

**Testimony Before
Senate Health and Medicaid Subcommittee
Amended Substitute House Bill 166**

May 15, 2019

Good morning again, Chair Hackett, Ranking Member Thomas, and members of the subcommittee. I am Pete Van Runkle, and I serve as Executive Director for the Ohio Health Care Association (OHCA).

I'm returning today to speak to aspects of the House-passed version of House Bill 166 that affect our members other than those serving individuals with intellectual and developmental disabilities. OHCA is the state's largest organization representing long-term services and supports providers, including skilled nursing centers, assisted living communities, and starting just recently, home care and hospice providers.

Let's start with home and community-based providers. For years, state policy has been to encourage expansion of home and community-based services (HCBS - home care and assisted living) to serve consumers who need care but not the intensity of services delivered in a skilled nursing facility (SNF). Unfortunately, though, funding of HCBS has not followed the policy direction to support HCBS provider capacity. Rates for HCBS have remained stagnant for many years. In the meantime, the cost of care has risen steadily, most recently because of the workforce crisis that has made it exceedingly difficult for providers in this sector to recruit and retain qualified staff. Workforce challenges are my no means unique to HCBS providers, but direct care staff make up the bulk of costs for HCBS and for long-term services and supports in general.

The Assisted Living Waiver is a case in point for the misalignment between policy and reimbursement. The three rate tiers for the waiver are the same as they were in 2006, topping out at \$69.98 per day for the highest tier, coupled with a \$24 a day room and board payment from the resident's own income. The waiver is long overdue for a rate increase, and attention also should be paid to the burgeoning phenomenon of memory care in assisted living, which has additional requirements under state licensure rules and is too costly to deliver to waiver consumers because of the low reimbursement.

Overall, the low waiver rates cause many OHCA members to limit the number of waiver consumers they will take (often accepting only individuals who already live in the assisted living community and paid privately for a period of time) or not to participate in the waiver at all. This results in an access issue. There are seniors all across the state who cannot afford assisted living but who also cannot find a waiver community that will take them. These consumers either do without the care they need or move into a SNF at a higher cost.

Similarly, rates for the PASSPORT home care program, the Ohio Home Care Waiver, the MyCare Ohio Waiver, and home health services under the Medicaid state plan have stagnated for varying periods of time. Like assisted living providers, home care providers struggle to survive on low Medicaid rates. Some have discontinued or limited their Medicaid exposure, reducing access for Medicaid consumers.

The House responded to these concerns by allocating a 2.7% rate increase for Assisted Living Waiver and PASSPORT home care, but nothing at all for home health or other waivers. We appreciate the House's consideration and ask the Senate to add to it by providing 5% rate increases in each year of the biennium, effective January 1 of each year, for assisted living and PASSPORT and adding the other HCBS waivers and state plan home health. In the case of home care, the increase would apply to rates for nursing and aides services, which are most affected by the workforce shortage.

Turning to SNF issues, OHCA's top priority in the budget process was and is protecting the SNF market basket that the General Assembly enacted in the last budget and then defended by overriding Governor Kasich's veto. In his Executive Budget, Governor DeWine proposed to eliminate this hard-won legislative victory before it even takes effect (the market basket is set to begin July 1, 2019).

The House restored the market basket language but set it aside for the biennium, converting a portion of the funding into a new quality incentive payment for SNFs that will stand alongside the existing pay-for-performance component that has been in place in various forms for over a decade. This quality incentive would stay in place into the future at the level set by the House bill.

While OHCA supports linking a portion of payment to quality measures, the House bill does not fund the new quality incentive with all the money from the market basket. It only includes funding from the market basket for the first year of the biennium. We propose to add back an amount equivalent to the second year's market basket, which will be set by the federal Centers for Medicare and Medicaid Services (CMS) this summer (CMS currently proposes 2.5%).

The new quality incentive in the House bill uses four nationally published quality measures, three of which are different from the measures used in the existing quality component. The House also added language that would deny any quality payment to more than 300 Ohio SNFs because they have occupancy rates below 80%. We had concerns about this language as it came from the House.

Yesterday we worked out an agreement with proponents of the occupancy penalty that we will offer to you in amendment form. This agreement also addresses provisions in the House-passed bill that make changes to the Ohio certificate of need law.

Another issue that was addressed in the House substitute bill but removed in the omnibus amendment was delays in Medicaid long-term services and supports (LTSS) financial eligibility determinations. The amendment at issue created presumptive eligibility for a LTSS applicant whose application is delayed beyond the deadline set by federal regulations. Such a delay is a common occurrence and creates angst for individuals and families who don't know if they will be eligible and will be able to stay in their SNF or assisted living community. For the provider who is delivering care, the delay is at best a cash flow problem and at worst a no-pay situation.

We understand that the amendment was pulled from the House budget because of cost concerns raised by the Department of Medicaid. We believe the cost would be minimal because the only added cost to the state would be if both the application is delayed past the deadline and the individual ends up not being eligible for Medicaid LTSS. Very few applications ultimately are denied, and the county departments of job and family services could eliminate any potential cost by processing the applications timely.

Nonetheless, we are working on a new amendment that we hope will both mitigate the risk to the state and address our members' legitimate concerns about pending Medicaid applications.

Another amendment that was in the House bill temporarily deals with regulatory issues affecting SNFs.

One of these issues pertains to investigation of complaints by the Department of Health (ODH). CMS requires ODH to investigate complaints against SNFs regardless who files them, how often they are filed, and whether or not they are anonymous. CMS also mandates that the most serious complaints must be investigated within two days, the next most serious within 10 days, and all others at a time determined by the state survey agency (ODH). Notwithstanding that only 22% of complaint investigations result in the complaint being substantiated, ODH is extremely aggressive in classifying complaints into the 2-day and 10-day buckets. The end result is that our members are constantly dealing with complaint investigations and the ODH surveyors are constantly having to do them. Given the low substantiation percentage, this is a major waste of resources. Unlike Ohio, which classifies nearly 90% of complaints into the 2-day and 10-day buckets, many other states classify much smaller percentages. The amendment would set limits on the percentage of complaints that ODH could include in each bucket. The others would be bundled for investigation with the next annual survey or together at another time.

We believe this approach would go a long way to resolving ODH's current problem with meeting federal timelines for annual surveys. Surveyors would spend much less time doing complaint visits and could use that time to do annuals.

The amendment also would address another aspect of the complaint issue, overlapping survey cycles. Each time a SNF is surveyed, whether for a complaint or an annual survey, and a deficiency is cited, a new survey window opens. If the window is not closed within a set period of time, the center cannot receive payment for any new admissions. If multiple surveys are done during that set time period, the survey window stays open. This is one of the consequences of ODH's practice of doing numerous complaint visits instead of bundling them. The amendment would require ODH to close a survey window – if the center has corrected the deficiency – before opening another one.

A third item of this nature is the informal dispute resolution (IDR) process. This is a federally required way SNFs cited for deficiencies can contest whether the deficiency should have been cited or whether the seriousness of the deficiency was evaluated correctly. Our members report that ODH often delays responding to IDRs and when they do respond, no rationale is given for the decision. The amendment would require ODH to respond within 10 days (the same amount of time the facility has to provide its plan of correction for the deficiencies) and to provide a written rationale for the decision.

Another provision of the amendment would require ODH to hold training sessions on new regulations, guidelines, and survey procedures jointly for surveyors and providers so everyone can hear the same information.

Lastly, the amendment would repeal several provisions in current law that create regulatory requirements in excess of the already very comprehensive and stringent federal requirements. The federal regulations and guidelines total thousands of pages and are enforced vigorously by ODH's surveyors and regulatory staff, along with similar officials at CMS. There is no need for Ohio to exceed these requirements.

These excessive state regulations include:

- Closing Special Focus Facilities much more quickly than under federal guidelines.
- Allowing ODM to suspend a facility's provider agreement without following federally specified procedures (this is a new addition in House Bill 166).
- Allowing other agencies than ODH, the designated state survey agency, to review centers' plans of correction.
- Mandating centers annually do quality improvement projects selected from a list compiled by the Department of Aging.

We have two other reimbursement-related proposals. The first proposal would correct the calculation of reimbursement rates for real estate taxes for newly constructed facilities. The revision would conform the rates to the facilities' actual real estate tax costs, which is the intent of current statute, instead of an average rate. The amendment also would require use of actual data instead of averages to set rates for centers that change ownership.

The second proposal is to align the rates for so-called “low-acuity” patients with the state’s policy of encouraging SNFs to relocate these patients to a community setting. Currently, the rate for all low-acuity patients is \$115 per day, compared to the statewide average rate for other patients of \$196 per day. This low rate applies whether or not the SNF can find an alternative placement. A center legally cannot discharge a patient unless they have a safe and appropriate alternative placement. The amendment would require the facility to notify state and local authorities of any low-acuity patients and work with the authorities to move the individual out. If despite their best efforts, they cannot find an appropriate placement, the facility would receive \$140 instead of \$115. We believe under this approach, the increased rate would be offset by a larger number of patients that are relocated to the community.

That completes our list of budget issues for long-term services and supports. Thank you very much for your attention to these items. I would be happy to answer any questions that you may have.