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Testimony Before
Senate Finance Committee
Amended Substitute House Bill 166

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Good morning, Chair Dolan, Ranking Member Sykes, and members of the Finance Committee. Thank you for the opportunity to submit written testimony on the state budget bill, House Bill 166.

I am Pete Van Runkle, and I serve as Executive Director for the Ohio Health Care Association (OHCA). OHCA is the state's largest association representing long-term services and supports (LTSS) providers, including skilled nursing centers, assisted living communities, providers of services for individuals with intellectual and developmental disabilities, and starting just recently, home care and hospice organizations. We will present comments and proposed amendments on aspects of the budget that affect each of these groups.

Home and community-based services (HCBS). We'll start with HCBS - home care and assisted living. For years, state policy has encouraged expanding Medicaid-funded HCBS for consumers who need services but not a skilled nursing facility (SNF). Unfortunately, though, HCBS funding has not followed this policy direction by adequately supporting provider capacity. Reimbursement rates have remained stagnant for many years. In the meantime, the cost of care has risen steadily. In recent times, cost increases have been driven by the workforce crisis, which makes it exceedingly difficult for HCBS providers to recruit and to retain qualified staff. Workforce challenges are by no means unique to HCBS providers, but are magnified because direct care staff make up the bulk of costs for HCBS and for LTSS in general.

The Assisted Living Waiver is a case in point for the misalignment between policy and reimbursement. The waiver's three rate tiers 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 rates are not sufficient to support assisted living capacity for waiver consumers because they are far below cost.

The waiver is long overdue for a rate increase. Attention also should be paid to the burgeoning phenomenon of memory care in assisted living. Memory care is paid at the same low

reimbursement levels despite being more costly because of additional state licensure rules and greater staffing needs. This makes it impractical to offer memory care to waiver consumers.

Overall, low waiver rates cause OHCA members to limit how many waiver consumers they will take - often they will accept only individuals who already live in the assisted living community and who paid privately for a period of time - or not to participate in the waiver at all. This is an access issue. Seniors across the state cannot afford to pay privately for assisted living but 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 years. 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.

Proposed HCBS amendment (SC3180-1). The House responded to these concerns by allocating a 2.7% rate increase for the Assisted Living Waiver and for home care under PASSPORT, but nothing at all for home health or other waivers. We appreciate the House's consideration and have submitted an amendment that would enhance it by expanding the rate increase to 5% in each year of the biennium, effective January 1 of each year. In addition to assisted living and PASSPORT, the amendment would cover the other HCBS waivers that are based on a SNF level of care and also state plan home health services. All of these programs are part of the HCBS menu. For home care, the rate increase would apply to rates for nursing and aide services, which are most affected by the workforce shortage.

Skilled nursing facility reimbursement. OHCA's top priority in the budget process remains protecting the SNF market basket that the General Assembly enacted in the last budget and then defended by overriding Governor Kasich's veto. We are very grateful for the legislature's support of adjusting SNF reimbursement to reflect increases in the cost of providing care.

In his Executive Budget, Governor DeWine proposed to eliminate this hard-won legislative victory before it even took effect (the market basket is set to begin July 1, 2019). The House restored the market basket language in statute, but set it aside for the biennium and converted a portion of the funding into a payment based on SNFs' performance on four nationally published quality metrics. This new value-based purchasing component is in addition to the existing quality incentive. The new incentive would continue into the future at the level set by the House bill.

Proposed SNF reimbursement amendment (SC3859-1). OHCA supports linking reimbursement to quality. We submitted an amendment that is supported by all three organizations representing SNFs. This amendment would retain the quality structure passed by the House, with a few methodological adjustments, and would include in the quality payment the full funding from the statutory market basket. The House bill only includes the funding calculated for the first year of

the biennium. Our amendment proposes to add back an amount equivalent to the second year's market basket adjustment, which we estimate at $29 million in state GRF.

The quality incentive language in the House bill also contains an occupancy penalty that would deny the quality payment to more than 300 Ohio SNFs because of occupancy rates below 80%, without regard to performance on the four quality metrics. Our amendment, again agreed by all three SNF organizations, would apply the occupancy penalty only to centers that both have occupancy less than 70% and also are in a lower tier on the quality metrics. The occupancy penalty also would apply only in the second year of the biennium, while the quality metrics would start January 1, 2020. The amendment also adjusts provisions of the House-passed bill that make changes to the Ohio certificate of need law.

Another issue covered in the amendment is delays in Medicaid LTSS financial eligibility determinations. These delays, which are commonplace, worry 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, eligibility delays cause cash flow problems and, if the applicant ends up not qualifying, months of care with no payment. The amendment would require Medicaid to pay for services if an application is delayed beyond the deadline set by federal regulations, but would eliminate risk to the state by requiring the provider to refund any payments if the individual eventually is determined to be ineligible. We believe this approach protects the state from any additional cost.

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

The second proposal would align 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 there is a safe and appropriate alternative placement. The amendment would require the facility to notify state and local authorities of any low-acuity patients and to 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 cost of increased rate would be offset by savings from more patients moving back to the community.

SNF regulatory issues and proposed amendment (SC3861). OHCA submitted a third amendment that deals with regulatory issues affecting SNFs. This amendment provides common-sense regulatory reform without in any way compromising consumer protections. SNFs are subject to a detailed and extensive federal regulatory system operated at the state level by the Department

of Health (ODH) and strongly enforced by the federal Centers for Medicare and Medicaid Services (CMS).

One area that requires reform is ODH's practices for investigating complaints against SNFs. CMS requires ODH to investigate all complaints 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 complaints are substantiated, ODH is extremely aggressive in classifying complaints into the 2-day and 10-day buckets. The end result is that OHCA members and other centers constantly need to divert resources to respond to complaint investigations and ODH surveyors constantly need to divert resources to do them. Given the low substantiation percentage, this is a major waste.

Unlike Ohio, which rushes to do nearly 90% of complaints separately, many other states bundle the vast majority together for investigation on the next annual survey or at another time. Our amendment would set limits on the percentage of complaints that ODH would investigate separately, without affecting the requirement that all complaints are investigated.

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 sooner.

The amendment also would address another aspect of the complaint issue, overlapping survey cycles. Each time a SNF is cited for any deficiency, whether on a complaint visit or an annual survey, a new survey window opens. If the window is not closed within a set period of time, a denial of payment for new admissions penalty is imposed. If multiple surveys are done during that time period, the survey window stays open. This is one of the consequences of ODH's practice of doing multiple, separate 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 ODH's informal dispute resolution (IDR) process, which is a federally required way SNFs can contest deficiency citations. IDR is supposed to be quick and informal, but OHCA members report ODH often delays responding to IDRs. When they do respond, no rationale is given for the decision. The amendment would require ODH to respond to IDRs within 10 days (the same amount of time the facility has to provide its plan for correcting deficiencies) and to provide a written rationale for the decision.

Another part 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 exceeding the already very comprehensive and stringent federal requirements. The federal regulations and guidelines total thousands of pages and are enforced vigorously by state and federal officials, providing effective protections for patients. There is no need for Ohio to exceed these requirements.

These excessive state regulatory statutes include:

- Closing Special Focus Facilities without allowing the opportunity to correct given in 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.

Intellectual and developmental disabilities (ID/DD). As mentioned above, OHCA represents ID/DD service providers, both intermediate care facilities (ICFs) and waiver agencies. Overall, we strongly support the House-passed budget for this sector. Developmental Disabilities Director Jeff Davis presented a budget proposal developed collaboratively with stakeholders. His budget contained bold proposals to help providers deal with the biggest challenge they face today: finding and keeping quality staff. Without staff – most importantly, direct support professionals (DSPs) – provider agencies cannot deliver critically needed services. OHCA hears from members constantly about this concern, in the ID/DD field and throughout our membership.

Director Davis proposed a two-step rate increase for homemaker/personal care waiver providers premised on increases in the underlying average wage for DSPs that topped out at $12.38 per hour by January 1, 2021. This increase was partially funded by county boards.

The House accepted this proposal and enhanced it by adding another $140 million so the DSP wage increase could move to $13.00 per hour on January 1, 2020 - a year earlier and $0.62 higher than the Director's proposal. We support both Director Davis' proposal and the House's addition to it. The increases are sorely needed to support our members' efforts to staff services for people with disabilities.

On the ICF side, Director Davis proposed not disturbing the rate formula stakeholders negotiated and the General Assembly enacted just last year in House Bill 24. Importantly, the ICF formula responds to the staffing crisis by giving providers the ability to increase wages and have the costs factored into their rates going forward. The House agreed with maintaining this policy.

ID/DD amendment (part of SC3861). Unfortunately, one amendment did not make it into the House bill despite carrying agreement of the department, provider associations, and county boards. We heard no concerns from House members or anyone else about this amendment, and

we understand its omission was accidental. For Senate consideration, the agreed-upon ID/DD language is included in SC3861.

Specifically, the ID/DD amendment addresses three issues. First, it would postpone and revise the quality measures that will determine a portion of the ICF rate in the future. The quality measures specified in HB 24 proved excessively burdensome and the payment methodology would have denied some providers money they are using to address the DSP crisis. Second, the amendment would create an incentive for ICFs to serve individuals with severe behavioral manifestations, with funding for the incentive coming from an increase in the ICF franchise permit fee. Third, the amendment would streamline and clarify provisions in the bill on summary suspension of supported living services. Again, these changes are agreed by all parties.

I'd like to mention one other issue, non-medical transportation (NMT). The department proposed rule changes to increase rates for most NMT and included money in their budget plan to fund the changes. One rate, for large-capacity vehicles, would be reduced under DODD's proposal. This led the House to put the NMT rate changes on hold and create a study committee on the subject. We hoped a solution acceptable to all parties would emerge during the Senate process, but unfortunately that has not happened so far. If one can be developed, we would support such a solution for our members who provide transportation services.

That completes OHCA's list of budget issues and amendments 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. You may reach me anytime at 614-361-5169 or pvanrunkle@ohca.org.