In favor of House Bill 6609: AN ACT CONCERNING NURSING HOME TRANSPARENCY

Good afternoon, Senator Slossberg, Representative Abercrombie, and members of the Human Services Committee. My name is Deborah Chernoff and I am the Communications Director for the New England Health Care Employees Union, District 1199. I also serve on the state's Long Term Care Advisory Committee, representing our 22,000 health care members, including our 6,000 nurses, aides and support staff who provide care in Connecticut's skilled nursing homes.

The Requirements and Purpose of HB 6609

Bill 6609 promotes greater transparency in the cost reports filed annually by nursing home operators with the Department of Social Services. The bill would require the operators of for-profit skilled nursing homes that pay significant amounts of money (in excess of $10,000 per year) to "related parties" to

- include profit-and-loss statements for such companies; and
- provide more detailed reporting of what the money was for and the actual cost of and mark-up on such goods and services.

As defined by DSS in the Cost Report form, related parties are related businesses or entities – **businesses which are related by family associations, common ownership, common control or business association with the owners, operators or officials of the individual facility.**

More Transparency Essential: Nursing Homes Pay Hundreds of Millions to "related parties" in one year

Nursing home operators pay out hundreds of millions of dollars to "related parties" for goods and services such as rent or lease payments, management services, pharmaceuticals, medical supplies/equipment, therapy services and temporary personnel. **For Cost Year 2011 (October 1, 2010 to September 30,2011), just the 10 largest nursing home chains operating in Connecticut together paid more than $136 million to their "related parties,"** as detailed in the chart on the next page:

Table 1: Payments to Related Parties by Ten Largest CT Chains

Corporate Entity/Chain	# of facilities	Total payments to related parties, CY 2011
Apple Health Care	24	$ 36,110,215.00
Athena Health Care Systems	18	$ 10,333,145.00
Genesis Healthcare	9	$ 19,988,697.00
HealthBridge Management/Care One	9	$ 14,123,005.00
iCare Management	9	$ 12,437,361.00
Ostreicher/National Health	11	$ 22,625,370.00
Paradigm Healthcare Development	6	$ 2,867,082.00
Ryders	6	$ 4,068,623.00
Spectrum Healthcare	6	$ 2,424,266.00
SunBridge Healthcare	9	$ 11,057,173.00
TOTALS	107	$ 136,034,937.00

All data from "Annual Report of Long-Term Care Facility" for Cost Year 2011

The need for greater transparency has only grown since this data was reported. There is greater consolidation within the for-profit nursing home industry than ever. Two of these "ten largest" chains are now one: Genesis Healthcare now operates all of the SunBridge homes listed above, meaning that single entity now operates 18 facilities in Connecticut and could well be paying in excess of $31 million from revenue derived primarily from state and federal tax dollars, public money, to Genesis Healthcare's related parties when this year's Cost Reports are tallied.

The Haven Healthcare Scandal: An Object Lesson

Connecticut has had a few exceptional bad examples of nursing home operators using public funding for their own purposes and gain, instead of for providing care to the frail, elderly or infirm residents living in their facilities. It would be hard to forget or ignore the case of Haven Healthcare, whose CEO, Ray Termini, built one of the larger chains of nursing homes in the state. In 2007, Haven filed for bankruptcy immediately after a series of articles in the *Hartford Courant* – not an investigation by the Department of Social Services – exposed a history of poor patient care and dubious financial transactions.

Haven CEO Termini and his company became the subject of federal and state investigations into whether Medicaid and Medicare funds designated for patient care were fraudulently diverted into other personal investments, including a $5 million personal loan to the CEO which went to purchase, among other things, three apartment buildings, a yacht and a Nashville recording purchase, among other things, three apartment buildings, a yacht and a Nashville recording company. Mr. Termini subsequently went to prison, but the fraud was exposed by investigative reporting rather than through DSS. In fact, the DSS Commissioner declined to follow a recommendation from then Attorney-General Richard Blumenthal that the homes be put in state receivership, because **"there is nothing that appears to violate any regulations or rate policies."** ("Haven Alarm Raised in '06," *Hartford Courant,* December 18, 2007).

Why Cost Reports Matter

The "Annual Report of Long-Term Care Facility," as these reports are formally designated, lack the information and transparency about nursing homes' corporate financial transactions needed to promote good public policy, responsible state expenditures, informed decision-making and consumer rights; this bill addresses that critical information gap.

Cost reports are a key component of the state's rate-setting procedures for Medicaid reimbursement, which is the major source of funding for Connecticut's skilled nursing facilities. About 70% of care provided in our state's nursing homes is paid through Title XIX.

The Cost Reports do give DSS a great deal of the information the state needs to monitor whether precious state resources are being expended appropriate for the care of the 27,626 residents of Connecticut's nursing homes. They also **provide a snapshot of the financial health of individual facilities, which is an important element in state decisions regarding applications to change or terminate services at a skilled nursing facility.**

Essential Data Missing from Cost Reports

However, the kind and level of the financial data now contained in these cost reports is no longer adequate to inform these important public policy decisions. The nature of the nursing home industry has changed significantly in recent years, moving from a preponderance of small "mom-and-pop" facilities and non-profit operators to more and larger corporate, for-profit regional or national chains. Many of these chains operate on a vertically-integrated business model, where the individual facility, generally incorporated as a Limited Liability Corporation (LLC), purchases many of its major services and supplies from other "related parties" – businesses related by family associations, common ownership, common control or business association with the owners, operators or officials of the individual facility.

However, often all of the related businesses are privately held, making it impossible for DSS to evaluate the real financial situation of the home because **the state has no systematic access to**

information about whether those related businesses are profitable or not. Nor is it possible for those families or individuals who pay for nursing home care out of their own pockets to evaluate if an increase in private-pay rates is justified when the nursing home raises those rates.

Most for-profit nursing home chains make some payments to related parties for major cost components including rent/lease, management services, pharmaceuticals, medical supplies and equipment, staffing, consultants, and specialty care such as physical, occupational or respiratory therapy. Many of these individual facilities report losses, sometimes very large losses, on their cost reports. While nursing homes are obliged to report the existence and amount of such payments to related entities**, they do not have to supply the detailed information necessary to make a full assessment of the real financial condition of the facility.**

Of course, management services, drugs and temporary staffing are all legitimate expenditures for a nursing home, but there is no detailed reporting that would show us whether these payments and charges are standard, discounted or inflated.

Given the often-complex vertical integration of these "related parties," **it would certainly be possible for the individual nursing home to serve as a kind of "loss leader," where the facility itself loses money while funneling millions of dollars to related highly-profitable businesses.** Is that the case? Never, sometimes, often? Unless we significantly enhance the financial transparency of nursing home cost reports, our state will have only gain access to the information necessary to make that evaluation when it is too late to preserve services or prevent fraud.

Current Cost Reporting Requirements are Inadequate, Opaque

Cost reports do include one page where the nursing home is required to report any payments made to "related parties." However, as the sample below illustrates, there is no real detail, just a list of the parties to whom the payments were made and the amounts of those payments.

Sample Reporting of Payments to Related Parties in Medicaid Cost Reports

State of Connecticut
Annual Report of Long-Term Care Facility
CSP-4 Rev. 10/2005

General Information and Questionnaire
Related Parties*

Name of Facility	License No.	Report for Year Ended	Page	of
162 South Britain Road Operating Compnay II, LLC of	2280	9/30/2011	4	37

Are any individuals receiving compensation from the facility related through marriage, ability to control, ownership, family or business association? O Yes ⊙ No — If "Yes," provide the Name/Address and complete the information on Page 11 of the report.

Are any individuals or companies which provide goods or services, including the rental of property or the loaning of funds to this facility, related through family association, common ownership, control, or business association to any of the owners, operators, or officials of this facility? ⊙ Yes O No — If "Yes," provide the following information:

Name of Related Individual or Company	Business Address	Also Provides Goods/Services to Non-Related Parties: Yes	No	%**	Description of Goods/Services Provided	Indicate Where Costs are Included in Annual Report Page # / Line #	Cost Reported	Actual Cost to the Related Party
162 South Britain Road LLC	162 Britain Road, Southbury, CT 06488	O	⊙		Facility Real Estate Lease	P22 L9	880,288	880,288
Healthbridge Management, LLC & HBM Consulting	57 Old Road to Nine Acre Corner, Concord, MA 01742	O	⊙		Management Services/Clinical Specialists	P16 Lm12	760,742	760,742
Eight (8) other Healthbride Facilities		O	⊙		Sharing of Staff with Related Facilities	P10 Various	(30,595)	(30,595)
Partners Healthcare	6 Thompson Road, East Windsor, CT 06088	⊙	O		Pharmacy - Drugs	P20 L5a2	664,417	664,417
Partners Healthcare	6 Thompson Road, East Windsor, CT 06088	⊙	O		Pharmacy - Drugs Med Cabinet	P20 L5b	15,908	15,908
Partners Healthcare	6 Thompson Road, East Windsor, CT 06088	⊙	O		Pharmacy Consultant	P13 LB3	7,560	7,560
Partners Healthcare	6 Thompson Road, East Windsor, CT 06088	⊙	O		Pharmacy - IV Expenses	P20 L5j	60,333	60,333
Partners Healthcare	6 Thompson Road, East Windsor, CT 06088	⊙	O		Medical Records Supplies	P16 Lm5	26,348	26,348
Healthbride & Related Facilities		O	⊙		Common Pension, Health and Insurance Prog			

* Use additional sheets if necessary.
** Provide the percentage amount of revenue received from non-related parties.

For example, the payment listed to "Partners Healthcare" for Pharmacy/Drugs just indicates the total amount paid: $664,417. There is no information about the costs of those drugs to Partners Healthcare, nor of what the markup – or discount – might be from one "related party" to another. Neither is the nature of the Management Services provided specified, making it impossible for anyone examining the Cost Report to determine if these are low, standard or high prices that the nursing home is paying out to its "related parties"

The State's Interest Requires Transparency of Financial Data

The state has an obvious interest in **making sure that nursing homes are not overcharging by overpaying related entities.** This means if nursing homes want to do business with related entities they can be put to the following choice: either provide from themselves and the third parties documents which demonstrate that the nature of the relationship and that the internal accounting for charges is fair and reflective of the market, or don't do business with related entities.

This is comparable to the rules for charitable boards. A charity can do business with entities that are controlled by its board members, but if it does so, it must be able to demonstrate that such business is not overcharging (thus turning the charity into a tax exempt for-profit), or it must not do that business.

Nursing Home Closures Put Residents at Risk, Require Financial Scrutiny: The Wethersfield Story

If a nursing home submits an application with DSS for a Certificate of Need to terminate services, based largely on the facility's assertion that it is not financially viable, DSS does not currently have access to important information necessary to make the right decision on a matter of such deep public concern and serious consequence as closing a nursing home. Many individual nursing homes report significant losses in a given year while expending millions of dollars in payments to other, related businesses.

This is not just a theoretical risk. As recently reported in the *Hartford Courant*, DSS initially rejected a Certificate of Need application from the operator of the Wethersfield Health Care Center after that operator, HealthBridge Management, **refused to supply financial information requested by the Department that would justify the closure**, even though the primary rationale given by the company for closure was the financial condition of the facility.

Eventually HealthBridge did permit DSS staff to examine the requested documents, which resulted in the State's granting permission to close. However, they did not give copies of those documents to DSS, in which case they would become a matter of public record. Instead, they allowed staff to examine the documents in HealthBridge's own offices during a short window. As a result, the circumstances that justified this closure cannot be examined by family members of the residents who lost their homes, their community and their contact with familiar caregivers and other residents, or to staff who lost their jobs or to town officials, who lost the

Serious consequences flow from nursing home closures; DSS and consumers alike should have access to the information that supports – or doesn't – such a serious decision. Consider the testimony last year from Ann Marie Mangiagli when a similar bill was introduced. Mrs. Mangiagli is the mother of a former resident of the Wethersfield Health Care Center, a woman who required constant care because of an autoimmune disease that damaged her both physically and mentally. As Mrs. Mangiagli, whose story was featured in the *Hartford Courant*, testified:

"No other mother, no other family, should have to go through what we've gone through these past six months, waiting and wondering what will happen to my daughter. If a for-profit company like HealthBridge wants to collect millions of Medicaid dollars from the state, they should have to be open and transparent and honest about their other businesses, and how those businesses are doing before they can do something so hurtful and traumatic as evicting my daughter and the rest of the residents of Wethersfield and forcing them to leave their home, their community, their family and their friends."

Transparency Requires Routine Data on Related-Party Transactions

Bill 6609 seeks to have nursing homes include more financial data on their related-party transactions as a routine part of their annual cost reports submitted to the Department of Social Services, rather than only upon request by the Department. As was clear in the case of the closure of the facility in Wethersfield, while such data ought to be available to DSS upon request, it wasn't – it required additional months of negotiation for DSS staff to even be able to see the data and they were never given copies of the data. As was also clear, that was a matter of choice on the part of the HealthBridge chain, not because the information was difficult or burdensome to obtain, but because they did not wish to share it.

Companies that derive the lion's share of their revenue from public money have an affirmative responsibility to be open and transparent about how that money is spent. If they don't wish to disclose how they make their money, they shouldn't rely on taxpayers to provide their profit margins.

Moreover, waiting to request and receive such data until there is some evident reason to assess the financial health and operations of a service provider responsible for hundreds of lives and jobs, means it will generally too late to stop the downward spiral into closure, bankruptcy or receivership or to detect the fraud that was a key component in the collapse of Haven Healthcare. Other members of the public with an interest in assessing the condition of a nursing home operator – nursing home residents, their families and/or guardians, employees, regulators – should be able to access that information on a routine and regular basis, just as they can now access information about how much these companies pay to their related parties for rent or management or other goods and services.

All this would require is additional attachments to the Cost Reports that nursing home operators are already required to file annually. This bill does not require DSS to routinely review or assess the additional information – merely to have it on hand without extraordinary efforts and long-term delays and negotiations being necessary to obtain the data.

Caps on Reimbursement Rates Don't Resolve Key Issues

Some might argue that the additional cost reporting requirements contained in this legislation are unnecessary because the state controls reimbursement for Medicaid expenses by a variety of mechanisms including caps on the amount of expenditures by nursing homes on different "cost centers." For example, in determining an appropriate daily rate of Medicaid reimbursement, DSS looks at the actual cost of direct nursing care, but caps the allowable amount to be reimburses at 135% of the median rate for that cost center. Therefore, if a particular nursing home spends significantly more than the median, it will not be reimbursed by the state for the higher amounts.

While it is true that costs exceeding the cap would for an individual facility would not be considered allowable and therefore not be included in reimbursement rate calculations, it is critical to remember that the caps are calculated on the median cost. Therefore if a large number of corporate operators routinely pay themselves high fees for goods and services, the median costs for the all nursing homes will rise – potentially becoming another cost driver for reimbursement rates for all facilities with no routine examination of the markup on those costs.

The caps also only address the reimbursement issue, not the expenditure issue and only for those "cost centers" that are capped – there is, for example, no cap on capital expenditures. There are no regulatory limits on how much a nursing home can **spend**, and such expenditures contribute to the overall financial health – or lack thereof – of the facility. The losses claimed by the Wethersfield Health Care Center were offered as justification for closure of the facility. Dozens of other nursing homes have done the same in the past and, as a result, hundreds of residents have been evicted and forced to relocate, while hundreds of workers have lost their jobs, and related businesses have suffered loss of revenue.

For Profit Chains Dominate Long-Term Care Industry in Connecticut

Of the 225 nursing homes in Connecticut classified as "Chronic and Convalescent Nursing Homes," or CCNH, 177 (79%) are for profit; of those 177, 105 (60%) are operated by the largest chains (defined as operators with more than five facilities in the state).

Not-for-profit nursing homes do also may some payments to related parties. This bill, however, exempts not-for-profits from this reporting requirement because, not-for-profits already have much greater financial disclosure requirements than for-profit operators.

Because of their tax status, not-for-profits have to file IRS Form 990 in addition to their annual Cost Reports to the state. These tax filings, which reveal extensive financial information about salaries, revenues and expenditures, are widely available, on line or by request to the filing company or agency.

Given the dominance of the for-profit industry in long term skilled nursing, the State of Connecticut has a critical interest in transparency in order to

- protect the rights and interests of nursing homes residents and their families
- afford access to information for consumers; and
- make wise use of the more than $1.6 billion we expend annually on nursing home care.

This legislation is good public policy. The changes are consumer-friendly and necessary to protect the vital interests of one of the state's most vulnerable populations – as well as our precarious budget. I urge you to support this bill.

Thank you.