

**Before the House Health Committee
Testimony on House Bill 96 As Introduced**

March 5, 2025

Good morning, Chair Schmidt, Vice-Chair Deeter, Ranking Member Somani, and members of the committee. I am Pete Van Runkle, representing the Ohio Health Care Association (OHCA). We are the largest statewide membership organization for long-term services and supports providers, with more than 1,200 members.

Given the way HB 96 was divided among the House standing committees, I'm here today to discuss a provision in the budget bill that applies to only one of our member constituencies, skilled nursing facilities (SNFs). You heard about this provision, the DeWine Administration's proposal to prohibit leasing a SNF from a real estate investment trust (REIT), during Dr. Vanderhoff's testimony last week.

Dr. Vanderhoff spoke about buildings that are sold to "out-of-state" owners and then leased back by the original owner. However, that somewhat narrow scenario is not consistent with the language in HB 96. The language is very specific to REITs, whether they are based in Ohio or outside Ohio, and applies to any new lease of a SNF from a REIT after the bill's effective date. I will address what actually is in HB 96.

We strongly oppose the REIT prohibition and are proposing an amendment to remove the language. In a state that supposedly is "open for business," the administration's proposal would slam the door in the face of one specific type of business that is commonplace in Ohio and elsewhere around the country. So far in the budget process, the administration has offered no justification for singling out REITs in this manner. Governor DeWine did not mention this provision in his press conference announcing the executive budget, nor did Director Murnieks or Director Corcoran in their testimony to the Finance Committee later that week.

No one outside of the administration knew about the REIT language until the bill was introduced on February 11. Since then, the only public airing was Dr. Vanderhoff's testimony last week, but he never actually used the term "REIT."

A REIT is a specific type of business, defined in the Internal Revenue Code, that invests in real estate, taking ownership interest in buildings. REITs invest in all types of buildings, although typically a given REIT concentrates on buildings used in one or more specific business sectors

such as offices, warehouses, data centers, retail, or residential. Health care is one of those sectors. Like other businesses, some REITs are publicly traded while others are privately held. Around 1,100 REITs exist in the United States, of which 225 are publicly traded. Institutional and individual investors frequently hold positions in REITs as an alternative to equities and fixed income.

For the thousands of businesses, including SNF operators, that lease buildings or space from REITs, the REIT is a financing mechanism. By buying the building, the REIT frees up capital for the business to use in operations. It is no different than other methods of commercial financing such as banks, private equity firms, or other businesses and individuals who own or have a financial interest in real estate and receive periodic payments from the business that uses the building.

The administration's proposed prohibition on leasing from REITs would cut off a financing option used by many SNF operators in Ohio and across the country. The administration has provided no rational basis for this drastic proposal. Reportedly, it is modeled on one piece of a health care reform bill that the Massachusetts legislature passed in December, following the collapse of the Steward hospital system. Steward was based in Massachusetts and happened to lease its hospital buildings from a REIT. The Massachusetts legislation, however, does not apply to SNFs, only hospitals. The expansion to SNFs is an Ohio invention, unprecedented anywhere else.

Dr. Vanderhoff claimed in testimony that it was "proven" that sale/leaseback arrangements involving owners not based in Ohio create a "high probability" that the SNFs involved will provide poor care and ultimately close. He offered no evidence to support this sweeping condemnation except a vague, anecdotal reference to 4 SNFs the Health Department closed sometime in the relatively recent past. We suspect the rationale Dr. Vanderhoff espoused underlies the administration's proposed REIT prohibition.

The ban would create multiple market dislocations. The language in HB 96 prohibits the Health Department from licensing a SNF operator if they enter into a new lease with a REIT. While existing leases would be grandfathered, a REIT could not replace a poorly-performing operator with a better one. They – and the facility's residents - would be stuck with the bad operator. An operator who wants to build a new SNF or acquire an existing SNF would be denied an important source of financing that is available and widely used today. A SNF owner who wishes to sell a building would be denied access to a pool of potential purchasers, as would an owner/operator who wants to get out of the ownership business but continue to operate the buildings.

All of these dislocations would happen because the administration apparently thinks leasing from a REIT – any and all leases from any and all REITs – somehow automatically results in extremely poor quality, so poor that it results in the SNFs being closed down.

This theory is false.

After HB 96 was introduced and we discovered the REIT language, we began to research REIT ownership of SNFs in Ohio. There is no publicly-available list, but through intensive searching, we

identified 103 REIT-owned SNFs. We believe this group encompasses most if not all Ohio facilities with REIT involvement. Using the most current available data, we compared the performance of the REIT-owned buildings against the entire Ohio SNF population on key quality metrics.

The following table shows that on all but one of these widely-used metrics, the REIT-owned facilities outperformed the statewide average.

Measure	REIT-Owned SNFs	All Ohio SNFs
5-star status	21%	18%
1-star status	11%	16%
Ohio quality points	32.3	30.9
CMS long-stay quality measures	4.62	4.45
CMS short-stay quality measures	3.25	3.02
Adjusted total nurse staffing	3.36	3.55

Clearly, leasing from a REIT is not a recipe for poor care, as the administration seems to be suggesting.

The fact is that building owners are not responsible for the quality of care, operators are. The operator provides care and services to the facility's residents on a daily basis. The building owner, whether it is a REIT or someone else, is simply a landlord. It is no different than the myriad of business that operate in leased space. The success of the business is driven by the business owner (the operator), not the landlord. It is true that unfavorable lease terms can create difficulties for a business and even lead to closure or relocation. But that is true of only a small minority of businesses operating under leases and also applies to businesses that "can't pay the mortgage."

Governor DeWine has been very clear, over the past two years, about his interest in the quality of services provided in Ohio's SNFs. He is right to take interest. But the focus should be on how facilities are operating, not how they are financed.

The answer is already in place.

Over the last two years, the General Assembly acted in HB 33 and again in SB 144 to require much greater scrutiny of the qualifications of operators who take over Ohio facilities (so-called "CHOPs"). The legislation applies even-handedly to potential operators based in Ohio and those based in other states. The applicant for a CHOP license must provide full transparency about ownership of both the operating entity and the real estate. The new operator must be able to demonstrate operational experience and cannot have a track record of problems like facility closures, license revocations, or bankruptcies.

This legislation is operational and is being enforced vigorously by the Department of Health. There is no evidence that it is not working to protect Ohio's SNF residents. The case I believe Dr. Vanderhoff was referring to involved an operator who took over before the CHOP provisions

were in place. If tweaks are needed to improve the CHOP law's effectiveness, the administration certainly could have brought them forward in the budget bill instead of targeting a financing arrangement used by many high-quality SNF operators.

The CHOP provisions actually do look at ownership in one very specific way. The legislature included language imposing a penalty if a new owner acquires a building and raises the rent or other financial obligations of the operator within 12 months after the acquisition. The language seems to deal with exactly the issue of concern (an owner who strips resources from an operator), but does so without shutting down a financing option that is not to blame. Oddly, the executive budget proposes to strike this language.

For all of these reasons, we respectfully request your support of our amendment to strip the REIT provisions that apply to SNFs out of HB 96.

Thank you for your attention to this important topic for Ohio's SNFs. I would be happy to answer any questions you may have at this time. I also am available to meet in person or communicate via email (pvanrunkle@ohca.org) or phone (614-361-5169) regarding these issues.