimes left, sometimes left forever.

Because of this changing of clients' needs, a continuous evaluation must be made to insure that he is receiving proper service at the appropriate level. Utilization review and discharge planning in acute and long-term care facilities is a step in the right direction. However, discharge planning and utilization review cannot be effective if there is not a place to be discharged to, the home environment, or if a client cannot receive the supportive services needed to keep him in his home.

Day care and home health become a valuable component in the continuum of care when the program offers a full range of services, whether for personal care or a highly skilled and technical service. All too often, established clinical and institutional facilities and service agencies themselves determine where and what services elderly are provided, when it should be the clients' and his physicians' choice of where and what services are needed and for how long.

Adult day care and home health services should be made available equally to all elderly, regardless of whether they live in the country or the city. Cost effectiveness of these programs as opposed to institutional health care has been documented by many throughout the United States.

Although many still dispute the cost effectiveness, we can state that it does not cost $200 a day for home health care, and it doesn't cost $40 a day for day care.

Senator PERCY. Did you hear testimony given today that home health care might be more expensive than institutionalized care? I suppose they're not talking isolated cases, but they're talking in generalities, to which you objected?

Mr. SCHEIBLY. It could be, over the long run, it could be more expensive. If it is, then the assessment has not been made to the patient on what types of services that was needed.

I'm not talking about going in and seeing this client for the 100 visits that's allowable so that you can collect as much as you possibly can. I'm talking about providing the client the services that are needed.

Senator PERCY. And the variety of cases, infinite variety, some of which might need nothing but meals-on-wheels, some that might require a good deal of home care. But averaging it out, as you say, in your judgment, the cost is less than the cost would be for institutionalizing them in a facility such as you maintain?

Mr. SCHEIBLY. That's right.

Senator PERCY. That's my conclusion, also. Otherwise, I wouldn't be pushing this end of it so much. But I have heard testimony to the contrary, and I wanted your expert advice, not my uneducated guesses.

Mr. SCHEIBLY. The elderly who have received these modes of care speak long and convincingly and unashamed of their bias in favor of these methods of health care delivery.

In conclusion, it has been proven that day care and home health for the elderly is a workable, cost-effective concept preferred by the elderly and their families to institutionalization.

I'd ask you at this time to urge your committee and the Senate to establish a national task force on adult day care with the specific objectives of developing a national policy on adult day care and recommending to HEW and the Congress appropriate funding sources and levels, guidelines for standards, assessment and evaluation.

We must do this now in order to insure a comprehensive, yet cost-effective health delivery system for the elderly that can be free of the abuses which some of the long-term care industry has been plagued.

Title XX funding we know is available for services of many things, but the health component is limited. We feel that probably the only way that we can go with this is with the medicare or medicaid component for reimbursement.

Senator PERCY. As you know, I recently went down and visited your jail in Champaign, and when I came out I classified it as one of the worst jails I've ever been in in my life. It was a despicable place to put human beings and a disgrace to an enlightened county such as Champaign.

Your own nursing home is, I think, for a county nursing home, one of the finer ones that we have been in. Its facilities are clean and excellently maintained. You have a fine staff, and your testimony is evidence of that.

Did you volunteer to testify today?

Mr. SCHEIBLY. No, sir. I was requested to testify.

Senator PERCY. Requested to testify by the Senate Special Committee on Aging?

Mr. SCHEIBLY. Yes, sir.

Senator PERCY. And the presumed purpose, I imagine, would be to give public testimony to the fact that both proprietary and public, it is possible to maintain excellent facilities and provide humane, decent loving care.

Mr. SCHEIBLY. Senator, if I could just say one more thing in defense of the public officials in Champaign County, the decision was made a good number of years back to either go with the jail or a new nursing home, and the public officials voted to build the county nursing home first, then the jail.

Senator PERCY. My only message to my friends in Champaign and Urbana with whom I've been arguing about this is that if you're ever going to rehabilitate criminals, if you want to put criminals into a facility that will make them angry at society when they come out, it's that jail. But if it's a choice due to limited resources, I agree they put their money in the right place. But the cliche that "We're not going to build a Holiday Inn for our criminals down here" is really to misunderstand the nature of law enforcement and what is necessary, because that jail would turn beginning criminals into hardened criminals by the time they left.

I think your nursing home gives everyone who comes into it the impression "society really cares about me." We really appreciate your testimony very much.

[The prepared statement of Mr. Scheibly follows:]

PREPARED STATEMENT OF JAMES A. SCHEIBLY

Adult day care and home health services does not refer to a single service but to a broad spectrum of services designed for the elderly with varying levels of need.

In order to maintain elderly in the community and home environment as long as possible, we must have a philosophy and commitment to a full spectrum of therapeutic, rehabilitative, and social support services. This involves our current available resources such as acute care, long-term care, home health, and senior citizens recreation and nutrition programs. There are omissions in these available services which prevent elderly from remaining in their homes longer. Home health services need to be expanded to include additional homemakers, home maintenance services, and nutrition counseling, to mention only three. Providing adult day care for those who need it in a setting that offers health services and social stimulation would fill a gap that now exists and I feel would be a step in maintaining elderly in the community and home longer.

In order to meet a client's individual needs, we should think of a multidisciplinary and multidimensional approach. Problems of the aged can be broken into four general divisions which are: Socio cultural, physiological, economics, and psychological. Some of the elements in each of these general categories would be as follows:

Sociocultural: Diminished social role, communication breakdown, isolation and rejection, dependence on others.

Physiological: Multiple chronic diseases, degenerative process, sensory deprivation, increase risk of injury, nutritional deficiencies.

Economics: Reduced income, increased expenses (medical care), inadequate retirement benefits (pensions and social security).

Psychological: Cognitive and/or emotional disorders, organic brain syndrome, presenile and senile dementias.

I included the above paragraphs in order to emphasize the multiple problems elderly have. You cannot focus upon one problem and hope to be successful in treatment without dealing with and being aware of other participating factors. In order to provide services that meet individual needs, I have attempted to diagram the procedure used in identifying the problems:

Person —→ reason he is referred —→ identify and assessment of contributory problems —→ develop multidisciplinary plan —→ perform care/service —→ evaluation —→ person.

With proper identification of a client's problem and appropriate treatment levels (whether it is in day care or home health) the over treatment sometimes seen in acute and long-term care can be avoided.

The following is a list of multidisciplinary services that are being provided by Champaign County Nursing Home in both adult day care and home health services: Nursing, occupational therapy, physical therapy, nutrition, social services, social rehabilitation, dental services and speech therapy. For day care there is also beauty and barber shops and organized activities. The home health services operate continuous health screening clinics in nine sites in Champaign County.

To prevent inappropriate institutionalization, we must identify the components comprising a comprehensive continuum of care and establish new services as required. Once the client's needs are assessed, proper and appropriate services can be provided by one or a combination of major components. When there are gaps in this continuum we often see placement of elderly in the more extensive level of care because of the erroneous assumption that skilled and highly technical health services can only be provided in an institutional or clinical environment. Also, another reason why inappropriate placement of elderly in long-term care facilities occurs is because their needs fluctuate over the entire range of services and where the need requiring the highest skill is offered (no matter what percentage of time this service is needed) is where the client is placed and sometimes left. Because of this changing of client's needs, a continuous evaluation must be made to insure that he is receiving proper services at the appropriate level. Utilization review and discharge planning in acute and long-term care facilities is a step in the right direction. However, discharge planning and utilization review cannot be effective if there is not a place to be discharged to (home environment) or if a client cannot receive the supportive services needed to keep him in his home. Day care and home health become a valuable component in the continuum of care when the program offers a full range of services whether for personal care or a highly skilled and technical service. All too often established clinical and institutional facilities and service agencies themselves determine where and what services elderly are provided, when it should be the client's and his physician's choice of where and what services are needed and for how long. The following diagram represents a continuum of care giving the client, his family and physician alter-

natives to choose from for various levels of care. It also demonstrates the flexibility in utilizing the various components individually or simultaneously for varying periods of time.

When providing a service for the elderly we think of the older client who is living at home with their spouse or adult children. Although adult day care has functioned as an alternative to nursing home in-patient care for almost two decades in England, this community-based mode of long-term care for the elderly has just come under study in the United States. Much of the cause for this slow growth can be attributed to consequences of medicaid and medicare, which has long favored payment only for institutional care. But health care costs are spiraling, particularly institutional cost. The Social Security Amendments of 1972 (Public Law 92-6-3, section 222) specified that adult day care would be one alternative form of health care delivery modes considered. Champaign County Nursing Home currently operates a viable adult day care program serving 20-22 intermediate and skilled level of care participants daily. It has proven to be a satisfying and economical alternative for some individuals to total institutionalization. From its inception to the present, the largest problem has been no public funds to cover the cost of day care. If public funds were available we are confident the number of participants we would serve would be limited only by the physical limitations of space available in our building.

Education and counseling of family members and clients are of prime importance in order to maintain the elderly in their homes. Not only in how to care for their older adult in relation to his specific condition during the hours he is home, but also to give moral support from trained professionals. Screening clinics for day care/home health will be effective treatment for some conditions (hypertension, dental, glaucoma, diabetes). Many elderly are reluctant to spend money for medical care and routine physicals until a health crisis situation occurs.

Adult day care and home health services should be made available equally to all the elderly regardless of whether they live in the country or in the city. Cost effectiveness of these programs as opposed to institutional health care has been documented by many throughout the United States. Although many still dispute the cost effectiveness, we can state that it does not cost $200 a day for home health or $40 a day for day care. The elderly who have received these modes of care speak long and convincingly and unashamedly of their bias in favor of these methods of health care delivery.

In conclusion it has been proven that day care and home health for the elderly is a workable, cost effective concept preferred by the elderly and their families to institutionalization. I would ask you at this time to urge your committee and the Senate to establish a National Task Force on Adult Day Care with the specific objectives of developing a national policy on adult day care and recommending to HEW and Congress appropriate funding sources and levels, guidelines for standards, assessment, and evaluation. We must do this now in order to insure a comprehensive yet cost effective alternate health delivery system for the elderly that can be free of the abuses which some of the long-term care industry has been plagued. Title XX funding offers many needed services for the elderly but the health component has been neglected. The appropriate funding source for day care and home health might be title XIX of the medicaid program.

Mr. WALTMIRE. Senator.

Senator PERCY. Yes.

Mr. WALTMIRE. I wonder if I could add a comment to his concerning the home health care situation.

A couple of years ago, in Washington, before Congressman Claude Pepper and his committee, the home health care issue was brought about as an alternative to the kind of care that we provide in our facilities.

You bring up the possibility of it costing more with the other contradictory statements about it being less costly.

I think what will happen, and this is my own personal feeling, is that as we begin to find the people who need home health care, we're also going to find many of those particular people needing care that we provide in our facilities. We, in turn, send many of our people home, so I think what we're going to find in developing home health

care, that there is going to be a lot more people found who may need institutional care in our kind of facility, and that may be where you'll add to the cost.

Senator PERCY. I'd like to give, once again, a chance for the person who sent this anonymous note up to sign it.

Mr. HANNON. I'll sign it.

Senator PERCY. You will sign it. OK. Fine. Thank you.

I'll read it into the record, then, so we won't have any curiosity about it. The note is somewhat critical of the Special Committee on Aging, of the BGA, and WLS television, so I want to be sure we don't evade that critical note. I'll ask you if at the end of the hearing if you'd want to modify or amend it in any way, put it on the record.

Our next witness is Suzanne Weiss, director of Accom-O-Day Care Center in Chicago.

STATEMENT BY SUZANNE WEISS, DIRECTOR, ACCOM-O-DAY CARE CENTER, CHICAGO, ILL.

Ms. WEISS. Thank you. Senator Percy, Mr. Grisham, and Mr. Lewis, I would like to precede my remarks with a request. I have carefully prepared my presentation to include no more than 10 minutes. I hope that since Accom-O-Day is one of the alternative care systems being discussed today, perhaps I could respectfully request that I be able to finish it in its entirety. It is my feeling that it is of extreme importance to the immediate——

Senator PERCY. Permission granted.

Ms. WEISS. OK. Thank you.

Senator PERCY. I'll take it out of my 5 minutes for questions.

Ms. WEISS. You might have more than 5 minutes of questions, I hope.

It is with extreme pleasure that I find myself able to formally present to you an existing, successful and heretofore unrecognized and authorized entity which can and does function as one alternative to institutional placement for a segment of the elderly population. Accom-O-Day Care Center functions in many capacities as an option to home care, institutional care, or to no care. The clientele are those who are marginally able or unable to maintain themselves in the community. With day service, maintenance in the community becomes viable, no longer marginal—in fact, normal.

Stimulation, activity, minimal nursing care, and good nutrition constitute the basic needs of all marginal elderly. These needs can be met in a day care setting such as Accom-O-Day.

Specifically, I would like to address myself in the next few minutes to two main points regarding Accom-O-Day Care Center. The first pertains to its inception, struggle to exist, quality of care, and present threats to its existence; the second provides evidence and rationale regarding the expenditures made to maintain elderly in the home and delineates specific services we render. Attached to this testimony is additional information regarding program components, logistics of staffing, family testimonies regarding care and need, as well as professional input from local coordinating service agencies.[1]

[1] Retained in committee files.

Accom-O-Day was opened 2 years and 10 months ago with a small amount of financial backing from personal savings. A full staff was recruited from the professional wives of the owners, I might add at no salary. Clientele came slowly and so did the promised funding from the Federal Government. For over 2½ years we have applied, reapplied, and pleaded at the State level for funding for day services. A tremendous capital outlay accrued, clientele numbers, due to client's financial status—that is social security—kept the numbers consistently too low to cover quality care costs. Hence, quality care was maintained, financial loss incurred.

On July 14, 1978, we no longer could sustain further financial losses. Our pleas, contacts, conversations, and proposals for funding to the State agencies produced no success. We announced to our members and associating agencies that we would close our doors on July 28.

Within 3 days the news media, CBS, Sun Times, Tribune, Learner papers, prominent columnists and commentators were behind us—all through the concerted efforts of approximately 20 members and their families and a dedicated staff. Local agencies were willing to carry away our garbage which we could no longer pay to remove, or to march to Springfield to picket our lack of funding. Within 4 days Springfield called us, requesting that we come down to explain our needs. Within 5 days we were able to safely say that the department on aging was committing itself to funding 55 clients per day who would attend Accom-O-Day.

The department on aging and its staff are to be commended upon the remarkable abilities and concern they evidenced during our negotiations and problem-solving sessions. They were extremely capable, helpful, and made every effort to enable us to remain open.

Until yesterday, it appeared they were successful. Unfortunately, the Illinois Department of Public Aid yesterday amended their rules and procedures. Originally, 75 percent of the costs of day care were to come from the Federal Government, 25 percent must come from local donors to supply the States with the necessary 100 percent for reimbursement.

The entire concept of donor matching moneys has been a constant threat to Accom-O-Day's existence, but most crucial of all, yesterday, the Illinois Department of Public Aid instituted an up-front donor system which requires not only the local donor pledge from a 1-year contract, but moneys in advance of instituting the contract.

It is my contention that this particular system of funding is against the basic nature of human dignity and is based upon discrimination against the free enterprise establishment.

Since as a for-profit business we cannot legally underwrite ourselves as a donor, and most likely will not be able to arrange and establish a donor situation which is not or does not appear surreptitious, we are automatically written out of the funding mechanism.

The type of funding system existing today breeds a fertile ground for inept, dishonest business, a repeat scenario of what a large number of representatives of the Government are striving to prevent.

Most importantly, it negates, even denies—the fact that the free enterprise system is still the most cost efficient, service producing, highest quality controlled system in America. Accom-O-Day has proven this.

During negotiations to provide a particular nonprofit organization with day services, this was highlighted. Accom-O-Day offered to provide this agency, which by the way now has funds from the department on aging, with more services, of better quality, at less than two-thirds the cost which it receives from the State.

This agency proceeded to add to our proposed costs the additional unnecessary supervisory costs, intake costs and social work costs which we already provided, by adding staff to their agency to oversee our providership.

The unnecessary addition brought their total costs to much more than could be afforded, hence negotiations ceased.

This organization, by virtue of being nonprofit, then funded itself for the 25-percent matching, received DOA 75-percent matching funds and received the same unit price we would be receiving for less service than we would be providing.

Perhaps we should begin to look into the practices and regulations and requirements for funding and providership which the Illinois Department of Public Aid is establishing and requiring of the provider before we can really begin to question the provider and the provider status.

In my case, as an originator of day care in the Chicago area and one who has fought all odds in order to remain open, to maintain low cost to the client, and above all, to maintain quality care, I stand ready to close our doors, rather than submit to the degrading process of convincing private persons or foundations to fund what rightfully is the responsibility of the State to fund.

Very few programs of day care will come into existence. Very few survive, will survive for long periods of time, and only a handful will prove cost efficient if run on smaller scales than the approximate numbers we have established.

You speak of incentives for quality care. Incentives to quality care in the form of alternative care are being choked now by the funding system. Funding is effective in the nonprofit system through beefed up budgets. Dedication, such as evidenced through continual efforts, incurred debts, and in specific cases such as mine, a person who has worked 3 years with no salary and long hours, will not be forthcoming in a nonprofit organization which does not receive its budget.

I would like to personally volunteer my services at this point, since Accom-O-Day can no longer find itself financially able to remain open after this month unless we receive a fair reimbursement system, to aid your committee in developing a successful method of utilizing the Federal moneys allocated for alternative care. If I've worked for 3 years without salary in an ineffective method, I'd much rather do it in an effective method.

Incentive to provide health care for the elderly and community contacts is choked even before its true assessment can come to fruition.

Incentive to run this type of demanding program comes from pay. In the nonprofit organization, pay is in the form of salaries, fringe benefits, and heavy staffing, thereby requiring less of each individual.

In the free enterprise system, pay comes after the quality is produced, and the price is determined not by the numbers of overstaffing or salaries incurred but by the quality and quantity of service provided.

The competitive free enterprise wins except in the eyes of the Illinois Department of Public Aid. The ultimate losers, of course, are the elderly persons who no longer have an alternative quality care system such as Accom-O-Day to attend.

What happens to these elderly? Do they accept either inadequate or more expensive care, or perhaps premature institutionalization? What happens to a facility such as Accom-O-Day which provides quality care through a total staff involvement if it must divert some staff energies to finding a donor? Either their costs increase or quality suffers.

How is one small budget to cope with this frustrating dilemma?

Let us turn now to the services rendered, their costs and their intangible value. Accom-O-Day offers the following services.

Social rehabilitation, including reality orientation and remotivation, a full activity program, medical services provided by a nurse, speech therapy, physical therapy upon request, social worker consultations; one main meal and two snacks, plus transportation. The members may choose to attend on a full unit basis of 8 hours or a one-half unit basis of 4 hours.

Dr. William Weissert, research fellow at the National Center for Health Services Research with the U.S. Public Health Service, has shown that day care is less expensive than institutional placement, especially the type offered by Accom-O-Day, since day care is an intermittent form of care which calls upon the family to respond and supply a large portion of the care expense of the elderly.

On a yearly basis, considering part-time attendance as the main form of attendance, Weissert was able to ascertain that day services saved 37 percent to 60 percent of the cost of institutional placement. It will be interesting to note that in this particular study, cost efficiency was not at its highest since the average number of clients per day was 28. At Accom-O-Day we hope to be even more cost efficient by caring for 55 clients per day.

The most important aspects of day care are the intangibles, the nonquantifiable, yet, if we scientifically measured the responses of the families who place their elderly at Accom-O-Day, or if we observe the changes in self esteem, self image, and dignity of the elderly members we would find that we certainly cannot place a monetary value upon this kind of service. The extended family will certainly find support in day service. The needs of the elderly must be met in human, family-supported, caring setting.

I thank you for the opportunity to speak.

Senator PERCY. Suzanne, I would like to say to you I have not been personally familiar with your work. Your gracious and generous offer of voluntary assistance in support of this committee is very much appreciated. I will consult with my colleagues on the committee, but on behalf of my current consultations with both minority and majority staffs, we readily accept your offer and invitation to come to the area where we really need assistance and help.

I will direct the staff to see whether we can find some consulting money so that such a gratuitous offer doesn't have to be entirely something that you can deduct from your income tax, but have nothing to add to it.

Ms. WEISS. I will be available with more time after December.

Senator PERCY. Thank you. Thank you very much.

Our final witness is Dean Jost, I'm particularly interested in having you testify, Mr. Jost, because of the work of the Uptown Legal Services here in Chicago.

STATEMENT OF DEAN TIMOTHY JOST, PROJECT DIRECTOR, LEGAL SERVICES FOR THE MENTALLY DISABLED OF UPTOWN, UPTOWN LEGAL SERVICES, CHICAGO, ILL.

Mr. JOST. Thank you, Senator.

My name is Dean Timothy Jost, and I'm an attorney and project director of Legal Services for the Mentally Disabled of Uptown. Our project is a project to give legal services to people in nursing homes in the uptown area of Chicago. We are funded by the American Bar Association and by the Legal Assistance Foundation of Chicago.

We have been in existence for nearly 2 years, and during that time, I think we've seen over 400 nursing clients, many of whom are nursing home residents.

The U.S. Government is the largest single purchaser of nursing home services in the United States. The Congressional Budget Office estimates that in 1975, the United States spent $5.2 billion on long-term care. This expenditure represented 40 to 45 percent of the market.

As other third-party payors provided only a small portion of the total expenditures for nursing home care, the U.S. Government is the only single consumer with a significant ability to determine the quality of the product offered by the long-term care industry in the United States.

The U.S. Government has, unfortunately, sadly neglected and abused its opportunities to shape the quality of long-term care.

Most of the money which the United States pays for long-term care is funneled through the medicaid and medicare programs. The United States plays two major roles in governing the medicaid program which impact on quality of care.

First, it provides a significant portion of the money which is spent on long-term care by the State, Federal medicaid programs. Second, it provides standards for quality of care which long-term care facilities which participate in the medicaid program must meet.

The Federal Government has missed significant opportunities both in the long-term care reimbursement and certification areas for improving quality of care.

At this point, the primary qualification for long-term care reimbursement established by the Federal Government is that the reimbursement must be related in some way to nursing home costs.

Although the Department of Health, Education, and Welfare allows States to provide quality of care incentives in their reimbursement formulas, they are not required, and most States do not have them. The primary goal in most State reimbursement plans, including that of Illinois, is to spend as little money as possible on nursing home care.

It is good, plain, commonsense that a consumer should pay more for good quality care, less for poor quality care, yet in some States, such as Illinois, the long-term care reimbursement so ruthlessly

emphasizes the provision of cheap care that it makes the provision of quality care very difficult, if not impossible.

The Federal Government needs legislation requiring States which participate in the medicaid program to tie reimbursement to quality of care. It is shameful and foolish that though every State in the Union is required to change its long-term care reimbursement system to provide for cost related reimbursement as of January 1, 1978, the Federal Government did nothing to require quality of care to be recognized in these reimbursement systems, and indeed, did not even provide a model reimbursement system for the States to look at in redesigning their systems.

The Federal Government should also redesign its current recertification standards for long-term care. At this point, the United States, through HEW, comprehensively defines what intermediate and skilled care facilities must look like to participate in title XVIII and title XIX programs.

States are required to inspect to insure that the facilities meet these certification standards to participate in the medicaid program, and the States are reimbursed 100 percent for their certification inspection costs.

Unfortunately, the certification standards provided by the Federal Government are woefully inadequate to define quality of care. Although in some areas, as has been said earlier, such as fire safety and access for the handicapped, the standards are fairly good, on the whole, they focus far too much on physical plant and programs and not on the actual care given the residents.

It is very unlikely that in a defense procurement program the United States would determine quality of a product by only looking at the tools and the manufacturing process used to produce the product, but this is essentially what the Federal Government has done with long-term care.

The Federal Government needs to implement a resident outcome assessment system such as the QES developed by Illinois or the PACE system which the U.S. Government is working on. It needs to require specific staffing ratios for nursing home staff and not the standard referred to earlier of sufficient staff, with State or local inspectors determining what that means.

The Federal Government also perhaps needs to provide minimum wages for the nursing home industry, as I believe it does for other industries which contract with the Federal Government.

I talked to a friend the other day who said that she was working in a nursing home where there was a very dedicated and qualified aide who had been working there for 3 years, and until recently was earning only $2.60 an hour.

A certification system needs to be developed which would make it possible to rank homes by quality of care so the private consumer market could decide on what care it wanted.

Certification standards should recognize and protect residents' rights. Although the rights of residents currently are recognized in the HEW regulations, they have not been enacted into law. Some of the rights already provided need to be strengthened.

Nursing home residents need the right not to be transferred from a nursing home without appropriate notice and time for a hearing.

Residents and their representatives need guaranteed rights of access to their own records in the nursing homes. Privacy of mail and personal property within nursing homes needs to be protected.

Nursing home advocates must be guaranteed access to nursing home residents. Although the Federal Government has funded a nursing home ombudsman program, there has been no guarantee that these ombudsmen will have access to the homes.

Further, a private right of action needs to be provided for nursing home residents to enforce their rights.

Finally, the Federal Government needs to assist States in enforcement of certification standards and to require States to have decertification procedures so that the condition presented earlier where the State of Illinois has not decertified any home for an entire year could not exist.

The Federal Government is pouring billions of dollars a year into long-term care with total disregard for what its money is buying. It is high time that we start using this purchasing power creatively to provide the best quality of care for elderly and disabled American citizens. This will undoubtedly require new Federal legislation which will require your efforts.

I hope and trust that you will take this charge seriously and that the time and energy put into these hearings will not have been wasted. Thank you.

Senator PERCY. Thank you very much, Mr. Jost. I appreciate that.

I know that Mr. Canaday and Mr. May have testified to their feelings about the bias that might exist in the BGA and channel 7 investigation. Would any of the others of you care to question or testify as to the remarks that you heard from the first panel? What are your reactions to the charges that they made?

Also, do any of you care to comment on where the fault lies for conditions such as those described by the BGA investigation?

Mr. CANADAY. Senator Percy.

Senator PERCY. Mr. Canaday.

Mr. CANADAY. If conditions do exist, they lie directly with the facility.

Senator PERCY. They are what?

VOICES. Can't hear.

Senator PERCY. Yes, if you'd use the microphone, please.

Mr. CANADAY. If conditions exist which are as bad as the BGA indicates, the responsibility lies directly with that nursing facility and the owner of that facility.

Senator PERCY. Yes.

Mr. CANADAY. That has to be primary responsibility.

Senator PERCY. I agree with you. Primary responsibility. He operates under license. He goes into a business. He pledges to do certain things. He's obviously not doing them.

Where is the next responsibility, then, however, assuming that you wouldn't need armies or police departments if the world was filled with angels, and we're not angels in this regard. We're dealing with human beings, profit incentive, and the proprietary area is an incentive which as a businessman I would understand and expect.

I think it happens to be the best way to provide a lot of goods and services, but who has the primary responsibility beyond that, then, if there is abuse?

Mr. JOST. Senator Percy, I'd like to comment on that.

I think there are four places one has to look for responsibility. I think I probably commented today on Federal Government's responsibility because I understand that is where you have the greatest power to bring about change.

Second, I think that from my experience, the attitude of the nursing home administrator is probably one of the highest determinants of the quality of care that people in the home receive. I would say that some administrators do not care about quality, other administrators care about quality but feel very frustrated and don't know how to create it, and other administrators break their backs against all odds to really provide quality care.

I think my experience would witness to the fact that a lot of what the BGA identified is present at some homes, although certainly not in others.

Third, I think that a lot of the responsibility lies with the State governments who have not gotten their act together, to provide sufficient funding for nursing homes, and also to provide a unified effort to govern licensing and certification and make sure that is done effectively—that where abuses are discovered that they are dealt with.

I think another thing which we have to recognize, though, is that in the United States there is not the same emphasis on or regard for older people as exists in many other countries. I think that for most people, a nurses' aide job is not an honored profession that they are happy to tell their friends about and feel respected for. I think that's partially true because of the poor pay, and I think it's also partially true because it's not a profession that's looked up to, and I think a lot of things have to be done with the attitudes of Americans.

Senator PERCY. Mr. Jost, for your information, with the strong support of Senators Church, Domenici, Percy, and others, the present Senate version, that's presently in conference, of the Older Americans Act, would now authorize nursing home access to ombudsmen and strengthen the programs in other ways, following the lines of some of these suggestions that you've made.

The House version also has those same strengthening provisions that will come out of conference, so I appreciate your comments on them.

Mr. JOST. On my final point, I'd just like to make one further comment, and that is I was somewhat puzzled as to being identified here as a member of the provider panel, and I think one of the things it witnesses to is that there probably are not enough consumer groups working with nursing homes in Chicago to get together an entire panel, and I think that until residents and their relatives and people in the resident nursing home care get together enough so that there are groups which will monitor long-term care on a long-term basis, not on a one-shot basis, that there won't be changes.

Senator PERCY. HEW is now struggling with revised revisions in the regulations for nursing homes. The major thrust is to improve quality provided in long-term care facilities.

How do you, in your judgment, insure quality, and can quality be measured? Any of you care to comment? Ms. Weiss?

Ms. WEISS. Thank you.

Well, I think that quality is nonquantifiable. I really feel that all of the paper work that we might collect will not really tell us if quality was instilled into the actual performing of an act, in care of a person.

Certain numbers of times may be charted, but what actually happened in the interaction is very difficult to ascertain, and I can testify from my own personal experience in the last 3 years that when you're doing it on a fairly individualized basis such as in day care, where you've got a 1 to 7 maximum staff to client ratio and you're in a noninstitutional setting, the quality, there is an element of commitment and involvement simply by virtue of the fact of proximity over time of a staff person with these seven people, that if you were to observe this, you'd be able to see but not really measure, and I think that those are things, those are intangibles that we're trying to quantify and we really can't.

Senator PERCY. Ms. Weiss, have you found that your day care program has kept elderly people from being unnecessarily institutionalized? How would you describe your operation as to its cost effectiveness?

Ms. WEISS. Those are two parts, and I want to separate them out in my mind.

The first point—would you repeat that again?

Senator PERCY. The first question is simply, in your program, have you seen evidence that you are able to keep people from being institutionalized, and then at what cost? Is it cost effective?

Ms. WEISS. OK. Attached to the documents which I've given you are personal letters from many of the families who have stated, point blank:

> Because of being able to attend Accom-O-Day, I was not required to place my mother prematurely.

or—

> My father now lives at home and can work in his garden on the weekends whereas before, we had considered nursing home placement simply because we could not provide the 24-hour-a-day care. We needed respites for some period of the day.

In terms of cost efficiency, at this point, the way Accom-O-Day is running, it has been a financial loss to us.

What we have projected for the 55 clients per day, had we been able to legally obtain a donor to come up with the 25 percent matching, then we feel that we would have been extremely cost effective. We would have been able to provide 9 hours of service, including transportation, one meal, two snacks, a nurse on duty, medications regulated.

We can give you stories in comparison to other agencies who do provide day care where these kinds of services are not provided.

We could have given you this at $17 a day on an intermittent basis. Not everyone would have attended. We would have been able to serve well over 275 clients per year.

Our projections were that 50 percent of the clients would come full time. The remaining portion would come part time, either 1, 2, or 3 days a week or for half days of the week, thereby maintaining probably the most important aspect of their life that lets them live longer and healthier with family contact.

Senator PERCY. Finally, Mr. May, I'd like to ask you this question. In the film, we saw a mouse. I don't know how prevalent mice in

kitchens are, but among elderly people, particularly, mice are somewhat disconcerting.

Do you think a reasonable effort should be made by nursing homes to keep themselves free from such animal life that might be disconcerting and might detract from the feeling that there is a sanitary condition and standard being maintained in the kitchen?

Mr. MAY. Absolutely, I agree with that completely, Senator.

Senator PERCY. Do you disagree with sworn witnesses that I have talked to that have testified they were instructed by the owners of the—I'd say in this case unscrupulous owners—nursing homes that they were instructed to feed people in four shifts and as there was food left on one plate from one shift, move it over to the next plate? Can you disprove or have evidence of the testimony given to this committee on those points as false?

Mr. MAY. If there was sworn testimony, how can I disprove it, but was that information current as of this year?

Senator PERCY. That I don't know. That was done 7 years ago, but there was allusion to testimony in the previous panel that food is moved from one plate to another in the second serving.

Who was the witness that testified to that? Are they still here?

Yes, Barbara Klein. Would you care to reiterate again what you actually saw?

Ms. KLEIN. In that particular circumstance, it was a plate that had been returned untouched by another resident. It was cold, and it had been originally intended for another person, but it was taken and given to a resident who had not been served a tray.

Senator PERCY. But it was an untouched plate. Then I misunderstood that.

Ms. KLEIN. That's right.

Senator PERCY. I thought that you had reference to the situation which we had uncovered, which is not an uncommon practice, in a few of these homes, 7 years ago, and I hope that that practice has stopped.

Do you disprove or have evidence to prove that hiring of untrained and unqualified personnel, which was prevalent in hearings 7 years ago, and once again was testified to before this committee today, has stopped virtually and that only qualified personnel are being hired by nursing homes in Illinois?

Mr. MAY. Senator Percy, I return to my testimony, and we did find allegations in the BGA report, but there are many positive things that are going on right now, both within the industry and the State administration to correct these difficulties.

We are supporting the nurses' aide training bill. There was a recommendation of a blue ribbon panel to the Governor that nursing home administrators no longer be licensed. We oppose that.

We are behind many things that would ameliorate the conditions of care, the nature of employment, the qualifications. All these things we are for, and I don't think that they've really been brought out sufficiently by this panel today.

Senator PERCY. Well, I appreciate the suggestion on that.

Do you support alternatives to long-term care or nursing home care if they can be made available, and do you agree that such services are not now really available?

Mr. MAY. Absolutely. We think that they should be expanded. We also feel the proprietary facilities should have an opportunity to have access in title XX funding for alternative care.

We think in some rural areas, they are the only health care facility within many miles, and they could provide these services very efficiently and effectively.

Senator PERCY. Now, I would like to read into the record the note that I received:

> It would appear to this member of the audience that there exists an obvious bias against the service providers as distinguished from the BGA, who are obviously cronies of the special committee. For purposes of the record, I have no affiliation to the service providers, and therefore, I would urge a more impartial role on the part of the committee and its chairman. Charles W. Hannon, JD, practice management consultant, medical and dental, Schaumburg, Ill.

I can assure Mr. Hannon the Chair has no real bias. I have leaned over backward. You've read many books on the elderly, nursing home care, and I have read them, and they are sensationalized, and they sell a lot more than I've sold of mine because I insisted in putting balance into it and telling the good side as well as the bad.

Obviously, the purpose of this hearing is almost like the public media. If you fill the newspaper with all the successful and happy marriages, you wouldn't sell many. If you told and filled the newspapers about all the people who got home safely at night and all the happy lives that were led and no acts of crime, you wouldn't sell very much.

I must admit that the purpose of a senatorial hearing is to pick out things that aren't going right and try to rectify those, and to that extent, we are looking for wrongdoing, but I always try to balance that out by paying particular tributes to those who are doing a good job as is evidenced by two of our witnesses here today and reached by a third, Suzanne Weiss, who's trying to provide a service that we feel is important and necessary.

I'll admit in the very nature of the hearing, it sometimes tends to be more negative than positive, and to that extent, I'm generally a pretty positive person. I'm fulfilling a role that this committee is charged with of trying to do everything we can to try to correct conditions and improve conditions. You pretty much do that by mainly pointing out what's going wrong.

But I have tried and I've instructed the staff to make certain we balance it out.

If there are no further questions, we'll move right on to our third panel. I thank you very much for your presence here, and Miss Weiss, we look forward to a new relationship with you.

We have three remaining witnesses who will testify. First, will be Arthur Quern, Patricia Nolan, and Dr. Desai Prakash. They will give a joint testimony. We also have Edward Stec and Robert Ahrens.

Once again, the Chair will invite our witnesses to summarize their statements, if they possibly can. The full statements will be incorporated in the record, but I do want to leave time for questions.

We will start with Edward Stec, Director, Office of Health Standards and Quality, Region V, Department of Health, Education, and Welfare.

STATEMENT OF EDWARD STEC, CHICAGO, ILL., DIRECTOR, REGION V, OFFICE OF HEALTH STANDARDS AND QUALITY, HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. STEC. Thank you. I do not have a prepared statement but could make one available. I did mention to your staff that I wasn't aware until yesterday that I would be testifying today.

What I would like to do, however, is talk a little bit about my job, about the organization.

A VOICE. Can't hear anything. I don't think the mike is live.

Mr. STEC. Let me just recap very briefly. What I would like to do is just state my name, the organization I'm with, how we do fit into the picture, and why it is pertinent for me to be here and comment on some of the things that have been mentioned.

My name is Edward C. Stec. I'm with the Health Care Financing Organization, specifically the Director of Health Standards and Quality Bureau.

Now, the Health Care Financing Administration is relatively new. It was formed after the March 1977 reorganization within HEW. What Health Care Financing Administration did will perhaps help some of the problems that have been talked about constantly. It did put within one administration, within HEW, the major programs that are involved with funding, with standards and quality, PSRO, et cetera.

In other words, it took medicaid, which has, in partnership with the States, the sharing of funding, with States put into the same organization as medicare, which is the Federal program that makes direct Federal payments to providers and suppliers of service.

It also put together Health Standards and Quality Bureau, which is probably the most complex of the reorganization, because prior to reorganization, long-term care responsibility within HEW were just all over the ball park. There was some responsibility for regulation writing within medicaid because they deal with the same State agency. There was some in the medicare bureau and medicare also wrote all of the regulations for the other type of providers that are subject to State agency inspections.

It took the Office of Long-Term Care, which was the organization that dealt with nursing homes, and made it part of this organization, and also took out parts of Public Health Service that acted as consultants, put it all into Health Standards and Quality.

We did merge about 1 year ago, and I might say that some of the comments that have been made, and some of the activities have been discussed and offered here, require that I define how we fit into the long-term care picture, areas in which we have direct responsibility and areas in which we have oversight responsibility.

I think the first thing to mention is that the term "nursing home" is a very general term, and we have talked about various agencies administering nursing home programs, comparing it with home health agencies or hospitals.

Through my experience, I don't think you have different types of definitions for a hospital or for a home health agency. A home health

agency was really created with the medicare law, where it did define what types of service would be covered by the medicare program. Regulations were written to define what kind of agency can provide this service.

However, with the nursing home, the first attempt at Federal regulation was to implement the medicare law and make payments for extended care coverage in 1967, and as a result, we did, through the conditions of participation, I believe, define what is an extended care facility.

This was about the only Federal direction, although payments were being made under the medicaid program for nursing home care. In addition, payments were made to beneficiaries which were turned over to nursing homes, but there were no Federal standards until 1974, when the ICF, the intermediate care facility, was designed.

A very important difference here is that with the skilled nursing facility that's participating in the medicare program, the provider agreement with that particular facility is with the Federal Government, with our office.

I do sign off on SNF, title XVIII, provider agreements. I do notify of terminations, approve withdrawals, or indicate that a facility was not qualified and issue denial.

With the intermediate care facility, we have more of a monitoring role. Now, the payment is matched by the Federal Government to the State, which does make payments for these types of services.

Basically, we're probably more involved with form and substance in our monitoring program. The ICF provider agreement is between the particular State agency and the home. Surveys are conducted by the State.

We do get involved in saying whether the proper forms are used, et cetera. I think we do concentrate too much on that.

Again, as far as terminating Federal participation, it's very questionable under what conditions we can terminate Federal participation to an ICF.

One thing I do want to make clear, we do not put a nursing home out of business. What we can do by an adverse action, such as a withdrawal, a denial or a termination, is indicate that Federal funds cannot go into the facility. This is the extent of what, by law, we could do.

We do not get involved in local licensure, et cetera, except that the conditions do require that if there are State and local licensure requirements, the facility does have to meet them to qualify.

I might also mention, finally, that we did conduct hearings here in Chicago on July 11 through 13, in this particular building. Several of the people who have testified here also testified at those particular hearings.

What we have done over the last few months, especially when we've gotten our reorganized group together, is just to look at the regulations.

I think we pretty much decided that we do concentrate more on process than on measuring quality of care.

The hearings were well attended. I believe nationally, they were held in five different locations. Something like 400 formal reports were submitted. We had very heavy attendance here in Chicago on all 3 days.

I might mention that by and large, we were told by the public that the standards that we developed for States to use in ICF, and the standards that we developed for skilled nursing facilities, should be aimed at quality of care.

The problem again is that we didn't get too much in the way of direction as to how we do define quality of care.

I am confident, however, that if we do not have legislation, the regulations that will be rewritten will make another attempt to concentrate more on measuring quality of care and the process itself.

I want to make one additional comment. We do recognize the need to experiment, and the State of Illinois does have a system which they did submit, they submitted to us at the hearings for consideration in rewriting the regulations. That's the QES system that was mentioned earlier.

The State of Wisconsin has had another experimental system approved several months ago which is called Triage, which is a different type of attempt at concentrating more on facilities which have problems, less on facilities which are operating quite well. It's quite an interesting program. We're trying to use our experimental authority to overcome regulatory requirements. We have approved it and are in the process of implementing this system.

Those are about all the comments I have.

Senator PERCY. Thank you very much, Mr. Stec. I appreciate that.

Now, we'll hear from the State of Illinois, and we have with us Arthur Quern, director of the Illinois Department of Public Aid; Dr. Patricia Nolan, associate director of the Office of Health Facilities and Quality of Care, Illinois Department of Public Health; and Dr. Prakash, regional administrator, region 2, Illinois Department of Mental Health, Chicago.

Mr. Quern, are you going to speak on behalf of your group?

STATEMENT OF ARTHUR QUERN, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID, SPRINGFIELD, ILL.

Mr. QUERN. I am, Senator.

Dr. Walsh is here in place of Dr. Nolan from the department of health, but I will make a statement on behalf of the State and the other State representatives, and I will try to answer any questions you may have.

A VOICE. Can't hear back here.

Mr. QUERN. Senator, we have a mike that's not working. I'll try again.

My name is Arthur Quern. I am the director of the Illinois Department of Public Aid.

Senator, I will make a brief statement on behalf of the State representatives.

I am joined by Dr. Walsh of the State department of public health, Dr. Desai Prakash of the State department of mental health, and we will be trying to make a brief statement and answer any questions you might have.

The State's role can be stated rather succinctly. It is our responsibility on behalf of those who are eligible under the State laws to purchase or provide directly appropriate levels of medical care and

nursing care at the lowest possible cost, the lowest reasonable cost available, and provide it in a facility or in a program which is approved and licensed and which is geared to provide that individual with the highest level of independent living possible for that person.

Now, the implementation or execution of this mission is what we are talking about today in many of the items that have been discussed before this committee.

I think what I would like to do is to attempt to address those major areas which have been raised and then leave to you any questions or other details which either we do not address or which you would like to add to the picture.

Since we have been in office, in the Thompson administration in 1977, we have been looking at and concerned with the reimbursement system for nursing home care, along with a number of other questions of reimbursement for medical care under the medical assistance program.

At the current moment, in the most recent fiscal year, we purchased on behalf of 46,000 citizens, $250 million worth of care. In the coming year, we expect that same amount of assistance for that same number of individuals. The cost to the State taxpayers, approximately $285 million.

What we want to do is to assure that that money is well spent and spent in a way that provides individuals with quality care, but we also want to do it in a way that does recognize limited resources and the pressures of cost containment. In all areas of the health industry, cost containment is a must, because if the State and public sector is to continue to respond to this kind of need, it must do so in a way that is cognizant of the limited resources available.

What we have done is effective January 1 of this year, a new cost-related reimbursement system was instituted. With that system, we did a number of things. We attempted to accomplish a number of things.

First of all, on the average, rates went up about 14 percent. We recognize that for a number of years, the rates that the States were paying had been below actual costs, so in January of this year, rates did go up.

In the coming year, under the same reimbursement system, rates are expected to go up again. That increase will be based on actual cost reports that will be submitted by the nursing homes, and then under the formula which we have established and has been approved by HEW, we will take those costs and compare them. We will take a look at one facility, its costs, and compare it with other facilities and attempt to strike a reasonable balance to find an appropriate level of reimbursement which actually reflects costs out there and at the same time does provide a reward for efficiency.

This is a system that we have instituted. We just started it this year. We are carefully watching it to see if it accomplishes those things or helps us accomplish those things.

We do believe it has improved our ability to respond to costs out there. The 14-percent increase is already showing up in the rates that are being provided, and we expect about an 8-percent increase based on inflation this year to be effective in January.

But I think it's important to point out there are only so many things that a reimbursement system can do. No matter what system you structure, the unscrupulous will always find a way of squeezing the dollars out of the intended care and putting it into their pockets.

We believe that by careful auditing, careful reviews of these facilities and careful comparisons amongst facilities, we can minimize this kind of misuse of public funds.

There will never be a system which will totally eradicate it. I do believe we are on the route of substantially improving our ability to reduce it.

Another area that was addressed time and time again this morning is the question of patient assessment. We've talked about the point count system and its shortcomings. The ability of anyone—the State, the bureaucracy, the medical industry, the medical professions—to measure the need for quality care, the need for care, is an ability which is not perfected. It is one which is not agreed upon. It is one which has posed great difficulty for everyone.

We recognize the shortcomings in the point count system. We do believe it reflects some actual need and does give us a tool for measuring the needs that patients have for the kind of care they would require in institutions.

We also believe it's either got to be improved, modified, or else replaced, and we are working with the industry now to seek better patient assessment tools.

But here again, I've got to make the points that any patient assessment tool is likely to pay more for care for those who are in more serious need. One of the criticisms of the point count system is that it rewards a facility if it has a resident who is in greater need for care.

Almost any medical system of reimbursement for patient care is going to pay for those who need greater care. What you must seek to do is to try to take out any disincentives to good care. You must seek to try and review the kind of care that's being provided in response to the patient assessment tool, whatever it is, and regularly compare that among facilities and have it reviewed by professionals.

This is what we're talking about with the medical industry now, with the nursing home industry, what kinds of tools are available.

In conjunction with this issue, the Department of Public Health, has proposed that the QES system which was developed in the past be tested in the next year on a pilot basis to see what it does tell us.

We are also going to take a careful look at what is done in other States to see if anyone else has learned enough about this kind of issue that we can benefit by their experience.

Another issue that was repeatedly brought up this morning is that reference to the number of State agencies involved in overseeing the kind of care that's provided in nursing homes in this State. There is no question that there are a variety of agencies, and we are very cognizant of it.

At the present moment, given the organizational structure, we seek to minimize overlap, and we are seeking to assure communications. We've done this in a number of ways.

Governor Thompson created something called the purchase care rate review board in which all of the major agencies which are involved

in purchasing care—medical care, primarily—on behalf of citizens in this State, meet at least once a month, review their reimbursement system, and review the principles upon which they agree to pay and reimburse people for care provided.

We have also begun reviewing our mutual or our respective regulations to assure that one agency isn't issuing a regulation which is going to have a significant impact on people in nursing homes and in other agencies such as public aid, which is paying a great deal of that cost, is not aware of that regulation, so we're going to take a look at all regulations that the State issues before they are issued to assure that everyone knows the fiscal impact and the programmatic impact of the programs involved.

We have begun doing this. We think it bodes well for cooperation among the agencies, and as long as a structure is as it currently is, we are working to assure communications between these agencies. In addition, Dr. Peterson, who is the director of the Department of Public Health, is, at the request of the general assembly, currently looking at all of the roles of the different agencies involved in reviewing and investigating, paying and licensing, certifying, et cetera, these facilities to see what consolidation makes sense, what it would cost, what would you lose in consolidation.

Here again, I would caution you in one sense: The consolidation can lead to a loss of checks and balances. One monolithic agency, which is the only public entity dealing with a nursing home, could be subject to self-protective kinds of attitudes, and if it didn't have the kinds of checks and balances it currently has, where different agencies and different representatives of different public organizations are in that facility, you might not have the same amount of checks and balances.

That's not to say we have enough now and it's not to say we're ruling out consolidation. It is just to say that we want to keep that in mind. We don't want to create a monolith which is going to replace the current faults with a new set of faults.

Senator PERCY. Has the commission set up by the Governor, headed by Mr. Freeman, former chairman of the board of the First National Bank, gotten into this area and looked to see what can be done to consolidate, streamline, and make the decisionmaking more effective?

Mr. QUERN. There were over 670 recommendations in that report, and I know of at least 10 or 15 recommendations which deal with one part or the other part of the nursing home industry and review.

Senator PERCY. Do you support those recommendations?

Mr. QUERN. Some yes and some no. We're reviewing them right now. We're not sure all of them would save as much as they say. We are not sure that they can be implemented in the fashion they suggest.

Senator PERCY. Would it be possible, then, in a period of a week to 10 days to give us an analysis of those that you fully support, those that you do not support and those that you're still open for question?

Mr. QUERN. Senator, we have about 70 under review right now. I'm not sure I can meet your time limits, but I certainly would be willing, as we finish our process this fall as part——

Senator PERCY. I think it was quite an inspiration to set up this absolutely top level commission, one of the finest things done by any

State. I think that other States would benefit very much by the analysis they've made in this field. Also, I'm certain the Governor didn't appoint that commission feeling that the recommendations would be accepted 100 percent by the director of the department. But, on the other hand, if you can give us an evaluation, I think it would be very much appreciated, and I'll order that the record be held open so that we can get that report from you.

Does that about conclude your comments?

Mr. QUERN. One final area, Senator, that was brought up a number of times this morning, and that is alternatives to home nursing care.

The Governor, since he's taken office, has been very strong on this as a major priority, and we have been working with the general assembly and with many others to find various means of assuring that there are alternatives to nursing home care and today, the Governor will sign a bill—House bill 2691—which will provide up to $6 million in the current fiscal year for care, home care, to help people stay out of institutions.

We think, working under that bill, working with that legislation, we can have a very good test and a very good look at what will happen if home care is available and home care alternatives are provided.

We do, I must share with you, have some concerns that there will be instances of expanding the needs as opposed to responding in alternative ways, but the Governor has directed us to go ahead with this bill. He's signing it today. It will provide up to $6 million, and we think in the long run, it will give a very good test to see if this idea works and alternatives to home nursing care provided in the home can help individuals and can help the State.

Senator PERCY. Thank you very much.

Director Ahrens, you will conclude our comments, but I would like to say that on the day of the mayor's marathon, we were at dinner together with all the marathon runners across the country. He had that day gone out to visit the new senior citizens center on Milwaukee Avenue. It was really an inspiration. No city cooperated more with Senator Kennedy and I than the city of Chicago in setting up nutrition centers, really doing an outstanding job. You provided a model that I talked a great deal to the rest of the country about, to convince them this is one of the finest things they could ever go into.

I think these centers have been a 10-year battle of mine to see that we don't just build centers for youth on campuses. Every campus in the country has got a student union where students can get together, but you have to go to St. Petersburg, Fla., to find a good center for senior citizens.

They've got all the time. They've got the desire to get together. They want to be with each other, and there are the physical facilities, and to think of us setting them up in the city of Chicago, whether you use Federal revenue sharing or not, I don't care, it's one of the best uses you can put that money to.

I think you have really distinguished yourself in your leadership in this field. I know, also, the city of Chicago, under your leadership in this area, has been constructively looking for alternatives to nursing home care, and I think you pioneered again in that regard. I was so delighted to have the industry itself testify that they constructively look forward to this, feeling that institutionalization is not always the answer for a person's needs.

Your reputation across the country is well known in this field, and I always feel privileged to work with you and the State government to provide a real model for the Nation here in Illinois.

We need an awful lot of things. It is not enough to lead in agricultural products and in the export of agricultural products. We have to lead in the caring for human beings in a dignified, fine way.

I think, probably, our lifetimes would be well worthwhile if we do that. So it's with that sense we have invited you to appear here, and we're very grateful to you and Arthur for being here, as well as Dr. Prakash and Dr. Walsh, and of course, Mr. Stec. You obviously have a great responsibility in this area and I've worked with Secretary Califano, and I know his dedication in this field, also.

STATEMENT OF ROBERT J. AHRENS, DIRECTOR, MAYOR'S OFFICE FOR SENIOR CITIZENS AND HANDICAPPED, CHICAGO, ILL.

Mr. AHRENS. Thank you very much, Senator Percy.

As you said, we've been through some battles together when we pioneered with nutrition programs back in 1968 to get them established, and finally——

A VOICE. Can't hear back here.

Mr. AHRENS. I was just saying we worked together back in 1968 and 1969 to pioneer what is today a national nutrition program for older people, and I have appreciated the opportunity, also, to work with you.

I really ought to say I'm here, of course, as the director of the mayor's office for senior citizens and handicapped, but——

Senator PERCY. Bob, could I interrupt you for just a moment, because I know other people have pressing appointments?

We will be trying to wind this up in 5 or 7 minutes. My questions are very short, because your statements have been quite complete.

I will have a summary statement of a minute or two, so the people can count on, I think, leaving the room just shortly, 5 or 10 minutes before 1, to make their 1 o'clock appointments.

Mr. AHRENS. I wanted to make a statement, also, as the president of the urban elderly coalition, which is an association of the offices on aging of the Nation's cities, that we regretted very much this summer losing a member of our staff, but since we lost him to the respected staff of the Senate Committee on Aging, we don't feel so bad, and I'm sure that Jeff Lewis will do an outstanding job for your committee, as he did for the coalition at our office in Washington.

Senator PERCY. We're very proud of him, too.

Mr. AHRENS. I have a brief statement, but there are a couple of points I do think important that I add to it, because they are critical of the State of Illinois and I may as well do it while we're all here.

A House subcommittee has concluded that there are from 2 to 3 million noninstitutionalized aged persons who are bedfast, homebound, or have difficulty in getting outdoors without help. Nationally, the population aged 75 and over is growing at almost twice the rate of the older population as a whole.

In Chicago, persons age 75 and over increased by 31 percent between the 1960 and 1970 census; those 85 and over increased by 65 percent. While no one age group among the elderly is necessarily frail, the Federal Council on Aging has noted that dependency-creating

elements are more likely to occur among the more aged groups of the elderly.

A recent survey in Illinois by Booz, Allen, and Hamilton confirms again what most practitioners in aging have always known: The elderly in our Nation want to remain in independent living in their own communities and out of institutions for as long as it's wise and possible to do so. It's always been a chief goal of our office in Chicago to try and develop the home and community based systems that will support this.

Our office does provide some basic services, such as home help, homemaking and home-delivered meals to some of Chicago's elderly. However, the funding for these programs, made available chiefly under titles 3 and 7 of the Older Americans Act, with some under title 20 of the Social Security Act, is extremely limited. Our research division has estimated that 10,000 elderly and younger handicapped persons in Chicago need home-delivered meals. With present funding, we can serve only 1,100 daily.

Many agencies are ready and willing to develop supportive services as alternatives to prevent unnecessary institutionalization, but funds are lacking. We need to alter those policies which have directed most financial resources to support of long-term care proprietary institutions. We must change the medicare and medicaid legislation to include a full range of in-home services.

The restrictions placed on home health visits under medicare ought to be eliminated and the range of services should be expanded. We agree with recommendation 6 of the Subcommittee on Health and Long-Term Care of the House which recommends that a full range of homemaker and correlative services be added to medicare's current coverage of home health services.

The kinds of services such as friendly visiting, housekeeping, home repairs, transportation, home-delivered meals, are absolutely necessary supplements to a continuum of in-home health services.

We support the concept of Senate bill 2009, introduced by Senator Domenici, a member of your committee, which proposes to eliminate several prerequisites to receiving home services under medicare.

In most States, home health care agencies are not required to be licensed, and standards are lacking for training of home care personnel. The frail or vulnerable elderly must be served by well-trained, well-supervised, competent workers who deliver quality service in accordance with recognized criteria.

Opportunities for abuse of these clients must be eliminated. There is no point in trying to eliminate abuse in institutions and then face it again in an alternative system, so we do need national standards to insure the provision of quality in-home services, and these standards ought to be developed through consultation with service providers and the elderly as well as with planners and advocates so that we get standards that are workable and can be implemented quickly.

These standards for in-home services ought to include criteria for service delivery as well as for selection and training of service personnel. Provision must be included for certification of providers who meet the standards and severe penalties for those who abuse clients.

If quality care for the homebound and bedfast is to be insured, then HEW must develop national standards for a full range of quality

in-home services with effective controls to avoid the abuses that have arisen in the long-term care institutions.

Furthermore, the provision of in-home services to the elderly, funded through a variety of sources, including title 20 of the Social Security Act, should be closely coordinated through the designated area agencies on aging, which have the overall responsibility for planning services, so as to avoid duplication and maximize quality and efficiency.

This is an extremely important point, for the failure of States to work through the area agencies on aging in Social Security Act title XX programs for the elderly, can make the coordination responsibilities of the area agency on aging under title III of the Older Americans Act an impossibly difficult task.

I think the Congress may well want to review the effectiveness of the coordination of titles III and XX programs at the State and local levels.

And here, Senator, I think it's important to add that I do think it is disgraceful that the State of Illinois has failed to access any more than 53 percent of title XX social service funds for the last year. Excuses for this just do not hold water, and I think the U.S. Commission on Civil Rights Age Discrimination Study findings, which also pinpointed that even those title XX funds which are spent do not go to the elderly, in terms of their proportion of the population, is equally true here in Illinois. It all indicates that there is a lack of priority in Springfield for social services.

If we paid some attention up front to these kinds of things, I think we would have to pay less attention to the kinds of things which have resulted in this hearing.

The whole title XX plan for Illinois includes nothing for home delivered meals.

While we have waiting lists under title VII of the Older Americans Act for meals programs, the State of Illinois does not put 1 cent, Senator, into the nutrition program for the elderly. The city of Chicago and HEW have come up with millions of dollars for these nutrition and multipurpose centers that both you and I think are so necessary and valuable. The State must do more than be a silent partner, I think, in the delivery and funding of social services for our older people. The burden should not be left alone, I think, to the Federal and local governments.

Finally, because of the nature and severity of the impairments of many older people, while only 4 or 5 percent are in institutions, that percentage can be expected to continue to require long-term care in an institutional setting.

The responsible public agencies, whoever they are, must establish high standards for patient care, plus vigorously enforce these standards and I mean Federal, State, and locally.

The public will no longer tolerate profiteering of the nursing home owners who fail to provide quality care for their patients.

Thank you for the opportunity to present my statement. I know that the views I've presented for our office on the need for home and community-based services are equally the views of the urban elderly coalition and also the National Council on the Aging, whose public policy committee I chair.

Senator PERCY. Thank you very much.

I'd first like to ask a question of all of you. Do any of you feel that BGA and the news media provided a public service by focusing attention on this particular issue?

Mr. AHRENS. Senator, I wish they would do even more. Let me give you an illustration.

Going back to 1968 and 1969, I wrote a letter to the editors of all of the Chicago newspapers, enclosing copies of the study we had done on the likely effect of this wholesale putting people out of State mental institutions, asking them to look into it and perhaps devote editorial time to it. Nothing resulted.

Now today, we're having exposés on that problem.

Again, I wrote to every television and radio station manager here in Chicago, and to the press, prior to the title XX hearings a couple of years ago, to determine the State social services plan.

I said I had read nothing in the newspapers that would even explain title XX to the public, let alone urge them to come out and testify.

Again, I think the media, if it would really take up its responsibility, would do more. It would do these basic things up front, that would diminish the need for exposés that have to come later, and would perhaps eliminate some of this intolerable abuse where it exists of old people.

Senator PERCY. Considering they could do more in our particular fields of interest, even more, do you feel, though, that what they have done, focus attention, has been in the public interest?

Mr. AHRENS. Indeed I do.

Senator PERCY. I think there seems to be a concensus.

Mr. QUERN. Senator, I'd just like to say two things: One, that the report by the BGA and the channel 7 report dealt with about eight nursing homes. There are specifics in there that we'd like to address independently in a written statement to you, but I think you point to a very key word here—and indeed, the investigator for the BGA used the same word earlier—"attention."

He said it was not so much abuses as it was inattention.

You've also heard today about all of the State representatives tripping over each other coming in and out of facilities. Somewhere in here, we need to focus on the proper roles of all of the various entities involved in nursing home care, but one thing that comes back to us, we run a large agency. There are a number of agencies involved. The statistics that we have—I can't assure you that they are the most valid or best sample kind of statistics, but our best information shows that up to 60 percent of nursing home residents have one or fewer visitors a year.

One of the things that happens today with this hearing, with the BGA report, is a question of public and family and community concern. We are large agencies. It's healthy for us to be interested about what we're doing and where we're headed.

Nursing homes and institutions—it's healthy for them to get questions in this form, but until families are concerned and communities are concerned, there will never be enough inspectors. There will never be enough monitors 24 hours a day to watch every patient and watch every nursing home, so the point that has come through all of

this is a question of attention, and I think that's been the most significant point of all.

Senator PERCY. I might say in most of the audiences that I address I will get around to the fact, as I did yesterday, that probably in your neighborhood, you have a nursing home. You walk by it a number of times. You just never turn in and see what is going on.

I wrote a letter to every single high school in Illinois and got high school students to visit nursing homes. Some of them testified that they just literally were thrilled that they were wanted.

Drug abuse is worse among young people and old people. Why? People in the middle stream of life—being active, busy, making money, providing for families—feel important. But the younger people sort of are left out of the bigness of society, and they cop out, in a sense, and the older people feel left by the wayside.

Put the two groups together. Some of the young people from Mundelein College were 10 feet tall as they went into those nursing homes at Edgewater in Rogers Park. They went in and combed the ladies' hair, helped them answer letters, helped them make phone calls, just sat and read the newspaper with them, talked over current events, started calling each other "grandma" and "grandpa" and "grandchildren," and so forth. It was just a wonderful thing.

So there's an awful lot Government can't do, more they can't do than they can do, really.

Some of those people have only one visitor a week. They grab onto you, they hold onto you. They're so anxious to touch a human being and just feel that someone cares about them.

That's something Government can't provide.

The purpose of these hearings many times is just to prick the conscious of people as much as anything else, and I appreciate very, very much your mentioning it.

I'm wondering, Mr. Quern, whether you could address yourself to the question regarding Accom-O-Day and the donor matching which legally disqualifies the witness that we had before, the director of Accom-O-Day Care Center in Chicago.

Mr. QUERN. Certainly. I personally visited Accom-O-Day, and we looked into working with HEW to develop a pilot to see if we could pursue that. We were not—we did not get approval to use title XIX funds in that fashion, so then we went the title XX route, and I want to mention we, too, are concerned about title XX and this State's ability to get its entitlement.

I think we're there. I think for the first time, Illinois will reach its ceiling in the fiscal year.

One of the things she was referring to was part of the Governor's initiative under title XX to involve the private voluntary sector in the use of title XX funds, and we had hopes, in the absence of HEW approval, to use title XIX for that facility, that we might try to use the volunteer sector to come up with the donation.

We would share the leverage which title XX provides for reimbursement and let that money go directly to this kind of program.

I did not know Ms. Weiss' problems with that till I heard her statement here today. I take it she found some of the discussions with the private volunteer sector inadequate and therefore, has decided to not proceed with that.

The only thing I can say is, as a next step, I would hope that we would sit down again when the Governor signs his bill today, he does provide an additional resource. It may provide a means for taking a program like Accom-O-Day and giving it a run for its money to see if it works.

I cannot leave that statement, though, without addressing a question that you raised a number of times, that is, are we sure that it's really going to keep people out of nursing homes? We are not sure.

I think it may just respond to a need out there in the community which is not being met, lonely old folks in their homes who aren't getting any kind of services. Whether or not it provides an offset of nursing home costs is something we'll study.

That's an interesting cost-benefit analysis. We think it's worth exploring in terms of home health care services, so what I would like to do with Accom-O-Day, once the bill is signed, once we have begun developing the regulations, to sit down with them again to see if there's a means of using them.

Senator PERCY. Very good.

Incidentally, I spend a great deal of time on case work with Senator Stevenson, who was invited to be here to participate with me. Regretfully, his schedule did not permit him to do so, but our offices work together on a lot of case work involving patients in nursing homes, nursing homes themselves and so forth, because they know of my interest.

I had one call come in last night, late, asking for an appointment with the Governor to work out a problem. I said, "Why the Governor? We've got the expert coming today."

If Mr. Grisham could turn that case over to you, I'd appreciate your giving us some judgment on it as to what could be done.

My last question really pertains to whether you feel lines of delineation between Federal, State, and local government are clear enough, whether their responsibilities in this area are sharp and clear.

Do you think there still needs to be work done in that area to eliminate the overlapping, duplication, to clean up the lines of authority and responsibility so each level of government knows what its duty and responsibility is and authority?

Mr. STEC. Personally, I think it is clear.

My problem, what I tried to address myself to very briefly, is the definition of a nursing home is a very wide definition. The Federal Government just has control over a very small portion of direct control and a monitoring role in another portion. I would think, by and large——

Senator PERCY. Your area mainly is intensive care.

Mr. STEC. Right. We had about 800 of those in the region where there were about——

Senator PERCY. Intermediate?

Mr. STEC. We don't even have a count on a role in residential facilities.

I think from the standpoint of what we've done, I think we have had fairly good relations with the State. I think we've given some pretty good training and interpretation of regulations.

Now, keep in mind, I think our regulations were too process-oriented, but I know in Chicago, we started basic training courses which I think the States do like quite a bit. We are funding some of

the surveying activity, which I think does help, and if you look at many States, they have developed some fairly strong licensure laws which do help in enforcement.

Again, I think the question is how far should regulations control nursing homes go, and that's the question I would, you know, prefer to comment on, at least officially.

Senator PERCY. Thank you. Just a very brief comment. We will adjourn in 1 minute.

Mr. QUERN. It is not as neat as anybody would have. I think we know our functions. Now they've got to be improved.

We are involved in paying bills. Other State agencies are involved in licensing. Others are involved in approving patients' programs.

We terminate medicaid providers such as we terminated eight nursing programs in the last year. Public health has been involved in licensing, reviews, and they have suspended one license in the last year, and there have been over 50 in hearings at various times.

These roles are defined now, defined in the most sensible way. Are there better ways to consolidate?

I would have one other thing. I can't pass it up, and that is one major factor is the cost, and Illinois, as with a number of other big, industrial States, only gets 50 percent reimbursement by the Federal Government, whereas many other States are getting as high as 80 percent.

Our $285 million could go a lot further if we were reimbursed at the rate of some other States.

Senator PERCY. Very good.

I think at this stage, I'd like to just summarize a few of the conclusions that I have come to. This has been a good hearing and you always want to keep going. You finally have to have a terminal point.

As I said in my opening statement, the committee really is here today to update our previous studies on nursing home conditions.

We've heard testimony about some deplorable conditions, and we've heard testimony about some good conditions, so we know that there are, in some areas, high quality care being provided, and that it can be and should be provided.

We're not talking just about a million people in nursing homes. We're talking about 5 or 10 million people who have families in them, who are concerned about them. We're talking about everyone in America that may end up in one, so we've got a problem to see that today we do have a better coordinated governmental program, so that we can see who has the responsibilities, and that the buck stops someplace. If it's the Federal Government role, I want to see that we assume that degree of responsibility.

We're going to try to streamline the bureaucracy in every way that we possibly can, to better monitor the quality of care in nursing homes and define what we mean by quality care.

I think we have seen improvements, but we also know that we have problems, and we have still a long way to go.

The area that I think we all can work on together more is expanding extended care services in the home. Personally, I have seen so many people who could have saved the State $400 a month or $500 a month if they just had some service for a while that would have bridged them over. They'd much prefer to stay in their neighborhood, their communities, wherever they happen to be living, and I've

talked to those people in their homes. We are really trying now at the Federal Government level to reach out and expand the meals-on-wheels programs, home-delivered meals, extented home care, and this is the area that Senator Domenici and I are beginning to work in very, very closely.

We mention a little of the arithmetic. Let's talk now about taxpayers' dollars. We're spending someone else's money, and I did it for years, spending stockholders' money, and now I think I have to look at this as carefully, more carefully than if I were spending my own money.

Just last year, we spent, at the Federal level, $6.39 billion by medicaid on nursing home expenditures.

As Everett Dirksen said, "A billion here and a billion there, and pretty soon, you're talking about real money."

What I'm impressed by after 12 years in Washington is $6.39 billion. At the same time, we're only spending, and I say "only," it's a lot of money, but relatively speaking, it's less than a tenth, we're spending $458 million in medicare funds on home health care services.

It's obvious that if more funds were put to work there, you'd lessen the necessity for $6.39 billion, and it's a better, more humane way to do it.

We just don't have the procedures and programs now. This is an increasingly elderly society. More and more people are living longer and getting older. We're increasing the working age. There's a lot of things that we can do there that we haven't even discussed, obviously, such as improving the social security system.

Between 1966 and 1975, nursing home costs to this country have risen 400 percent, and the higher proportion of older people in our society will cause those costs to skyrocket. Let's try to get a lid on those costs.

I am more fully aware than I've ever been of the commitment that I must make and my colleagues must make. I respect very much Senator Domenici, who has made this a major part of his activity in the Senate. Caring for the elderly is of paramount importance to us. They have to feel someone cares about them and is looking after their needs, and that they have someone that they can write to.

It's the role of this committee to explore problems which prohibit elderly persons living in nursing homes from obtaining quality care. It's our overall responsibility and duty to see that we somehow build the kind of quality into the lives of the elderly that makes their lives meaningful, that makes them decent. This Nation will be judged for the way we provide for the elderly, and we're not doing a good job of it today.

We've got a long way to go, but Chicago and Illinois have been leaders in so many ways. I think we're going to do a great deal to improve these programs as a result of this testimony today, and I'm deeply grateful to BGA, to the media, and to all of the outstanding witnesses that we've had today.

These hearings will be presented as official hearings of the Senate Special Committee on Aging. Copies will be made available to any of you who drop me a note and ask for them.

I'd like to thank our distinguished staff, both minority and majority, for their great help, and without further ado, this hearing is adjourned.

[Whereupon, at 1:15 p.m., the hearing was adjourned.]

APPENDIX

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT ON BEHALF OF THE WILLIAM RAINEY HARPER COLLEGE, PALATINE, ILL.

William Rainey Harper College, Palatine, Ill., in its attempt to be ever aware of the community's responsibility to its citizens, is acutely concerned with the lack of well-trained nurses' aides who are employed in long-term care facilities, geriatric centers, and home-health agencies.

It is with this concern foremost in mind that William Rainey Harper College, jointly working with CETA (Comprehensive Employment Training Act) is offering an 8-week geriatric/home health aide training program to enable eligible suburban Cook County residents to care for Illinois' elderly.

This program is designed to provide the highest quality of training in both the geriatric field and that of home health care. We feel that institutional care is not designed nor required for all senior citizens, so we do offer 12 clinical hours in the home health care setting as well as home health adaptive techniques taught within the classroom.

In addition to preparing students with basic nursing skills relating to personal hygiene, skin care, nutrition, elimination, ambulation, vital signs, activities of daily living, facilitating rehabilitative goals, observational skills, and reporting techniques, we include 16 hours of psychosocial aspects of caring for the elderly. We seemingly find that if students first are able to identify normal aging and the psychosocial aspects of aging, they then are better prepared to care for their patients. This preparation, we feel, is also responsible for satisfaction, longevity on the job, and a thorough understanding of that phase of development.

The need for nonprofessional nursing care personnel is critical in all areas of care to the elderly. For our particular purposes this need was identified in a January 4, 1977, publication, "Survey of Need for Nursing Aide Graduates in Home and Geriatric Health Care."

The purpose of this study was to determine whether or not there was enough employment demand for graduates of a nursing aide program for home and geriatric care to justify such a program at Harper.

The population surveyed consisted of all the home health care agencies and the nursing homes in the northern, northwestern, and western suburbs of Chicago. The results indicated an overwhelming evidence that there would be sufficient demand for graduates.

The most serious problem revealed by the survey was the estimated salary our graduates could expect to make. The survey of these home health care agencies and nursing homes indicates there is an employment demand for about 150 nursing aide graduates per year. However, because the hourly starting wages are low ($2.54 for nursing homes and $2.82 for home health agencies) there is a question as to how many students could be recruited each year.

Since the development of this concept began, our biggest concern is that of identifying students. The difficulty, it seems, relates again to the earning power of nonprofessional care-givers in the job market. Although most of our contacts in the health care field employed our students at a rate similar to those of "experienced employees, that rate remains significantly low. In addition, raises, advancement opportunities, and motivation seemed to prevent graduates from remaining at any one facility for long periods of time.

We approached the identification of students through local newspaper advertisements, contacts with health care facilities, as well as a myriad of other sources, which never quite filled the class enrollment. The best approach seemed to be in advertisements which were specifically interesting to homemakers who were

looking for personal enrichment. It appeared to us that these students were most successful with great potential for advancement. These specific students were mature, loving, giving, and sensitive to all the needs of the elderly.

Currently requirements for nonnursing care-givers is, as we see it, relatively nonexistent. Many facilities are so desperate for staff that training and experience are not criteria for employment. Some facilities offer a training program. Even though these training programs are well intended, they seem to be extremely fragmented and carried out in a catch-as-catch-can manner. Apparently, the difficulties arise from on-the-job training instructors having many other diversified duties, as well as students being responsible for care-giving without adequate skills or knowledge.

We fully realize that many attempts are underway to resolve the situation of unprepared nonnursing care-givers. Beth Walston, chief of Curriculum Development and Training Division of the Office of Health Facilities and Quality Care, Department of Public Health, is doing a commendable job in standardizing nurses' aide training. We were unable to offer input at the latest meeting as the dates for the Springfield meetings met with personal conflicts.

We are also aware of the efforts of Richard Whitney of Lieutenant Governor O'Neill's office, and have been in contact with him as he concentrates his efforts on behalf of legislation for nurses' aides.

The Illinois Health Care Association in Chicago also is concentrating the efforts to upgrade training of nurses' aides in the Chicago area. We also have offered assistance in this endeavor.

Our successes in the past year in training nonprofessional care-givers is not ours alone. In addition to the efforts of the local CETA offices and the expertise of the nursing faculty at the college, we have had considerable support from our advisory board. The advisory board consists of key figures in the local health care field. We have three representatives from home health facilities who have not only been a help in our development, but also instrumental in referring students and offering employment opportunities. In addition to nursing faculty representation from the college, we used the expertise of many representatives of long-term health care facilities and geriatric centers on our advisory committee. These contacts also have helped in offering employment opportunities.

The local social service agencies also are aware of our endeavors and from time to time send us referrals.

Our futuristic goal in terms of caring for elderly in the north and northwest suburban area is to concentrate on the training of the nonnursing care-givers in health care facilities. To effectively accomplish our goal, the emphasis seems to be on teaching others to care for others. The ability to understand the elderly, in our opinion, does offer some success in their caring, as well as being able to use basic skills to assure the elderly of the care and dignity they so richly deserve.

It might also be imperative that the monitoring agencies be fully aware of requirements and standardizations of programs and then be able to enforce these programs.

All in all, quality care begins with quality training. We, therefore, strongly recommend that:

(1) Efforts to standardize nurses' aide training in Illinois continue through the establishment of firm training criteria and nurses' aide certification requirements. To be effective, these standards must be strictly enforced in all long-term care settings. Training programs must also be adequately funded and monitored to prevent "paper compliance" with established training standards.

(2) Emphasis be placed on understanding the process of aging and the psychological needs of the elderly in all training programs. It is essential that instructors within these programs have geriatric and rehabilitation nursing backgrounds and possess a strong commitment to quality care of the aged as well as the ability to transmit these concepts and skills to the students.

(3) The nurses' aide training program model described herein, which includes the joint efforts of the local long-term care agencies, the local community college and outside funding source such as CETA, could be developed and implemented in multiple community college districts within the State of Illinois. Widespread organized quality nurses' aide training should have a major impact upon the quality of care to our elderly if it is provided in conjunction with nurses' aide certification requirements.

(4) Federal reimbursement programs to long-term care facilities must include funding adequate to provide a nurses' aide salary schedule that is competitive with local nonhealth industry workers at this skill level. Many caring individuals

are forced to seek employment providing higher hourly wages in such industries as manufacturing and food chains rather than utilizing their skills in the field of geriatric care where they were trained.

ITEM 2. STATEMENT OF IRENE M. SMITH, EXECUTIVE DIRECTOR, HYDE PARK NEIGHBORHOOD CLUB, CHICAGO, ILL.

Senator Percy and other members of the Special Committee on Aging, the board of directors and the staff of the Hyde Park Neighborhood Club commend you on your effort to look at alternative services to nursing home care for the older citizens of our country. At the neighborhood club we believe we have a viable alternative to nursing homes by providing day care services for those elderly people who are no longer able to care for themselves during the day, but have families or friends with whom they live and can return to at night. Additionally, the day care services we plan to provide in the community will make it possible for older persons to remain in their own communities and continue the associations they have developed over a lifetime of living.

A decline in one's general health and energy level is common to all aging persons, and when this happens an older person often becomes dependent on others for providing the basic needs of daily living. If there is a family member or friend at home who can be of assistance, the elderly normally live out their lives in familiar surroundings. But if no one is at home during the day, or if an adult child would be required to stay at home in order to care for the older person, that older person may become a premature candidate for a nursing home. However, if a day care center exists which can accommodate the dependent older adult during the daytime hours and return the individual to his or her home at night, then it will be possible for that person to remain at home with family or friends who "care."

These daily supportive services—caring for personal needs, providing nutritional meals and snacks, seeing that medical and dental appointments are kept, and helping the older person to maintain social relationships with other people—can be provided in a day care center. The focus of this program will be on the enrichment and strengthening of life for the older adult—a recognition of the value of life and the contribution which the older person has made to our society.

Such a program will also emphasize the necessity of continuing to care for one's physical needs through proper nutrition and an appropriate physical fitness program geared to the needs of the elderly. In addition to activities with which the elderly are already familiar, there will be programs new to them which will stimulate them intellectually and bring them satisfaction and a renewed sense of achievement. The program we have designed will provide social work services to the client and his/her family from the time of application to the time of discharge.

Because of a minor physical impairment, or the confusion which sometimes accompanies old age, it becomes increasingly difficult for older persons to maintain their independence. A day care center will provide a comfortable, secure place in the community and the older adult may then return home at night to family or friends. Adult children will be relieved of the guilt and anxieties which often accompany the decision to place a parent in a nursing home. This program will save millions of tax dollars because the cost of day care, quite simply, is much less than nursing home care. This is a realistic alternative to nursing home care for many older people. It is a creative partnership with family and friends, which strengthens our society. We urge your committee to support the creation of day care centers for the elderly throughout the country, and furthermore, to use your influence to make title III and title XX dollars available for such programs in the Chicago area.

IRENE M. SMITH.

ITEM 3. STATEMENT OF LYNN G. BRENNE, ACTING EXECUTIVE DIRECTOR, SUBURBAN COOK COUNTY AREA AGENCY ON AGING, CHICAGO, ILL.

The Suburban Cook County Area Agency on Aging is responsible for planning, coordinating, and administering services for the elderly with Federal and State funds that are supplemented by private funds at the local level.

Nearly 300,000 persons over 60 live in the 30 townships and 125 municipalities outside of Chicago in Cook County and these comprise the constituency of this agency. The vulnerable elderly in this population are the special concern of this

agency and are the group for whom we take our advocacy responsibilities most seriously. The Senate Special Committee's concern for alternatives to nursing homes is providing long-term care for older Americans is also ours.

The concentration of aging Americans in the age groups over 70, 75 and 80 is increasing steadily. At the same time the trend of the current generation in this country to reduce child-bearing to zero population growth will steadily diminish the extent of familial care and respect of children for aging parents that today's elderly have grown up with. The problems that these circumstances portend are here already—and they are ours.

Warehousing of disadvantaged members of our society has been both disparaged and discouraged. Some success has been achieved among the handicapped, the developmentally disabled and the mentally ill. We should do no less for our vulnerable elderly. The nursing home represents a solution of last resort. Unavoidable at times, it is nevertheless a monument to loneliness, a minimum reward to the aged, and a maximum cost to the taxpayers.

The Suburban Cook County Area Agency on Aging conducts a senior companion program which is funded by ACTION and answers a vital need. Our program services over 300 seniors in nursing homes through 60 volunteers and is heartily welcomed by nursing home providers. However, it cares for only a few of the thousands in suburban nursing homes. It should be expanded to embrace more volunteers and patients.

More important than our commitment to advocacy on behalf of persons already in nursing homes is our emphasis on senior services that will keep the elderly out of nursing homes—an objective of the Illinois Department on Aging as well. (Evidence of our common cause is described in the attached news release of September 1.) Top priority is already given through funding administered by this agency for services that enable seniors to remain in their own homes, in familiar surroundings with friends and relatives close by, where they will not be forgotten.

Several programs seek to achieve this objective and they should be consolidated to increase efficiency and reduce administrative cost and slippage. These programs include titles III and VII of the Older Americans Act and title XX of the Social Security Act. The welfare aspect of programs should be carefully separated from those services intended for the elderly generally, many of whom today are rejecting such services because they are proud, dignified, independent and resist invasion of their privacy. Only the more skillful workers can achieve acceptance with dignity and their efforts can best be monitored effectively and administered at the local level. Undue incursion of Federal and State mandate and regulation deter rather than increase the confidence and acceptance by many elderly of essential services offered in good faith.

There is no disagreement on the benefits of keeping the elderly out of nursing homes. There is however, clear choice on the assignment of responsibility for accomplishment. The 564 area agencies can best have that responsibility. The need for splintering local planning and funding distribution, the cost of redtape, and expansion of paperwork, are issues that should be met and resolved by Congress as increased appropriations for the elderly are considered.

[Attachment]

STATE FUNDS KEEP SENIORS OUT OF INSTITUTIONS

The Suburban Cook County Area Agency on Aging will soon be more active in two programs designed to help the frail elderly remain at home, with funds available under the Social Security Act through the Illinois Department on Aging.

The two programs are for adult day care and for comprehensive alternative care. Day care programs provide closely supervised activities with a lot of personal attention for small groups of seniors. Comprehensive alternative care centers provide a wide range of services that include assistance for the homebound as well as day care and other programs.

The area agency on aging is now accepting applications from local agencies to provide these services and will make recommendations to the Illinois department on the applications received. Once programs are established, the area agency will monitor the progress of the programs, provide technical assistance, and give periodic evaluations.

Under a local effort plan, $173,472 is available for adult day care programs in the Cook County suburbs. This arrangement requires local donors to supply 25 percent of the total funding. The remaining 75 percent comes from matching Federal funds, without any expenditure of Illinois general revenue money.

Certain applicants will receive preference for the grants. These include organizations serving areas with high concentrations of low-income and minority elderly and agencies with established day care programs or the capability to set up such programs promptly.

In suburban Cook County, $243,000 will be awarded for a comprehensive alternative care center. The site chosen will be responsible for the coordination of at least a minimum range of services. These must include chore and homemaker services, day care, health related facilities, and counseling.

The comprehensive care program is an alternative to unnecessary and premature institutionalization. It is designed to provide a well-meshed union of programs in the area the center serves.

Many elderly individuals have needs which don't require the 24-hour setting of a long-term care facility, but do need periodic supervision, minimal assistance with personal care, and some help with home management or other services. In these cases, institutionalization can be prevented—or at least postponed—if substitute services are available in the community.

The Suburban Cook County Area Agency on Aging, through its coordination efforts in these two programs, will help to curb expensive institutionalization while assisting senior citizens to maintain their independence and dignity.

ITEM 4. STATEMENT OF PAUL Q. PETERSON, M.D., DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, SPRINGFIELD, ILL.

On behalf of the Illinois Department of Public Health, I would like to express our appreciation of the effort expended by the Better Government Association and WLS-TV in their investigation. It is this sort of private commitment to independent investigation which provides valuable information on the working of the regulatory system and helps us do a better job. We will certainly consider the BGA/WLS findings in directing our activities.

There are, however, several points of clarification which we would like to raise which will make policy application of the investigation much more probable. These pertain to development of supporting data for many of the points raised in the report. We recognize the advocacy nature of this report, and would not insist on strict objectivity in reporting. However, if advocacy is to be useful, it must be supported by reliable evidence, and statements of fact must be directly related to that evidence. Otherwise, the policymaker will be unable to ascertain the reliability of the advocacy, and may adopt a course of action which will be counterproductive to all concerned.

There are three major areas in which the report could be made more useful to the State's policymaking bodies: (1) A written report of the findings; (2) quantification of the findings where possible, including both the extent and the severity of reported conditions; and (3) more specific presentation of the evidence supporting the statements of fact made in the newscast. Each of these will be discussed in turn.

(1) *Written reporting of the findings.*—Since time is limited in a newscast, only a partial discussion of findings is possible. Also, extemporaneous statements may be made which do not accurately reflect formal findings, and identification of such statements is difficult. Accordingly, we would strongly suggest that the findings of this investigation be put into writing so that they may be adequately studied and incorporated into policy. This paper should include discussion of the technical methods used in developing information, including sampling procedures used to assure that conclusions drawn from the sample will generalize to the broader group of facilities to which the conclusions will be applied. Also, the training of investigators to recognize problems (e.g., staff withholding candy from a diabetic vs. fighting with a patient to minimize food costs) should be discussed.

(2) *Quantification of findings.*—It is extremely important to document both the prevalence of reported conditions and the severity of reported conditions. For example, the report notes that 60 percent of facilities surveyed have been cited for violations of personal care standards. Does this statistic refer to isolated failures to sew a name tag on clothes, or does it refer to general neglect of patients? Either interpretation is possible, and for the sake of accuracy and public information the report should array and discuss the types of violations documented.

In terms of the extent of the findings, careful description is essential. Incidents at five facilities, of eight chosen on the basis of complaints, are noted in the report.

One appears only because of equipment failure, and one only because of an instance involving cold food. Yet the findings of the report are generalized to the industry. There are, for example, over 40 references to abuses, shocking abuses, neglect, and even killing of patients in the nursing home industry in general. Other statements also imply that the findings are general:

"Abuses and neglect continue to plague the nursing home industry." (7/17)

"Peter, you say you've placed a lot of investigators in many of these homes for a period of several weeks." (7/13)

"Many nursing homes save money by serving all three meals within an 8-hour period—but then the patient goes for 16 hours without anything to eat—or maybe a snack like a graham cracker, which they can fight over." (7/18)

"As a result, nursing homes superficially look better than they did. They may be somewhat *cleaner* than they were—they're more *modern*. However, that creates an additional problem—which is that they're more deceptive to people who are taking and putting their relatives there—they may look at a place and see that it's clean—but there might be underlying conditions which relate to *patient care*, and that's the kind of thing that we uncovered by putting people on the inside." (7/17)

"* * * the State has bragged in a number of publications what they've done, about the fact that Illinois is much better because of the investigation done in 1970 by the BGA and the Chicago Tribune, and holding it up as some sort of model—and then when you go out and really look at it—you find out that it just isn't that way." (7/17)

"* * * there are on the surface a lot of homes that look really nice. And that is precisely what we did on our investigation. We went to nice homes and they had a nice physical plan and so forth. But when you get into them and you look at it for a while—you find a lot of things." (7/13)

Given the constraints on air time, the investigators could hardly have presented all the evidence on which their conclusions are based. However, the entire set of evidence must be presented if their advocacy is to be useful. The policy response to the conditions reported will be very different if we are dealing with isolated incidents at five homes than it should be if conditions described in the report pervade the long-term care industry.

(3) *Evidence for statements unsupported in the transcript.*—In several places the transcript presents a conclusion without presenting the supporting evidence. It would be useful to have the supporting material made public. Such statements are made in several areas:

(a) Government misfeasance:

"Nursing home inspectors are more concerned about paperwork than people." (7/14)

"There's a lot of buck-passing between agencies regulating homes." (7/14)

"But, we have seen that agencies regulating nursing homes pass the buck and are slow to act—and often there is conflict" (7/20). In particular, "buck-passing" should be differentiated from shared responsibility. There appeared to be some confusion here, as the BGA/WLS insistence that the Department of Health, Education, and Welfare discipline facilities when the responsibility had been delegated to the city of Chicago, which, by the report's account, is maintaining current records.

"There's also a lack of obvious commitment from people in government today" (7/21). This statement is somewhat inconsistent with the massive amounts of time, interest and money devoted to long-term care—for example, the development of QES—documented in the report.

"Apparently all the regulations on all different levels of government, don't really curtail the problems in homes." 7/17

In commenting on a report published by the Illinois Department of Public Health: "You can better believe that we're going to get a list of that—that was published, and we're going to compare it to some of the inspection reports that we found" (7/17). (No report on the comparison was made.)

(b) Poor quality food:

With regard to food quality, special care should be given to documenting qualitative judgments. Consider the phrase "soup and sandwiches for a light meal" (an industry term not inconsistent with eating practices of many families) vs. "a piece of American cheese between two slices of stale bread" or "baloney sandwiches as the main course for a Sunday meal—something is definitely wrong—gentlemen." To be meaningful in challenging the industry to provide better care, the report's statements should document insufficiencies

being referred to such as infrequent delivery, purchase of commercial quality meat, etc.

Also with regard to food, the report implies that $1.95 per person per day ($55 per week for a family of four) is inadequate. Some documentation should be presented if this is, in fact, a criticism of the industry.

(c) Training:

"If you're in a nursing home, 90 percent of the care you receive will come from people who have no medical or professional training whatsoever. With all trends considered, and studies considered, the nursing home industry wants to keep it that way." (7/19)

Regulations require that aides receive training, including the possibility of inservice training. Evidence on the lack of any training even after employment in the facility would be important, and evidence on the general lack of training in the industry would be most helpful.

More accurately this point appears to assert that formal medical or professional training and certification is required of nurse's aides. However, given the tasks performed by these personnel, completion of nurse's aide training as required by regulations is generally recognized as completely adequate—whether the aide is working in a hospital or long-term care setting. In fact, long-term care facilities which are regarded as excellent examples of care, including those referred to by Senator Percy during this hearing, generally employ aides with this type of training.

(d) Trends in quality:

Several statements were made concluding that conditions in long-term care are, aside from cosmetic physical changes, the same as they were in 1974. (7/13, 7/17, 7/19)

Given that enormous amounts of resources have been allocated to correcting conditions, documentation of this allegation would be valuable. Of particular interest would be the frequency and severity of abuses now as opposed to 1974.

To the television news viewer, of course, these points would seem technical and unexciting and, given the media used, their omission is understandable. However, in requesting a published report which would address these and similar points we are not simply asking adherence to procedures which are generally accepted by reputable policy analysts. Policy response, if it is to be appropriate, must be based on an accurate appraisal of the scope and severity of the problems being addressed. Otherwise, government agencies may address the wrong problems or misplace emphasis. In fact, BGA/WLS report emphasizes attention to building standards at the expense of patient care—a condition which may well have arisen out of earlier reports which concentrated on fire safety deficiencies. Simply drawing attention to a problem may not be a public service if that attention is misfocused, and results in an inappropriate response.

To this point, we have concentrated on requesting clarifications and amplifications which would facilitate use of the report for policy purposes. In addition, there are several points at which the report conflicts with our understanding of the long-term care industry and its regulation:

"Statistics reveal that 71 percent of the foreign nurses taking exams in our State, flunk. *There is no systematic followup* to check if nurses continue to work as a nurse or not." (7/19)

In the long-term care industry, unlicensed personnel would be identified during routine licensure inspection surveys. Thus, failure to pass the test would prevent working as an RN for any extended period.

"There's a great deal of talk now about cost containment—the need to not raise taxes—to lower government expenditures. The decision has to be made as to whether that has to be balanced off—or can be balanced off with providing adequate care for the elderly and aged—and handicapped in our State—and that's a major policy decision—*but it isn't being discussed at any level in the government right now.*" (7/20)

In fact, this topic is being actively discussed. Governor Thompson has established a purchased care review board, composed of the directors of the major social service and health agencies and the director of the bureau of the budget, to address this and similar issues. A detailed description of the board's activities may be obtained upon request.

Also the Statewide Health Coordinating Council is developing a policy analysis of alternatives to long term institutional care, and departments of mental health and aging are pursuing development of alternatives to institutionalization as a long-term solution to rising costs.

"A team of experts from the department of mental health is there weekly, and one person stops by just about daily. Most other homes pay for private consultations—but DMH is very concerned about Glen Oaks, because one-third of its patients are from mental institutions. Their involvement is very unusual—and DMH is closely guarding a report which cites major deficiencies in the home's programs." (7/21)

It is not unusual for the department of mental health to advise facilities regarding program content, particularly after a deficiency has been documented. The report appears to be faulting an attempt to remedy a deficiency by people it has elsewhere labeled unconcerned about patient care.

Repeated comments were made in the report and in oral testimony regarding inspector's concern with physical plant. While the physical environment is important to the safety of residents, the survey format used by the State of Illinois provides a substantial portion of survey questionnaire for questions relating to patient care, including the adequacy of the diet, the appropriateness of staffing, and control over medication—the very issues raised by the report. A survey questionnaire is included for informational purposes, so that committee members may draw their own conclusions.

"During the last year, not one nursing home was closed by the Illinois Department of Public Health, and that's their style. They would rather consult than close. Enforcement of regulations could end up in the courts for years—and nursing homes can continue to operate pending lengthy litigation." (7/13)

In fact, one nursing home's license was revoked this year, but that is a minor point. Our objection is to the apparent equation of enforcement with closure. The purpose of the department is enforcement of regulation, not closing of facilities. Yet there is no mention of the number of facilities which were brought into compliance. Furthermore, compliance can usually be obtained most rapidly through citation and consulting or initiation of the hearing process, and the quickest process is, after all, in the best interest of patients. Closing of facilities leaves patients homeless and in some cases without a good substitute. In addition, the transfer trauma caused by closing will very probably cause a number of deaths as several careful studies have documented. The reporters may not be familiar with these studies.

"There's a tremendous incentive in this point count reimbursement for the homes to keep people as dependent as possible—and not to rehabilitate people who have rehabilitative potential." (7/17)

Problems with the point count are recognized. However, without some type of patient assessment tool, the same rate is applied for all patients regardless of need. Several formal studies have indicated conclusively that patient condition is an important determination of the cost of care in any type of medical institution, hospital or nursing home. That is, the sicker the patient, the more it costs to care for him. The use of an assessment tool simply permits payment commensurate with the costs of care. To do otherwise would provide a disincentive for admitting the very sick.

At the time the reimbursement system was initiated, the point count system was the only assessment tool available to us. Subsequently, we have begun development of an alternative tool which will correct the deficiencies in the current point count tool. The key here is difference between cost of care and reimbursement. That is, if it costs $10 to care for a bedridden patient, and payment is $10, the facility is not encouraged to keep patients debilitated but is rather being equitably compensated for the added costs of admitting a sick patient. Incidentally, despite the allegations that the current point count encourages debility, we have seen no evidence that the cost of care for the specific conditions recorded on the point count is exceeded by reimbursement, and would welcome any hard evidence that an adverse incentive does in fact exist.

These last two points seem to indicate some lack of practical experience on the part of researchers. In a simplistic sense, it would seem appropriate to close facilities which do not comply with licensing standards. Given the probability of deaths caused by transfer, the difficulty of placing patients, and the fact that more can be accomplished by consultations and hearings, massive closures are not the best alternative. Similarly, the point count system is problematic in some respects, but the alternatives are probably worse. The practicality of alternatives must be borne in mind in any criticism of present systems.

One final point to be raised concerns the reimbursement system instituted by the State of Illinois in January of 1978. At least one previous speaker indicated that the State's only objective in developing the system was minimization of its

cost. In fact, the State's goal was minimization of cost for *appropriate care.* That is, we attempted to establish a reasonable reimbursement system which was sufficient to meet the costs of good care in an efficiently run institution and in fact this system costs tens of millions of dollars above the minimum system which would have been acceptable. For example, use of the point count to adequately reimburse for difficult patients added several million dollars to our costs. An additional $22 million was spent to assure that reimbursement for nursing care reflected the costs of facilities providing good to excellent care. In light of this, we believe this criticism of the State is unfounded.

Let me again thank the committee on behalf of the Illinois Department of Public Health for this opportunity to include our views in its hearing record. We will be pleased to respond to any questions the committee may have regarding long-term care in Illinois.

ITEM 5. STATEMENT AND ATTACHMENT OF PAT HARRISON, EXECUTIVE DIRECTOR, NORTH SHORE VISITING NURSE ASSOCIATION, KENILWORTH, ILL.

I am Pat Harrison, executive director of the North Shore Visiting Nurse Association. I am here to advise Senator Percy and the committee that there is presently existing a well-established network of organizations in the United States that provide a long-term alternative to nursing homes for the elderly, that is the Visiting Nurse Associations (VNA) which are organized on the local township and county level in many areas of the United States to give quality, low-cost home health care.

Although the VNA has no national, State, or regional organization as such, it has existed for over 80 years as independent, nonprofit local health care associations in many areas of the United States. Commonly associated with the National League for Nursing, these local organizations, under the direction of volunteer boards of directors and professional advisory committees staffed by physicians and other health care professionals, have effectively provided health care in the home. Many are licensed by the various states in which they are located and certified by both medicare and medicaid as home health service providers.

The original concept for the VNA was to provide public health nursing for indigent patients. However, today the VNA provides a wide range of health care services in the homes of all patients. Among the services given currently are skilled nursing care, physical therapy, occupational therapy, speech therapy, medical social workers, home health aides and nutrition consultants. These services are provided for fees based upon a sliding scale calculated on the patients' ability to pay. These services continue even after medicaid and medicare benefits are terminated. Greatly assisting in the funding for continuation of the home health care services for those who cannot pay are contributions by United Way, private donors, and township revenue sharing funds.

Speaking on behalf of the North Shore VNA, our area of responsibility and operations is New Trier Township and part of Northfield Township in Cook County, Ill. Within this area we provide services for the villages of Wilmette, Winnetka, Kenilworth, Glencoe, Northbrook, Northfield, and adjacent unincorporated areas. The North Shore VNA presently is the merged successor of three individual organizations formerly known as the North Shore, the Northfield, and the Wilmette Visiting Nurse Associations. The oldest, the Wilmette VNA, was formed in 1918 by a group of concerned citizens and physicians from Wilmette, Grosse Point, and Kenilworth at a time when it was determined that New Trier Township had the largest number of underweight children in the area. In 1920 the Chicago Tuberculosis Institute became interested in the project and assisted in enlarging the scope of care given so that adults as well as children could be aided in health problems. Subsequently, various churches, school boards, the village of Wilmette, New Trier Township, and the Wilmette community chest contributed to fund the services provided, which included assistance in public immunization programs. Since 1918 the North Shore VNA has provided 60 years of continuous home health care services.

In conclusion, I would like to stress that one of the prime goals of our organization is to give quality, low-cost health care for the elderly in their homes. The VNA has proven that this is feasible, practical, and desirable. I have brought with me a recent article that I wish to give you and ask that it be included in the record of this hearing. It is entitled "Home Health Care: Services and Cost," published in Nursing Outlook in August of this year. This article summarizes findings that document types of services needed to maintain chronically ill patients at home and the modest costs associated with such services.

Our headquarters is located at 509 Park Drive, Kenilworth, Ill. 60043 (Telephone: 312-251-0660). Should the committee desire further information about our operations and the community needs serviced by our organization, I would be happy to respond.

[Attachment]

Home Health Care: Services and Cost

(By Geraldine Widmer, Roberta Brill, and Adele Schlosser)

Recent concern about the increasing costs of health care has directed attention to an established, but still underused, alternative—the home, an institution in its own right. There have been many reports documenting the extraordinary costs of institutional care, as well as the inappropriate use of nursing homes and long-term care facilities. While some articles have been written postulating the cost effectiveness of care at home and the barriers to expansion of home care services, and studies have been made on limited aspects of home care or specific home care populations, little objective data are available to determine the total costs of home care services, how they are used, and how they are reimbursed.

In a unique partnership, the Visiting Nurse Service of New York and the New York City Health Systems Agency conducted a study of home care during 1975-76 in one district of New York. The study, which was funded by the regional medical program, had three major objectives: (1) to obtain information about patients needing home health care and their utilization of home health care services when all barriers to services, such as cost, were removed; (2) to arrive at a reasonably accurate estimate of the cost to the patient and to third party payors of the services needed to maintain the patient at home; and (3) to obtain information about the types and amounts of reimbursement now available to defray the costs.

Although the study deals with services in one urban setting, we believe the findings have significance for planners, health care providers, and legislators concerned with a health care delivery system that is both economical and responsive to changing population needs.

PROJECT DESIGN

In designing the study, we took into consideration the major factors that inhibit the expansion of home health services: the lack of payment for large segments of the population and for necessary services, lack of data about relative costs of care for the same services rendered in different settings, and information about costs per patient that would guide planners, administrators, and reimbursers to anticipate home health care expenditures. This study was, therefore, designed to elicit needed cost and reimbursement information in a way that would have applicability to a community-based home health care program or to a multipurpose health care system. In order to test the utilization of a broad range of home health services, the study was set up as a demonstration project, in which funds were made available for an expanded range of home health services for dependent, chronically ill patients for whom there otherwise would have been no source of reimbursement.

A community-based home health agency was used as the service delivery model because of its applicability in other parts of the United States. The Visiting Nurse Service of New York (VNSNY) is a voluntary agency, certified for medicare and medicaid reimbursement, licensed by New York State, and accredited by the National League of Nursing and the American Public Health Association. During 1975, the first year of the project, the VNSNY staff cared for 50,000 patients in three of the city's boroughs—Bronx, Manhattan, and Queens. In common with other community-based agencies, VNSNY has the organizational and administrative independence to care for a diversified patient population.

The site selected for the study was a sub area of a VNSNY district located in the Northwest Bronx, chosen because it has a high concentration of people over 65 years of age—19 percent as compared with 12 percent citywide. In addition, the population represents a range of economic groups, thus providing an opportunity to observe the different cost and reimbursement experiences of a variety of clients.

SERVICES PROVIDED

The services offered patients included the customary ones provided by VNSNY—nursing care, home health aides for up to 24 hours a day, physical therapy, speech therapy, social work services, medical consultation, nutrition consultation—as

well as several new services to make the range more complete. These new services included increased availability of a physician for consultation and visits, medical supplies and equipment, laboratory and diagnostic services, and transportation by ambulance, ambulette, and taxi for health-related purposes. If no payment was available either from the patient or through third-party payors for these necessary services, project funds were used. Otherwise, all customary billing and administrative services were used.

As part of the project design, staff nurses of the VNSNY assumed a greater role in coordinating all services for patients on home care. They coordinated all medical and social services provided by and through the home health agency. Each nurse developed the patient care plan and scheduled the frequency of visits. The nurse remained in contact with the patient's referral source, and determined, in conjunction with the physician, when to discharge the patient.

Patients admitted to the project were typical of the bulk of a home health agency's caseload. All were chronically ill, requiring nursing care, household management and other aspects of long-term care. Patients were admitted regardless of availability of reimbursement, referral source, medical supervision, or prior institutional experience.

To publicize the project, the project staff met with community groups and hospital personnel and sent information to local physicians to stimulate referrals and to reach new groups of patients who might otherwise have been referred to institutions.

ADMISSION AND ASSESSMENT

All referrals to the VNSNY study district were evaluated for possible inclusion in the study. Patients were phased into the project at a rate of approximately 45 per month over a 15-month period from January 1975 through March 1976.

On admission to and discharge from the project, the nurse completed a patient assessment, which was based on DHEW's patient classification form, and included selected sociodemographic and physical status information. The sociodemographic data included age, sex, health area, marital status, and presence of others in household. Physical status information included diagnosis; acuity of physical faculties, such as sight and hearing; and ability to perform twelve necessary activities of daily living—mobility, walking, eating, dressing, grooming, bathing, transferring, wheeling, stair climbing, toileting—bowel and bladder habits—and housekeeping and marketing chores. The nurses noted which areas the patient could do alone or with assistance and the type of assistance needed. In addition, the patient's referral source, medical supervision, and available source of payment for care were recorded.

The patient's ability to perform essential daily activities was coded under one of three primary functional groups:

(1) Group I—Patient requires assistance of another person to perform household and marketing activities. Does not require assistance with any other activities of daily living.

(2) Group II—Patient requires assistance of another person to perform one or more activities of daily living, household and marketing tasks.

(3) Group III—Patient entirely dependent on another person to have performed for him one or more activities of daily living, household and marketing activities.

It should be noted that these are *physical* functional categories. The degree of mental impairment in any of the three is reflected only to the extent that ability to perform activities of daily living is diminished by emotional causes. Patients were evaluated as to their behavior, that is, withdrawn or abusive, and their orientation; however, no meaningful way of incorporating these ratings into the functional groupings was devised.

TYPES OF CHARGES

The total cost of home health care included all charges for services within and "outside" the program utilized while the patient was under the care of the VNS and the method of reimbursement for each. Although prescription drugs were a part of the overall cost, these expenditures were excluded from the study because it was difficult to obtain accurate and complete data. Hospital stays that may have occurred during a course of care were also excluded, since the usual policy of home health agencies is to discharge patients when they are hospitalized and to readmit them if they need care following their hospitalization.

Information about services received from sources other than VNS was obtained primarily through monthly interviews with patients or their families. These

services included visits to hospital clinics, physicians and medical specialists, physical therapists, speech therapists, social workers, special therapists, as well as supplies and equipment, laboratory services, and transportation to health care providers. Dental services were excluded because only two patients of the first 250 reported using them.

This information was recorded on a monthly interview form, similar to that which was used in the 1966 nationwide medicare survey. At the same time, a monthly diary of services used was kept by each patient. In most cases, patients had little difficulty recalling the types of services they used; however, they had problems remembering the charges for these services and the amounts reimbursed. Often the provider or third-party payor had to be contacted for this information.

CHARACTERISTICS OF CLIENTS

A total of 420 chronically ill patients, 134 men and 286 women, completed a full period of care or were admitted during the 15 months of the study. Their ages ranged from 21 to 100 years, with a mean age of 72 years. Nearly 80 percent of the patients were over 65 years of age; almost 50 percent were 75 years or over, and 13 percent were 85 years of age and older. Women not only outnumbered men patients two to one, but also tended to be older. Approximately one-third of the patients lived alone—40 percent of the women, compared with 16 percent of the males. Their ethnic background reflected that found in the study areas' general population: nearly 93 percent of the study group was white, blacks comprised 3 percent, Hispanics 3 percent, and Orientals the remaining 1 percent.

Patients frequently had multiple diagnoses of varying impact and severity. Based on their primary diagnosis, however—that is, the condition responsible for the major aspects of home health care—heart conditions and malignant neoplasms were the most frequently reported diagnoses (19 percent and 14 percent respectively), with diabetes, fractures, and CVA's the next three most frequent. In addition, many patients had physical impairments common to advancing age. Vision problems were reported by 69 percent, hearing problems by 26 percent and speech problems by 14 percent.

The study population was well represented in each of the three physical function groups, with 39 percent in Group I, 28 percent in Group II, and 33 percent in Group III. As would be expected, age was an important factor in the patient's ability to perform activities of daily living, and people living alone tended to function more independently.

Acute care hospitals accounted for the largest number of referrals (46 percent) with nearly three-fifths of these referrals from inpatient services, one-fifth from outpatient departments, and one-fifth from the home care departments. Private physicians referred nearly 20 percent of the total; these were patients with no immediate prior hospitalization. Fifteen percent of all referrals came from community health and social agencies; the patient or his family initiated 11 percent; and skilled nursing homes and health-related facilities accounted for the remaining 9 percent.

Less than 6 percent of the patients reported they had no medical supervision on admission to the project. The majority of patients (72 percent) were under the care of a private physician. Twenty-one percent of the patients used the hospital outpatient department or emergency room for their medical supervision.

Nearly all patients (96 percent) reported having some insurance or third-party coverage for medical expenses. Forty-four percent had only medicare; an additional 26 percent had medicare in various combinations with medicaid or private insurance; 29 percent of the patients, two-thirds of whom were under 65, had only medicaid or medicaid plus supplementary coverage; an additional 7 percent had other types of private insurance.

One-half of the study patients were discharged from the home health program because either the patient's condition had improved to the point where nursing care was no longer required or the patient and/or family and friends assumed responsibility for his care. An additional 25 percent were admitted to inpatient facilities and 4 percent of the patients died.

In comparing categories of patients, it was noted that 63 percent of those who lived alone no longer needed care, as compared with 49 percent of those who lived with others. This outcome, an apparent function of a greater degree of physical impairment among those living with others, is also found with regard to hospital admission: 28 percent of those living with others had to be admitted for inpatient care, as compared with 21 percent of those living alone.

NURSING AND SPECIALTY SERVICES

The range of nursing services included health education, monitoring of vital signs, providing medically indicated treatments, performing personal care activities, coordinating all health services, and supervising paraprofessionals. The nurse, who can perform all of these activities, is the focal point of patient care, since coordination and supervision are especially significant components of home health care. In addition, two types of aide service were provided: staff VNS aides who were assigned to patients for up to two-hour periods to give selected treatments and other aspects of personal care, and aides obtained through contracts with homemaker agencies whose assignments were for longer periods (4 to 24 hours) and who provided combined personal and environmental care. Housekeepers were assigned or included in the study only when nurses found that their services were needed for health-related reasons.

The average number of nursing visits per patient was 8.5. In addition, 10 percent of the patient population received visits of up to 2 hours at a time from staff aides, who averaged 17.3 visits per patient. Nearly two-fifths of the patients had some type of housekeeper or personal attendant services, whether they were provided through the program or obtained from outside sources. These patients needed an average of 313.6 hours or 39.2 eight-hour days of this kind of support service.

More than two-thirds of all patients saw a physician and these patients averaged 2.1 visits each. Those patients age 65 to 74 used physician services the most. A physical therapist treated 33 percent of all patients, with each patient receiving an average of 1.8 visits. Use of this specialty was higher in the younger age group.

Slightly less than 16 percent of the patients received the services of social workers and this averaged 2.3 visits for each patient. However, people who lived alone and received social work visits averaged one visit more than people who lived with others. This finding reflected the role played by the social worker in helping a patient with medically-related problems in getting insurance coverage and qualifying for SSI or medicaid.

Four percent of the patient population received speech therapy, which averaged 5.3. visits per patients. Four percent also required other special therapies, including dialysis, chemotherapy, and radiotherapy. Patients in this group made an average of 8.1 trips for these therapies.

Other supportive services included transportation, medical supplies, and laboratory services. Because transportation was used primarily to get patients to and from medical appointments, utilization was highest (44 percent) in the 65–74 age group, consistent with their greater use of physician services.

Over two-fifths, 45 percent, of the patients were provided with medical equipment or supplies. More of the patients aged 65–74 received this service than did those under 65 or over 74—52 percent compared to 41 percent and 42 percent, respectively. Laboratory services were used by 16 percent of all patients, with an average of 1.2 times per patient.

LENGTH OF STAY

The average length of stay of all patients in the program was 52.4 days. This figure refutes the common perception that patients receiving home health services need lengthy or, in some instances, lifetime care. While all study patients met the eligibility criterion of chronic illness, some required only short-term post-surgical care, and others needed care and teaching only for a transition period while they learned to care for themselves. Still others required fairly lengthy, ongoing maintenance care. As a result, some patients were under care for several days, while others were still under care when the study ended. Since 74 percent of all study patients had only one admission in a year's time, this means that most patients required home health services for less than 2 months out of the year.

Which functional group the patient was in appeared to be the single best indicator of length of stay. The most functionally disabled patients had the most number of average days in the program—54.90, and the least disabled group had the fewest days, 46.25. Patients under age 64 years had an average care period nearly 10 days longer than those 65 and older. Younger patients requiring home care for chronic conditions may be sicker than their older counterparts, or may be in an earlier phase of accommodating to chronic illness and, therefore, need more assistance. Patients who lived alone had a longer care period, 56.6 days, than those who lived with others, 48.5.

Only 20 percent of the patients were readmitted for home care within a year of their first admission. Of these, 16.9 percent had two admissions during the year, 2.6 had three admissions, and 1.3 percent had four admissions. The 43 patients who reentered the project for a second admission showed some differences when compared to the group who had experienced only one admission. The second admission group had more men (44 percent compared to 32 percent women), and had a higher percent of more functionally dependent persons (38 percent compared to 33 percent). Thirty-seven percent of this group were discharged to hospitals following their first home care admission, as compared to 26 percent of those with only one home care admission. The average length of stay within the program for a second admission was higher than for a first, 64.8 compared to 52.4 days.

COSTS OF THE SERVICES

The mean cost (based on fees charged) for all health care services received by the patient population during their first admission was $765 per case, or $14.71 per day. The median case cost was $347. The dramatic difference between mean and median costs indicates that costs were not symmetrically distributed. A special attempt was made to identify which population subgroup and particular service use pattern was causing the average cost to be so unrepresentative of the experience of the population as a whole. When the population was ranked from lowest to highest according to each patient's total costs and divided into ten equal groups, an important finding was made. Ten percent of the population incurred almost 47 percent of the costs; the combined ninth and tenth groups incurred 67 percent of the costs.

When patients in the tenth group (highest cost) were compared to all other patients, no substantial differences were noted in age or presence of others in the household; however, there was a marked difference in their physical functioning. In this group, twice the number (62 percent) of persons were in functional Group III, compared to the rest of the population (31 percent). In fact, one-fifth of all persons who were least capable of carrying out activities of daily living (Group III) were in the tenth group. The increase in cost with each decile did not reflect a uniform increase in the utilization of all services. The main increase in cost was attributable to the use of home health aides, personal care services, and household employees.

The average total cost for the population, excluding the tenth group, was $453; whereas, for the tenth group alone, it was $3,744. The major factor contributing to the high cost of this group was a very long length of stay—149.7 days as compared to an average of 52.4 days for the study group as a whole. The per diem costs for the group were also higher—$25.01 a day, compared to the overall average of $14.71 per day. The level of disability of this patient group, as evidenced by their physical functioning and dependence on household and personal care support services, indicates that these patients might require institutional care at a higher and therefore more costly level if home care services were not available to them.

For the study population as a whole, personal care and household support services accounted for the largest single item of the total home health expenditures. Services provided by a nurse made up 30 percent of the total costs; physician visits amounted to 7 percent of the total; equipment and supplies, 5 percent. Each of the remaining services accounted for no more than 3 percent of the costs.

Average costs showed little variation by age or living arrangement, however, there was a marked difference in costs by functional group. Per diem costs were $11 for Group I, $15 for Group II, and $20 for Group III. This demonstrated again that as functional ability decreased, the need for services increased.

The average total cost for health services for a second admission was higher than that for a first admission, $848.66 compared to $768.80; however, the average per diem cost was less because of the longer second admission stay, $13.51 compared to $14.71.

PAYMENT FOR HOME CARE

Despite the fact that 96 percent of the patients reported some third-party coverage on admission, one-third of all home care costs were not reimbursed by any third-party payor. While nearly 80 percent of the patients were over 65 years of age and therefore eligible for medicare benefits, this insurance program covered only one-fourth of the total costs. In addition, the study revealed that nearly one-half of the total home health expenditures were made for "out-of-program" services, that is, those not provided by the VNS. This often meant that patients and families had to arrange and, in many instances, pay for the service themselves. Variations, however, occurred in coverage of individual services: Less than 30 percent of physician fees and only 16 percent of the cost of nursing were not reim-

bursed. In contrast, 43 percent of housekeeping and home attendant costs were not reimbursed; these services comprised 41 percent of all non-reimbursed costs.

CONCLUSIONS

Certain findings of this study appear to have considerable significance from the standpoints both of delivery and reimbursement of home health services. The study documents the value of home health care and refutes some of the misconceptions which have prevented or slowed expansion of such services. For example, the data on length of stay belie the concern often expressed that home health services deal primarily with a population needing long-term, if not life-time care. The patients in this study were all chronically ill, the vast majority elderly, many were living alone, and one third were so dependent as to be at the level of care provided in a skilled nursing facility. Yet the average length of stay was less than two months. Again, in contradiction to the frequently expressed concern that care of the chronically ill at home involves inordinate numbers of expensive professional personnel, the study findings reveal a modest use of the professional worker. Utilization patterns, in fact, show that the professional nurse was very appropriately used as coordinator and manager of care, with the direct services provided by less costly personal care workers, such as home health aides and housekeepers. Use of other supportive services, such as transportation, housekeeper services, and medical supplies and equipment, was also extensive.

The importance of the patient's level of functional ability rather than diagnostic classification emphasizes the need to develop a full range of services to meet the requirements of patients in various stages of illness. The increased use of "out-of-program" services leaves no doubt that a complete range of services must be provided in order to establish home health agencies as true health care institutions. It is unconscionable to expect patients and families, already burdened by the concerns and costs of chronic illness, to arrange and/or cover the costs of half the services that are needed. The alternate, of course, is more costly institutional care.

This fact is all the more striking if the median cost of $347 per patient in this study is compared with what the costs of care for these patients would have been in institutions. For example, at the time of the study, the monthly cost for institutional care were $1,380 per patient in a skilled nursing facility and $857 in a health-related facility. The fact that only 10 percent of the population incurred almost half the costs lends further weight to the significance of functional abilities in planning and providing health care, and the urgency of predicting the levels of care needed.

Another significant finding was that one-third of all costs were not reimbursed by any third-party payor. This high proportion of unreimbursed services is especially surprising in view of the fact that less than 4 percent of the patients reported not having some third-party coverage for health care on admission. Although 80 percent of the population had medicare coverage, the relatively minor role played by medicare in covering these patients' health care costs further documents medicare's focus on short-term acute conditions, rather than on the more realistic services required by the covered population.

In conclusion, based on the findings of this study of home care needs, we believe that:

(1) Care at home should be considered before all other alternatives. With careful professional assessment regarding functional ability and level of care, chronically ill patients can be cared for at home at lower cost than in institutions.

(2) Home health agencies must expand their own services and move to coordinate support services in order to become effective health care institutions.

(3) Legislators must be helped to understand the relationship of functional levels of care to costs. Home health agencies should be encouraged to develop varied charge structures for different levels of care and units of care with full accountability for effective utilization of personnel and services.

(4) Legislators must be helped to review and correct some of the restrictions on service which limit the types and amounts of assistance available to patients at home.

ITEM 6. LETTER FROM JEAN R. CLELAND, NORTH SHORE SENIOR CENTER, WINNETKA, ILL., TO SENATOR CHARLES H. PERCY, DATED SEPTEMBER 8, 1978

DEAR SENATOR PERCY: I attended the Senate Special Committee on Aging hearing held in Chicago on August 30. There are some points I would like to make in addition to the testimony given that day. Your Chicago office has told me this letter will be incorporated into the record for the day.

First, I am dismayed at what I presume to be a general practice in Illinois nursing homes of reticence regarding the "circuit breaker" and "additional tax grant" benefits to which many residents are entitled. Many older people still don't know about these benefits, especially if they have been institutionalized for some time; yet they are often eligible for them. Even persons on medicaid are entitled to the additional grant portion and, according to a recent ruling by the department of public aid, are not obliged to turn this windfall over to the department. Nursing homes either don't have the staff or the will to help residents file for these grants, though the few extra dollars would make life a bit sweeter for these people. I fear that nursing homes across the country are similarly negligent in helping their residents take advantage of benefits available in their localities.

Second, though day care centers and home health care programs were generally supported in the hearing, I heard nothing about the concept of congregate housing services which have received recent support with the passage in the Senate of S. 3084 and, in the House, of H.R. 12433. This kind of option is a very attractive alternative to nursing home institutionalization for those who can no longer be fully independent. Senator Frank Church says that 30 percent of the residents of nursing homes do not need to be in them. If home health care programs were broadened to subsidize the minimal services required by congregate housing residents, and section 8 similarly extended to cover such housing, some of that population that is now unnecessarily confined to nursing homes could have happier, more appropriate living arrangements.

Third, we hear again and again of persons who have to use up their life savings to pay for long-term confinement in nursing homes at the intermediate care or sheltered care levels. We believe that medicare should be expanded to cover persons who must be institutionalized but who may not need skilled nursing care.

Finally, you asked whether there is any source of information in the Chicago area providing ratings or objective evaluations of nursing homes. I believe there is none. Yet, at this agency, our counseling staff spends a great deal of its time assisting people in making appropriate decisions about the choice of nursing homes, though we never actually recommend one. We can provide a client with a considerable amount of factual information about a whole range of homes in the north suburban area, plus some useful criteria about the way to go about choosing one. Even the Department of Health, Education, and Welfare puts out a useful guide which I found not long ago in the giveaway rack at the local A&P! So there is help available for the consumer who is fortunate enough to be in touch with a place like this. Even so, I believe we need some tool which measures quality of care so that the general public can know what it is buying.

Yours very truly,

JEAN R. CLELAND.

ITEM 7. LETTER FROM DR. BERNARD D. PERLOW, PRESIDENT, BELMONT REST HOME, INC., CHICAGO, ILL., TO SENATOR CHARLES H. PERCY, DATED SEPTEMBER 14, 1978

DEAR SENATOR PERCY: Upon my return to Chicago on September 4, 1978, there had been brought to my attention newspaper reports of the hearing held under your chairmanship on August 30, 1978, in Chicago, Ill. This hearing was intended to deal with the issues of governmental regulations and of alternatives to institutional care. According to the newspaper reports allegations were then made by representatives of the Better Government Association against the Belmont Rest Home, and these allegations were prominently publicized by the media. As president of the Belmont Rest Home, Inc., I should like to have the following statements included in the hearing record:

(1) The statements made by Better Government Association and media representatives, as publicized, were incorrect, inaccurate, and misleading with respect to the Belmont Rest Home.

(2) Such statements and inferences drawn therefrom constituted in essence unwarranted allegations drawn from improper and possibly illegal intrusions as well as the invasion of private and patient rights by agents of the Better Government Association and/or the media.

(3) The scope of the testimony taken, as reflected within media excerpts, was beyond the announced purpose and purview of the hearing, and the publicity generated thereby caused detriment to the Belmont Rest Home and its owners by airing and republishing unsupported allegations.

(4) The Belmont Rest Home has made and continues to make every effort to comply with all applicable regulations of all governmental bodies with which it is involved.

(5) The Belmont Rest Home has been throughout the years of its operation under the present ownership dedicated to quality patient care and has been deeply concerned with the welfare and well-being of its residents.

Respectfully yours,

DR. BERNARD D. PERLOW.

ITEM 8. LETTER FROM MARK PICK, ADMINISTRATOR, BALLARD NURSING CENTER, DES PLAINES, ILL., TO LAWRENCE GRISHAM, LEGISLATIVE ASSISTANT TO SENATOR CHARLES H. PERCY, DATED SEPTEMBER 14, 1978

DEAR MR. GRISHAM: We are informed that on August 30, 1978, a hearing was held dealing with the issues of governmental regulations in the institutional health care industry and dealing with alternatives to institutional care. We agree that these areas, as well as all other areas which might lead to the attainment of the highest standard of care possible, are proper topics of concern. We do, however, feel that facilities that do meet the needs of elderly citizens and others in need of institutional care should not properly be tainted by specific and unsupported allegations made and publicized within such a hearing.

Although beyond the stated scope of the Senate hearing, our facility, Ballard Nursing Center, 9300 Ballard Road, Des Plaines, Ill., was the subject of testimony alleging poor and inadequate care. We strongly disagree with the allegations and innuendos within such testimony and within the WLS–TV/BGA report involving our facility, as the factual statements were inaccurate and misleading and were based on an improper method of gathering information.

We are informed by numerous residents of our facility, their families, and health care professionals in our community of the feeling that Ballard Nursing Center does provide quality care in a compassionate manner with foremost regard for the patient/resident's dignity.

We have always made, and will continue to make, every effort to comply with all rules and regulations governing long term care, and will always advocate and maintain the delivery of the highest level of care attainable.

Respectfully submitted,

MARK PICK.

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