



## **MAKING A DIFFERENCE: A CALL TO ACTION**

by: Kippy L. Wroteen

Readers here most likely know me as a trial attorney. While I take great pride in my courtroom skills I am acutely aware that prejudice has commonly invaded the sanctity of our courtrooms. This makes the courtroom a risky place for any long term care professional to visit. Regardless of whether we examine the rules of law that govern the courtroom or the rules of law that so pervasively attempt to micro-manage healthcare, there is one point of clarity. *The rules imposed on care providers today are not consistent with the actual care our teams are expected to meet.* The simple truth is that we need broad, systemic healthcare reform that addresses both how we provide care and how we pay for it. Regardless of whether you take on the fight for fair reimbursement rates or the fight for fairness in the courtroom, political advocacy is no longer a luxury to be exercised by the few. It is instead an urgent job for us all.

Personally, my first dip into political waters came last summer when I joined the CAHF contingency in opposition to a state effort to lower the burden of proof required to prove elder abuse claims. My experience in Sacramento wasn't pretty and frankly, I walked away feeling my voice had been unheard. Still it is important to note that ultimately this mis-guided bill driven by plaintiff attorneys hoping to make their fleecing easier failed. However it occurred, it was a victory.

This summer I joined CAHF's delegation in support of AHCA/NCAL's "healthcare day on the Hill" held in Washington, DC on July 10. I must say I am much more encouraged by the integrity exhibited in the meetings I attended with California Congressman Duncan Hunter (San Diego) and a staffer representing Congressman John Campbell (Orange County) than I experienced when talking to state legislators in Sacramento last year. My hat is off to our state and national organizations for the educational and empowering experience they engineered and I hope that my comments here will encourage more of you to take to the streets of our Capitol at next year's ACHA/NCAL event.

Why do you need to participate? The unfortunate truth is that in this age of increasing economic stressors there is a contingency of government leaders who believe that siphoning dollars from long term care is fair game. Why? Because they know it is far more acceptable to bad mouth long term care facilities than it is popular to talk about the many successes accomplished by hard working caregivers every day. We have to accept that this negative tide is not going to change so long as the public gets their news through distilled sound bites and dramatic stories trumping isolated tales of dysfunctional care as if routine. Since the tide won't change on its own it's incumbent on each of us to grab onto the rope to help pull the load.

This year there were 3 targeted issues AHCA members were asked to highlight for our legislators. (1) Support for the retention of provider assessments used to generate long term care funding; (2) Request for a change of policy to allow all hospital "observation stay" days to count towards the 3 day hospital stay requirement that triggers SNF post-acute Medicare coverage, and; (3) Maintenance of the present definition of Home and Community Based Services settings that currently qualify assisted living facilities and group homes for Medicaid funding. (I encourage you to refer to the AHCA website at [www.ahcancal.org](http://www.ahcancal.org) for more information.)

Now that I've acknowledged the bigger picture, I have to admit to having a personal agenda in addition to the list provided by association leadership. I want a fair stage in the courtroom to assure every long term care provider will have a meaningful and reasonable opportunity to challenge claims of abuse. It's time to abate the prejudice and to put the river of money being diverted into the pockets of a few wealthy plaintiff attorneys back into the provision of health care. Given the overwhelming breadth of the combined economic and long term care challenges faced today I opted to take a swing for the fences by suggesting to my Congressmen that broad Medicare/Medicaid reform is possible and with it would come the efficiencies needed to reduce the cost of healthcare in an environment that supports quality care.

Now I know that even the suggestion of broad Medicare/Medicaid reform sounds daunting but really, what if long term healthcare providers were given the reins to find solutions to our present dilemmas? I believe ideas would abound into a torrent of positive programs. Here's a start on some ideas. What if we expanded student grant programs for nurses and physicians to encourage careers in long term care? The government used a similar program when there was a teaching shortage so it makes sense to consider this idea as part of a long term care staffing solution. What if we expanded the AmeriCorps mission statement to include service in long term care? (For that matter why don't volunteers and therapists count in staffing ratios?) How about a pilot program designed to relieve our care provider teams of regulatory burdens in favor of their development of creative approaches that target the efficient delivery of care? I'm certain our care providers can provide a mother load of ideas to meet every challenge.

Now for my part, the targeted enemy is the cost of litigation. A cost which the recently published 2012 Aon Global Risk actuarial study projected will reach \$2,570 per bed in 2013. (Note that the Aon study is limited to per event losses of no more than \$1 million therefore the impact of the mega verdicts occurring each year is not included.) Given there are over 120,000 Medicare and Medicaid certified beds in California that equates to nearly \$310 million dollars. Now bear in mind that 40% of every dollar paid to plaintiffs goes directly into the pockets of their attorneys. What if there was a way to capture this money and return the dollars not needed to *reasonably* compensate for *legitimate* complaints was returned to the government as additional funding for reimbursement rates? How about joining these dollars with a program akin to the provider assessments where funds are matched by the Federal government? Fact is that the need to encourage litigation as our current statutory scheme provides for is long over. Now is the time to re-assess our laws and the delivery of care as we strive to meet the needs of 77 million baby boomers now coming of age.

OK, I'm not a legislator or a care provider and I admit my view from the gallery may have serious gaps. But Congressman Hunter appeared genuinely receptive and requested more information (I've even been assigned a staffer to follow-up with). Will my efforts make a difference? Your crystal ball is as good as mine but regardless of the result I cannot as either a

citizen or a baby boomer walk away without giving my voice a try. Now it's your turn. If you have an idea you would like me to include in my conversation with our Congressman, send it along. I would delight in expanding my dialogue to include your creative solutions. After all, nobody knows where the next great idea will come from. I'll put my money on you.

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About the Author:

Founder and Shareholder of Wroten & Associates, Kippy Wroten's experience covers a broad spectrum of complex litigation encompassing all areas of healthcare liability including high exposure and class action claims of elder abuse, fraud, and corporate unfair business practices. Ms. Wroten's experience includes the successful defense of individual healthcare providers, independent long term care facilities, ancillary service providers, as well as related corporate enterprises and their executives.

Ms. Wroten started her legal career as a Deputy District Attorney for Orange County where she prosecuted gang, child and spousal abuse cases. Thereafter, she spent 15 years as a litigator for a prestigious healthcare defense firm where she was a shareholder and lead her long term care practice area. Ms. Wroten founded Wroten & Associates in 2006 to better meet the growing challenges of the long term care industry. Wroten & Associates is designed to provide personal service at rational rates.

Ms. Wroten is a sought after speaker who is dedicated to the education of the healthcare industry and legal community. She has been an invited lecturer for the Defense Research Institute, Irvine Medical Center, Chapman University College of Law, and the Association of Southern California Defense Counsel.

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