March 11, 2014

Written testimony of the Connecticut Association of Health Care Facilities, Inc. (CAHCF), regarding S.B. 406 (RAISED) AN ACT CONCERNING CERTIFICATES OF NEED FOR NURSING HOMES

Good afternoon Senator Slossberg, Representative Abercrombie and members of the Human Services Committee. My name is Martin Sbriglio, and I am President and CEO of Ryders Health Management, which operates seven skilled nursing facilities and rehabilitation centers in Connecticut. Today I am pleased to offer testimony on behalf of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and sixty-seven (167) member trade association of skilled nursing facilities and rehabilitation centers. Specifically, thank you for this opportunity to offer testimony this afternoon regarding S.B. 406 (RAISED) AN ACT CONCERNING CERTIFICATES OF NEED FOR NURSING HOMES.

This legislation restructures and modifies the current certificate of need (CON) statutes that govern the processes and approval criteria for the addition and reduction of nursing facility capacity and major capital projects. The Department of Social Services (DSS) administers state CON requirements applicable to licensed nursing facilities, residential care homes and intermediate care facilities for developmentally disabled.

Before presenting CAHCF comments on S.B. 406, I would like to briefly cover current state policy related to the number of nursing facility beds in Connecticut and offer some background observations on state administration of CON laws applicable to skilled nursing facilities.

Connecticut adopted a moratorium on new nursing facilities in 1991. The moratorium was adopted because both executive and legislative branch decision-makers believed that too many beds were approved for development by the Commission on Hospitals and Health Care and that newly added Medicaid home care waiver services would reduce the future need for facility-based long term care. At that time, responsibility for nursing facility CON administration was shifted to DSS.

The number of nursing facility beds in Connecticut has decreased from 32,000 in 1995 to 27,120 today. Thirty-one facilities have closed over the past ten years removing 3,209 beds from the service system. How has this happened over a period when the number of individuals requiring long term care services has risen?

Demand for services has been, in part, met by an expansion in the availability of alternative services to persons who have resources to cover their care needs and to those eligible for Medicaid. The development and expansion of assisted living facilities, life care communities and home health/ home care agencies has met the needs of many individuals that would have entered nursing facilities and paid with private funds. The percentage of private pay individuals in nursing facilities has dropped from a high of approximately 25% in the 1990's to under 12%

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today. Many nursing facility companies have diversified over the past twenty years to provide assisted living and home care services as well as other health care services. Today nursing facilities serve a much more medically-complex resident with increasing acuity.

Through expansions to home and community care services, including the Money Follows the Person (MFP) program, Medicaid now serves more elderly and disabled individuals at home than are served by long-term care facilities.

However, given the dramatic aging of our population, there is certainty that our state will continue to need a strong supply of high quality nursing facilities beds.

A report prepared by the American Health Care Association (AHCA) in September 2011, included 2010 data indicating that nationally, there were 23.6 individuals over age 65 for each nursing facility bed and 3.6 individuals over age 85 for each bed. Data in the report for Connecticut (29,255 licensed beds in 2010) indicated that there were fewer beds available for our older population than the national average. There were 17.6 individuals over age 65 for each licensed bed and 3.2 individuals over age 85 for each bed. There will be a significant need for high quality nursing facility services even as we rightsize and rebalance.

CAHCF is urging the committee to take a more thoughtful approach to reducing bed capacity as proposed in S.B. 253 AAC Temporary Nursing Home Bed Reductions. Similarly, the committee should reject a DSS policy that posits that bed reduction goals can only be achieved by nursing facility closures. What is very concerning to CAHCF members and, should concern members of this committee, is that beginning several years ago DSS stopped approving any Medicaid rate adjustments associated with CON proposals to decrease a facility's licensed capacity.

Prior to the abrupt change in longstanding policy by DSS, facilities could work in conjunction with DSS to reduce beds with a rate adjustment, subject to DSS review, that accounted for fixed costs spread over fewer beds. Such rate adjustments allowed facilities to remain viable at a reduced bed capacity. This option is no longer available. CAHCF believes the DSS view is delaying as opposed to expediting, the state goal achieving substantial bed reductions. The state's admirable policy goal of bringing about nursing facility business diversification and increasing the supply of home and community based services by the nursing home sector will only be a partial remedy to the bed supply issue.

In this context, the following presents our comments organized into two categories: 1) Proposed S.B. 406 changes supported by CAHCF; and 2) Provisions of Concern to CAHCF.

Changes Supported by CAHCF

<u>Removes CON for Capital Projects under $2.0 million</u>- Current statutes require nursing facilities to seek DSS approval for any proposed capital expenditure exceeding $2.0 million and for any capital expenditure project exceeding $1.0 million which would increase facility square footage

by more than 5,000 square feet or 5% of the facility's existing square footage, whichever is greater. S.B. 406 removes the CON filing requirement for any capital project with a cost of less than $2.0 million.

CAHCF supports elimination of the space addition exception to the $2.0 million CON threshold. Under current law and S.B. 406, DSS review and approval is required for proposed bed capacity increases regardless of the associated capital cost, therefore, the vast majority of space addition projects would continue to be subject to state scrutiny for need, financial feasibility, cost-effectiveness and other criteria.

Revised Facility Closure Public Hearing Requirement- Under current law, a public hearing is required for all nursing facility closures except those approved as part of State Court Receivership or Federal Court Bankruptcy proceedings. S.B. 406 would waive the public hearing requirement for the proposed closure of a nursing facility having occupancy of seventy-five per cent (75%) or less of licensed bed capacity. This change is warranted because the hearing process often extends the CON decision timeline resulting in additional costs to the facility owner and the Medicaid program. In fact, we would ask that the committee consider removal of the hearing requirement entirely or if an occupancy threshold is specified that it be at a level of eighty per cent (80%). When a facility experiences a 20% vacancy rate its financial viability is generally severely damaged and any delays associated with a public hearing requirement will likely further exacerbate financial deterioration and increase the potential need for a costly take-over by the state under a receivership.

Residents in a nursing facility that could face relocation due to closure (as well as their guardians, conservators or other responsible parties) would continue to be notified of a facility's intent to request authorization to cease operation on the same day that the facility operator files a CON letter of intent with DSS. S.B. 406 maintains current statutory requirements related to resident notice requirements pertaining to nursing facility service termination including a full explanation of the CON review process and patient transfer and discharge rights.

Provisions of Concern to CAHCF

Restriction on CON Cost Modifications- Section 1 of S.B. 406 provides that DSS shall not accept or approve any request to modify the capital cost included in any prior CON approval through June 30, 2016. CAHCF does not believe that it is a good state policy to remove DSS authority to modify a previously approved CON to account for unforeseen costs or project scope changes.

It would be unfortunate if an approved CON project that would enhance the quality and cost-effectiveness of rehabilitative or long-term care services was not completed due to a statutory restriction on DSS consideration of a capital cost modification request. DSS is now under no obligation to modify a previously approved CON so it is unclear why this time-limited statutory restriction is being sought.

Competitive Procurement for New Bed Capacity- Language in S.B. 406 provides for DSS pilot project to, "seek competitive procurement of up to thirty-five beds at licensed nursing facilities provided there is a clear public need." The need for this pilot project proposal is unclear and it raises the broader issue of how the state addresses any current or anticipated need for an increase in bed capacity in certain areas of the Connecticut. Currently, facilities that see the need for expansion can approach the department with a proposal for the relocation of beds from a facility with excess capacity. CAHCF is concerned that the proposed "competitive procurement" approach by DSS may be the only mechanism for the addition of capacity even though S.B. 406 contains essentially the same bed relocation provisions as specified in current statutes.

CACHF believes that General Assembly should be careful and cautious with regard to the competitive procurement approach. We believe that the CON system should remain flexible enough for owners to make proposals for expansions based on changes they see in the markets in which they provide services.

Modification of CON Requirements- Section 1 (line 134) includes a provision allowing the Commissioner of Social Services to "waive or modify" any CON requirement in the section except with regard to the prohibition on requests for additional beds and modifications to any previously approved CON through June 30, 2016. We believe that DSS should have the authority to waive certain CON application requirements as it deems appropriate but are concerned with the granting of broad authorization to DSS to modify filing or other requirements placed on applicants.

CON Project Completion Periods- Section 4 of S.B. 406 would make CON approvals for capital projects valid for five years and other CONs, such as bed transfer or licensure conversions, valid for two years. It is unclear whether this provision would be applicable to previously approved CONs or only applications received and/or approved after July 1, 2014.

Since it is our experience and understanding that all CONs include specific deadlines for both the initiation of construction and project completion, it is unclear why this provision is being requested by the department. CAHCF believes that project milestones should be established between the applicant and DSS as part of the CON review and approval process, not in statute because circumstances vary from project to project.

CON Revocation by DSS- Subsection (c) of Section 4 of S.B. 406 would give DSS authority to revoke a CON if it determines that: 1) Commencement, construction or other preparation has not be substantially undertaken during a valid CON period; or 2) the CON holder has not made a good-faith effort to complete the approved project.

While this proposal does not on its face seem unreasonable, however, as previously stated, CONs include deadlines. Consequently, this provision does not appear to be necessary. Further, we oppose the granting of broad authority to DSS to revoke a previously approved CON.

We believe that DSS has adequate authority under current statutes and CON approvals to assure that CONs are time-limited and would not like to see any of our member facilities need to expend time and resources to oppose a CON revocation by DSS based upon legislation that was not in place when the CON was approved.

Bed Need Determination Based on 97.5% Occupancy- Section 2 of S.B 406 requires that for the relocation of beds from one facility to another be evaluated based on projected bed need using a 97.5% utilization factor. That percentage is very high when considering that nursing bed utilization in Connecticut currently approximates 91% and, nationally, nursing bed utilization is 86% (AHCA December 2013- Trends in Nursing Facility Characteristics).

CON Transfer Prohibited- Section 4 of S.B. 406 (line 692) would prohibit the transfer of a CON from an approved applicant to another person. Current law allows for CON transfers subject to DSS review. It would seem advisable to maintain current policy so that approved projects could proceed without the substantial delay and cost associated with a full CON re-application.

Section 1 Technical Issue- Beginning on line 112 of S.B. 406, the bill lists five exceptions to the prohibition on the consideration of proposals for new beds through June 30, 2016. We believe that the word "or" should be inserted before "(5)" on line 129.

In closing, there has been no substantive dialogue between our sector and DSS on the substantial revisions to the CON statutes recommended in S.B. 406. We urge the committee to recommend that the parties meet so that the state's intentions can be better understood, and we can have the opportunity to provide meaningful input. We believe that including the input from our sector will improve the policy that the state adopts.

Thank you. I would be happy to answer any questions you may have.

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