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Testimony of Deborah Chernoff, Public Policy Director
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Before the Human Services Committee, March 11, 2014

Opposing: SB 406, AN ACT CONCERNING CERTIFICATES OF NEED FOR NURSING HOMES

Good afternoon, Senator Slossberg, Representative Abercrombie and members of the Human Services Committee. For the record, my name is Deborah Chernoff and I serve as Public Policy Director for the New England Healthcare Employees Union, District 1199/SEIU.

I am here to voice our very strong objections to provisions of SB 406, which would amend the requirement that a public hearing be held when a nursing home operator files a Certificate of Need for closure of a skilled nursing facility. The bill as proposed will eliminate the mandated public hearing for facilities below 75% occupancy of licensed bed capacity.

Our union represents more than 6,000 nurses, nursing assistants and support staff in Connecticut nursing homes. Far too many times we have been witness to the fear, anxiety and trauma for residents, families, communities and workers caused when a nursing home shuts down. When a nursing closes its doors, it is far more damaging than when some other type of business – a store or a restaurant, for example – goes out of business or relocates. While that kind of closure can inflict deep economic damage to jobs, taxes and community resources, a nursing home closure is nothing short of an eviction for frail, elderly residents – they're losing their physical home, their caregivers and their community, all at once.

The statutory requirement that a public hearing be held is a relatively new one and represents the only opportunity for those most affected by such a closure – the residents themselves, their families, their caregivers and the local community – to speak to the issues and make the case that services should continue at that facility. While this proposed legislation wouldn't eliminate that statutory requirement altogether, it weakens it by setting a threshold of below 75% occupancy. Sadly, we have also witnessed all too often that operators desirous of a quick closure can game the system if they choose by arbitrarily closing admissions, "stampeding" residents out the door by creating the impression that closure is both imminent and inevitable, taking beds out of service for ostensible refurbishment or upgrading – when the will is eager, the way is easy.

None of the ways to artificially depress occupancy are theoretical – we saw this happen during HealthBridge’s initial attempt to close the Wethersfield Health Care Center. We are also keenly aware that census figures are notoriously unreliable and have historically been gathered by a DSS phone survey of facilities. In the Wethersfield case, one of the factors used to ultimately grant the Certificate of Need for closure was the availability of beds in the surrounding towns, as self-reported by other nursing home facilities. We know from our members employed at some of those other homes that many of those supposedly “open” beds were actually unavailable due to physical plant changes underway at that time, yet they were counted among the beds available for residents to relocate to.

There is no good reason to amend this statute. We know that these hearings can be painful for everyone involved. We also know they are necessary. While most nursing homes are granted their Certificate of Need for closure when they apply, there have been times when the process led to further review and another operator coming in take over the facility, retaining the services, the jobs and most importantly, the homes of the residents. For example, several years ago when Courtland Gardens in Stamford filed for a Certificate of Need, the hearing revealed information, via testimony from families and public officials, which ultimately slowed down the process; that facility is now operating as Regency Heights of Stamford and still caring for residents and providing services and economic benefits to the city.

We are also deeply concerned that this statutory change will move in the direction of gutting the hearing provision altogether. Once we begin with exceptions and exemptions, there’s no reason not to keep moving the bar to 80%, or 85% or higher. If the nursing home is truly not viable, the public hearing will only serve to reveal that fact. There is nothing now in statute to prevent the Department of Social Services from using occupancy to justify closure. But don’t silence the voices of the residents, the workers and the affected towns and municipalities by eroding their only avenue to speak up and speak out.

For all these reasons, we strenuously urge this Committee to reject the changes proposed in SB 406 in Section 3 of the bill, which would eliminate the requirement for a public hearing if occupancy is 75% of less of licensed bed capacity.