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Testimony Before the House Health and Human Services Subcommittee House Bill 166

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Good morning, Chair Romanchuk, Ranking Member West, and members of the Subcommittee. I'm Pete Van Runkle from the Ohio Health Care Association. I very much appreciate the opportunity to testify this morning.

Instead of appearing on multiple days for multiple agencies, I'm combining my testimony on four different agencies into this single presentation. OHCA has interest in the budgets of four agencies because we represent three groups of long-term services and supports providers: skilled nursing facilities; assisted living communities; and service providers for people with intellectual and developmental disabilities. We soon will be adding home care and hospice.

Aging. Let's start with the Department of Aging. We appreciate the subcommittee's attention to home and community-based waiver rates, both for PASSPORT and for the Assisted Living Waiver. As discussed in previous hearings, these programs' low payment rates constrain access to services by forcing providers to limit or to eliminate their Medicaid exposure or to go out of business altogether. Another recurring theme in testimony on the two waiver programs and other Medicaid-funded direct care services is how inadequate reimbursement depresses wages and hinders providers' ability to recruit and to retain staff.

We are very gratified by your recognition of this problem and your support for addressing it. This is a priority issue for OHCA. We propose rate increases for both the Assisted Living Waiver and personal care services provided through PASSPORT. Assisted living rates are the same as they were thirteen years ago when the program launched. PASSPORT rates also are extremely low. For assisted living, we propose (together with OALA and LeadingAge Ohio) increases that bring rates a little closer to market levels and establish a new rate tier for memory care. For PASSPORT, we propose a 5% increase from current rates, which also would apply to ODM-funded personal care and nursing programs.

We believe these proposals would spur expanded capacity and meet unmet needs. We also believe some individuals who would be served through expanded waiver access would have sought care in a skilled nursing center at a higher cost to the state.

DODD. Turning to the Department of Developmental Disabilities, OHCA is very grateful to Director Jeff Davis for his budget proposals. We strongly support the proposed rate increases for the Homemaker/Personal Care and On-Site On-Call services. As you have heard over and over, low wages for these and other jobs in long-term services and supports make it exceedingly difficult for providers to staff their operations. Lack of staff means lack of access to services and lower quality services. Wages are not the only component to attracting and keeping qualified staff, but they are very important.

The waiver rate increases certainly will help. We sincerely appreciate your support for this funding. In line with subcommittee members' observations that Director Davis' proposals should not be the end of the story, we suggest including a provision for future CPI-based adjustments in the wage levels used to calculate the waiver rates.

We also support Director Davis' proposal to realign and to increase non-medical transportation rates. This move will help Ohio comply with federal home and community-based services regulations, which require more individualized community engagement options and, concomitantly, more individualized transportation.

Relative to ICFs/IID (intermediate care facilities for individuals with intellectual and developmental disabilities), OHCA was very active in the long and arduous process of developing the new rate formula in current statute. The formula just took effect last July. We are grateful that Director Davis is proposing to allow this brand-new methodology to continue working through the coming biennium. A great deal of effort and compromise went into the formula. We believe it is well-designed to support the vital services our ICFs/IID provide.

OHCA also is working with Director Davis' team and other stakeholders on an amendment that will revise the quality measures for ICFs/IID, fund services in ICFs for children and potentially adults with severe behavioral challenges by raising the franchise permit fee, and strengthen summary suspensions of supported living services when there is a danger to health and safety. We anticipate an agreed-upon amendment will be available soon.

Medicaid. OHCA has several proposals for the Department of Medicaid's budget. House Bill 166 as introduced would repeal the skilled nursing facility market basket provision in current law. The General Assembly passed this critical provision just last session. The market basket is OHCA's number one issue in the budget. We ask that you keep it in the Revised Code.

The market basket is a simple concept. At bottom, it is part of the recurring theme about wages and staffing.

Medicaid rates for SNFs are based on the cost of delivering services, albeit at a deep discount. Currently, the average Medicaid rate in Ohio is approximately $44 per day less than the average cost of care. Every five years, rates are "rebased" to take account of cost changes. Rebasing tends to generate a relatively large rate change all at once. The market basket, which is a federally determined measure of SNF costs, smooths out the cost increases across the 5-year rebasing

period, allowing rates to keep pace annually. Rebasing then becomes a true-up of actual Ohio cost changes compared to the annual estimates.

The market basket for State Fiscal Year 2020 is 2.4%, as enacted by Congress last year. For SFY 2021, it will be approximately 1.9%. The percentage is finalized each October.

The following table shows what has happened to SNF costs, as reported on Medicaid cost reports, since the last rebasing, which used 2014 data. Costs went up 8.6% during that time. Obviously the statutory market basket percentage is much less.

Cost Center	2014	2015	Growth	2016	Growth	2017	Growth	Total
Taxes	$2.56	$2.66	3.9%	$2.85	7.1%	$2.98	4.6%	16.4%
Direct Care	$107.86	$109.85	1.8%	$112.12	2.1%	$116.87	4.2%	8.4%
Ancillary/ Support	$74.92	$76.91	2.7%	$78.02	1.4%	$81.03	3.9%	8.2%
Bed Tax	$13.94	$14.10	1.1%	$14.37	1.9%	$14.91	3.8%	7.0%
Capital	$19.41	$20.31	4.6%	$21.48	5.8%	$21.81	1.5%	12.4%
Total	$218.69	$223.83	2.4%	$228.84	2.2%	$237.60	3.8%	8.6%

The market basket provision in Ohio law represents a policy decision by the legislature that Medicaid rates for SNFs should reflect increases in the cost of providing care. As you know, the legislature felt so strongly about placing this policy in statute that it overrode Governor Kasich's veto of the market basket.

SNFs are no different than other long-term services and supports providers. Seventy percent of their cost is staffing-related. Nursing assistants, dietary workers, and housekeepers have low wages because of the constraints of Medicaid funding. Sixty-three percent of the average SNF's patients are on Medicaid. The market basket will help providers compete with other employers who offer better wages.

This is a quality issue. There is an inverse relationship between the proportion of Medicaid patients in an Ohio SNF and the building's performance on the federal Five-Star Quality Rating System. The more Medicaid patients, the lower the facility's stars. Low Medicaid rates mean providers who rely more heavily on Medicaid cannot afford as much staffing. It is well-understood in long-term services and supports that there is a relationship between staffing and overall service quality.

As a side note, Ohio's SNF rates are not generous, even with the market basket. "That state up north" pays about $45 per day more than the Buckeye state. Neighboring Indiana pays about $30 per day more.

Director Corcoran testified that despite its presence in state law, other spending in the Medicaid budget essentially "crowded out" the market basket in the department's effort to meet the JMOC rate (which is not binding on the General Assembly). Even with this and other cuts, Medicaid is projected to spend about $3.4 billion more in the coming biennium than the SFY 2019 level (see page 2 of Director Corcoran's testimony: $1.1 billion in SFY 2020 and $2.3 billion in SFY 2021). Of this $3.4 billion of added spending, none is going to SNFs.

Director Corcoran also pointed out that the budget includes rate increases for Medicaid managed care organizations because federal law requires their rates to be actuarially determined. The Director did not share the percentage or dollar amount of the MCO increases, but JMOC's actuary placed the lower bound at 3.2% and 3.3% for the two years of the biennium or somewhere around $1.5 billion total.

We do not in any way begrudge the actuarially determined increase in managed care rates. We do, however, struggle with the notion that Medicaid MCOs should have their rates adjusted for increases in their cost of doing business – which is what actuarial soundness means - but SNFs should not.

The SNF market basket is a state-law analog to the federal actuarial requirement. Both adjust payment rates to reflect cost changes. Just as Congress decided MCOs' rates should be adjusted for cost, the Ohio General Assembly made the same decision about SNF rates. We ask that you re-confirm this legislative policy judgment by removing the sections of HB 166 that would eliminate the market basket.

We have four other proposals for HB 166 that relate to Medicaid.

First, we propose, modeled on a recent Illinois statute, amending Ohio law to state that a person's application for Medicaid long-term services and supports must be presumptively approved if the county department of job and family services does not act on it within federally prescribed timeframes. You may have seen the recent front-page article in the Columbus Dispatch about chronic delays in processing Medicaid applications. These delays cause angst for consumers and their families. For our members, they cause cash-flow issues and bad debt. Presumptive eligibility is a solution for that problem.

Second, we propose expanding SNF pay for performance. As Chair Romanchuk commented in a previous hearing, the legislature looks with favor on Medicaid payment arrangements based on performance and quality. Our proposal would tie additional funding to a SNF's willingness to undertake proven quality improvement activities.

Third, we propose to correct deficiencies in existing statutes and rules that result in inaccurate rates for SNFs in two situations: newly constructed buildings and changes of operator. The amendments would apply to all skilled nursing centers constructed since the last rate rebasing.

Fourth, we propose to re-align an aspect of the SNF reimbursement system that penalizes providers who serve low-acuity Medicaid patients. The penalty is intended to encourage moving low-acuity patients to the community, but it does not take into account the availability of community placements. Our proposal would reduce the penalty when the SNF and relevant state and local agencies cannot find a safe, appropriate, alternative placement for the patient.

Health. Last, please allow me to share a few thoughts on the Health Department's budget. We have several proposals relating to SNF and residential care facility regulation that we would like to see added to HB 166:

- Increase ODH scrutiny of new SNF operators coming into Ohio. Inexperienced, inadequately financed operators have forced a number of other states into mass receiverships that have affected thousands of patients.

- Establish a voluntary Health Services Executive credential for health-care administrators who are trained and tested across all three long-term services and supports sectors (SNF, assisted living, home care/hospice). This is an idea from the Board of Executives of Long-Term Services and Supports that Representative Steve Arndt previously introduced in bill form.

- Address challenges with excessive complaint surveys, as discussed in the Health Department's budget hearing. Dr. Acton testified that ODH wants to reduce the time between annual surveys. A good way to do that – and to reduce burden on providers – would be to "bundle" complaints for investigation instead of spending staff time investigating them separately. As it stands, only 22% of complaints are substantiated, meaning there is a lot of wasted effort.

- Remove state provisions that exceed federal survey requirements. These include several items enacted in 2013 at the behest of the Kasich Administration as well as one section of House Bill 166 that similarly exceeds and interferes with federal requirements. The federal government has an exceedingly thorough and stringent regulatory system for SNFs with thousands of pages of rules and guidelines. The feds have occupied this space, and there is no need for the state to pile on.

- Require timeliness and transparency when ODH reviews cited deficiencies that providers feel are incorrect and require joint training of surveyors and providers on new regulations.

I also should note that OHCA supports the idea Dr. Acton mentioned of a technical assistance review process for SNFs, similar to a program operated by the Bureau of Workers' Compensation.

Thank you very much for your attention to these important issues. I would be happy to answer any questions you may have.