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Interested Party Testimony Before the House Aging and Long-Term Care Committee

House Bill 265 (As Introduced)

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Chair Ginter, Ranking Member Howse, and members of the committee, I am Pete Van Runkle, Executive Director of the Ohio Health Care Association (OHCA). OHCA is Ohio's largest organization representing long-term services and supports (LTSS) providers. We count among our membership assisted living communities, home health agencies, hospices, intermediate care facilities and providers of Medicaid waiver services for people with intellectual and developmental disabilities, and skilled nursing facilities (SNFs).

We appreciate the opportunity to offer written testimony on House Bill (HB) 265 as an interested party.

OHCA strongly supports quality training for caregivers serving people with dementia. It is clear that they requires different caregiving approaches than people who are cognitively intact. In fact, OHCA in 2017 applied for and was awarded a grant from the Department of Medicaid and the US Centers for Medicare and Medicaid Services to deliver dementia training to staff members of 150 skilled nursing centers using the CARES Dementia Basics[1] program, which HealthCare Interactive developed with assistance from the Alzheimer's Association. As part of this grant, SNF staff members were able to obtain the Alzheimer's Association essentiALZ dementia certification.

I also have a personal interest in this topic because my mother has severe dementia and resides in an assisted living community where she benefits from Ohio's Assisted Living Waiver – and from the attention of staff members who know how to work with people who have dementia.

We do have some specific thoughts about HB 265 as it currently is drafted. While we question the need for legislation in this area, which is well-served by existing training courses, we offer at

[1] https://www.hcinteractive.com/Basics

the end of our testimony a possible alternative approach if this committee believes legislation is necessary.

The following paragraphs outline our thoughts.

The House and Senate already created a pathway for addressing dementia-related issues. Just last year, both the House and the Senate overwhelmingly passed Senate Bill (SB) 24, a bipartisan measure sponsored by Senators Wilson and Yuko that created the Alzheimer's Disease and Related Dementias Task Force. The Aging and Long-Term Care Committee unanimously reported SB 24, and committee leadership and other committee members co-sponsored it.

The goal of SB 24 is to take a focused and deliberative look at all aspects of Ohio's response to Alzheimer's disease and other dementias. The task force includes 28 individuals, including members of the General Assembly, to represent a wide variety of interests and perspectives. The legislation charges the task force with 28 specific topics for investigation and requires a report and recommendations to the Governor and the legislature within 18 months after the bill's effective date.

The task force's charges include several items that overlap with the language and intent of HB 265:

- "Dementia-specific training requirements for employees of long-term care facilities"
- "Improving the health care received by individuals diagnosed with Alzheimer's disease or related dementias"
- "Equipping health care professionals and others to better care for individuals with Alzheimer's disease or related dementias"
- "Improving services provided in the home and community to delay and decrease the need for institutionalized care for individuals with Alzheimer's disease or related dementias"
- "Improving long-term care, including assisted living, for those with Alzheimer's disease or related dementias"
- "Assisting unpaid Alzheimer's disease or dementia caregivers"

Given the broad legislative support of SB 24 and the clear overlap in subject matter, HB 265 is premature. The task force is about to start its work. It is unwise to legislate on issues that the task force is required to consider without gaining the benefit of its considerable expertise. It is not "kicking the can down the road," but prudent lawmaking.

As it relates to regulated LTSS settings, HB 265 is unnecessary. The need for dementia-specific training for caregivers in formal LTSS settings is well-recognized and has been addressed in the regulatory context. Skilled nursing facilities and assisted living communities (licensed in Ohio as residential care facilities) already have specific training requirements in their regulations.[2]

[2] See 42 CFR 483.95(c)(3), 42 CFR 483.95(f), 42 CRR 483.95(g)(4), OAC 3701-17-07.1(K)(3)(b) (skilled nursing facilities); OAC 3710-16-06(E)(3), 3701-16-06(E)(5) (residential care facilities).

Medicare-certified home health agencies, along with facility-based services, must include a patient's cognitive status in assessment and care planning.[3]

The dementia practitioner certification mandated by the bill is not voluntary. Generally speaking, professional licensure/certification is mandatory. If one wishes to practice the profession, one must obtain a license to do so. That same concept exists in HB 265 relative to the dementia practitioner. The bill includes procedures for a licensing agency to accept applications and fees from license applicants and to approve or disapprove applications based on compliance with regulatory criteria – all indicia of a mandatory licensing program. HB 265 nowhere states that this licensing is voluntary. Moreover, ORC 173.072, as proposed by HB 265, provides as follows:

> Sec. 173.072. No person shall knowingly use any of the following unless the person holds a certificate in dementia care:
>
> (A) The title "certified in dementia care," "dementia practitioner," "certified Alzheimer's disease practitioner," or "certified in Alzheimer's care";
>
> (B) The acronym "CDC," "DP," "CADP," or "CAC," after the person's name;
>
> (C) Any other words, letters, signs, cards, or devices that tend to indicate or imply that the person is certified in dementia care.

This is classic title protection, another key element of professional licensure.

There may be some situations in which voluntary licensure is beneficial. For instance, OHCA supported provisions in HB 166 that created the voluntary health services executive (HSE) license under the Board of Executives for Long-Term Services and Supports (BELTSS). The legislation creating the HSE license makes it clear that even though it affords title protection, the license is voluntary. Revised Code section 4751.101 provides:

> Nothing in this chapter or the rules adopted under it shall be construed as requiring either of the following:
>
> (A) An individual to be a licensed health services executive in order to do either of the following:
>
> (1) Practice nursing home administration;
>
> (2) Serve in a leadership position at a long-term services and supports setting or direct the practices of others in such a setting.

[3] See 42 CFR 484.55(c)(1), 42 CFR 484.60(a)(2)(ii).

HB 265 includes no such language, so it cannot be confirmed as establishing voluntary certification.

Perhaps more importantly, though, a HSE is very different from a dementia practitioner as a subject for licensure, even if it is voluntary. A HSE is a clearly identifiable job category: a person who leads a SNF, assisted living community, or home care or hospice agency. The HSE license indicates that the person is qualified to oversee all three of these types of organizations. Dementia practitioners, on the other hand, are not defined as a specific profession in HB 265. The concept appears to be an amorphous one that could encompass many different types of jobs and even volunteers or family caregivers. The only reference to the "profession" is in the title protection language set forth above.

There is no need for another licensed profession in Ohio, especially when it is not a true profession. Ohio licenses a vast number professions under an extensive bureaucracy of boards and commissions. The legislature has made efforts over the years to scale back this bureaucracy, but this bill would add to it. The larger problem with HB 265 is that there is no recognized profession of dementia practitioners absent the bill inventing one. As noted above, this invention is half-hearted because while the bill includes title protection language, it does not define a dementia practitioner. The only definition is by inference, that a dementia practitioner is someone certified by the Department of Aging (ODA) as having completed one of the courses ODA approved.

Completion of a dementia training program is insufficient to define a profession. There are many dementia training programs in existence today in the private sector, some of which bestow certificates or other indicia of completion.[4] The National Council of Certified Dementia Practitioners actually has trademarked the title "certified dementia practitioner."

As this committee heard in previous testimony, these programs are aimed at different audiences and accordingly, differ widely in content and structure. As also noted in previous testimony, health professionals licensed under existing Ohio laws often have education and experience with dementia that goes far beyond what would be conveyed in a stand-alone training course. Because of the vagueness of the term "dementia practitioner," it would appear that HB 265 would cover require these health professionals to take an approved course on top of their existing training and experience.

If dementia practitioners are to be certified, the Department of Aging is not the appropriate entity to certify them. ODA does not license or certify health professionals. The agency operates

[4] For instance, the CARES Dementia Basics program mentioned above, with the Alzheimer's Association essentiALZ certification (https://www.hcinteractive.com/Basics), the National Council of Certified Dementia Practitioners (https://www.nccdp.org/cdp.htm), a large library of trainings offered directly by the Alzheimer's Association (https://training.alz.org/), the Dementia Friends program from the Ohio Council for Cognitive Health led by former ODA Director Bonnie Burman (https://ocfch.org/), and many others.

a variety of programs that serve older Ohioans, incident to which it regulates organizations that provide waiver services and people who work in quasi-governmental organizations that operate the department's programs. Health professionals are licensed by boards such as BELTSS, the Board of Nursing, the Medical Board, and a variety of similar entities.

Recommendations for HB 265. Having received testimony pointing out various issues with the bill, it would seem appropriate for the committee now to take some time to consider whether legislation is needed, especially given the imminent start-up of the Alzheimer's Disease and Related Dementias Task Force. If the committee believes that legislation is needed before the task force completes its work, we urge the committee to consider carefully what changes should be made to HB 265 in light of the public testimony.

One possible approach may be to amend the bill to require ODA, instead of embarking on an unclearly defined and unnecessary regulatory quest, to develop and post on its website a list of dementia training programs that the department considers viable, identify the target audience for each program, and provide links to the programs and summary information about them, including cost.

This would allow people who wish to obtain training for whatever reason – family caregiving, professional advancement, greater understanding of dementia – to select a program that best meets their needs. It would be truly voluntary, not a professional licensing law, and would provide useful guidance to people interested in dementia training.

Again, we appreciate the opportunity to provide our thoughts on HB 265. Please feel free to contact me at pvanrunkle@ohca.org or 614-361-5169 if you have any questions or would like to discuss our testimony.