OHCA
OHIO HEALTH CARE ASSOCIATION

55 Green Meadows Drive South
PO Box 447
Lewis Center, OH 43035
P: 614.436.4154 / F: 614.436.0939
www.ohca.org

Testimony Before
Senate Finance Committee
Substitute House Bill 166 as Pending in Senate Finance

June 14, 2019

Good morning, Chair Dolan, Ranking Member Sykes, and members of the Finance Committee. Thank you for the opportunity to submit written testimony on the Senate substitute version of the state budget bill, House Bill 166, which is pending before the committee.

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 substitute bill that affect OHCA members.

Market basket/quality, certificate of need (SC4607). OHCA is most grateful for the language in the substitute bill on skilled nursing facility (SNF) quality incentive payments. These provisions are supported by all three associations representing SNFs and ensure that the quality incentive funding is consistent with the General Assembly's veto override in the last budget.

Unfortunately, though, another agreed item would revise House-passed language amending the Ohio certificate of need (CON) laws. The substitute bill does not include these changes and even strips out the House's CON provisions.

OHCA supports amendment SC4607, which would reinsert the House CON language, with the changes we are recommending. The revised language would do the following:

- Move the quadrennial review period for CON applications to move beds from counties with surplus SNF beds to counties that need beds up from July to January and utilize the 2016 bed-need calculation for the January 2020 review.
- Permit moving beds to contiguous counties only when the contiguous county needs beds.
- Make the process for a competitor or other person to appeal an approved CON less formal.

- Remove current law preventing counties that need beds from receiving them because of occupancy of existing providers in the county.
- Temporarily prohibit a new provider from building a center in an "over-bedded" county.

We view these changes as needed modernization of the CON law, which has been essentially unchanged for a decade.

Assisted living (SC5008). We strongly support the provisions in the substitute bill that allow a 5.1% increase in Medicaid Assisted Living Waiver rates and apply a market basket index (the same for SNFs) to rates for personal care services. Assisted living is a high-demand service, but because of inadequate rates, provider capacity is insufficient to meet the demand.

OHCA proposes a further amendment (SC5008) that would provide another 5.1% increase in the second year of the biennium. Given that Assisted Living Waiver rates have been the same since the program began more than a decade ago, we believe that the second "bump" is important to preserving and enhancing access to assisted living for Medicaid beneficiaries. The amendment also clarifies that the market basket in the substitute bill will apply to the Assisted Living Waiver.

Medicaid eligibility (SC5002). OHCA supports this amendment to address the current backlog of Medicaid applications for facility-based long-term services and supports (skilled nursing and assisted living).

This amendment does not increase Medicaid appropriations or result in any additional cost to the state. Instead, it addresses a problem that can impede providers' cash flow for months and in some cases results in tens of thousands of dollars of unpaid care. These individuals are living in the facility while the application is pending. The facility is prohibited by current statute from moving them out regardless of how long their applications sit.

We recognize and applaud the efforts the Department of Medicaid has been making recently to reduce the backlog of applications, but it continues to exist, and we continue to hear about it from members. The proposed amendment addresses the problem by requiring Medicaid payment to start when an application has been pending for more than 45 days, the federally required timeframe.

So why does this fix not cost the state? Because today if an applicant eventually is determined eligible, however long that takes, Medicaid pays for their care retroactive to the date they applied and in some cases, even before that. So there is no additional cost for these individuals by simply starting the flow of payments sooner.

For the small fraction of long-term care applicants whose applications eventually are denied, the amendment eliminates risk to the state. The language specifies that the state will recoup any Medicaid money paid for these patients by deducting them from the provider's normal vendor payments. The amendment gives the provider the choice of receiving a payment that they may have to pay back or cutting their losses by discharging the patient.

SNF regulatory reform (SC4997). We support this amendment as a no-cost, common-sense approach to provide relief on several regulatory issues that are causing problems for our members. These reforms do not compromise protections for Ohio seniors but improve the efficiency of existing regulatory programs.

The amendment includes the following key changes:

- Requires the Health Department (ODH) to consolidate complaints for investigation instead of investigating each one separately. Only 22% of complaints against SNFs are validated. Consolidating the investigations would save both ODH employees and facility staff time. This time would be better spent providing care (on the part of the center) or doing annual surveys sooner and meeting federal timing requirements (on the part of ODH). Patient protection would not be reduced because all complaints still would be investigated, and the most serious complaints (12% of the total) still would be investigated separately.

- Requires ODH to complete an informal dispute resolution (IDR) within 10 days of a center's request and to provide a written rationale for the decision. IDR is a federally required procedure for a center to challenge a deficiency cited by ODH surveyors. OHCA receives many reports from members that their IDR requests languish without decisions and that ODH refuses to explain the decisions they make. This part of the amendment would ensure timeliness and transparency of the process but would not impinge on patient protections.

- Repeals an existing statute and removes a proposed statute from the bill, both of which interfere with long-standing federal enforcement systems for centers that are cited for serious deficiencies. In both cases, the existing and proposed statutes can hurt SNF patients by forcing them out of their homes without allowing the federally prescribed time for the center to correct its deficiencies. The federal protections would not be affected by the amendment - if the center does not correct the problems timely, it would be subject to exactly the same penalties, including closure.

We sincerely appreciate your great work on the budget so far and respectfully ask your consideration of the four additional amendments described above.

I am at your service at any time to answer any questions or to discuss long-term services and supports issues at 614-361-5169 or pvanrunkle@ohca.org.