BEFORE THE HOUSE INSURANCE COMMITTEE
Opponent Testimony on House Bill 153
June 16, 2021

Chair Brinkman, Vice Chair Lampton, Ranking Member Miranda, and members of the House Insurance Committee, my name is Keith Lake and I am the Vice President of Government Affairs for the Ohio Chamber of Commerce. I am here today to testify in opposition to House Bill 153, legislation that would prohibit health plans, during a plan year, from increasing a covered individual's out-of-pocket cost for a prescription drug, moving the drug to a more restrictive tier, removing the drug from the formulary, or otherwise limiting or reducing coverage for the drug.

The Ohio Chamber is the state's leading business advocate, and we represent thousands of companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

There are two primary types of health insurance plans: self-insured plans and fully-insured plans. HB 153 applies to both types.

A self-insured plan is one in which the employer assumes the financial risk for providing health care benefits to its employees and contracts with a third-party administrator (TPA) to process claims. Self-insured health plans are regulated under the federal Employee Retirement Income Security Act of 1974 (ERISA).

A fully-insured plan is an actual insurance policy. The individual policyholder or the group policyholder, typically an employer, pays a monthly premium to an insurance carrier. In return, the insurance carrier is responsible for paying all of the medical claims covered by the policy.

It is undoubtedly true that individuals purchasing health insurance for themselves or their families often choose a health plan based on how its drug formulary treats their prescriptions. Requiring health plans, as HB 153 does, to deliver on the coverage benefits they market and sell for the plan year is reasonable in the individual market.

However, in contrast to the individual market, in the group or self-insured markets – in other words, the markets impacting primarily Ohio employers – it is not typically the case that sponsors choose a health plan based on the plan's drug formulary, but rather on a variety of other factors. These factors include cost, and the ability to adjust a formulary within a plan year provides plans with an important tool to respond to changes in the market.

Health care costs are a top concern in just about any recent survey of business leaders. In 2017, the Ohio Chamber of Commerce Research Foundation began conducting a quarterly survey of business leaders across Ohio to determine the economic health of Ohio's economy from their perspective. We call this our *Prosperity Pulse*. In all but two of our quarterly surveys to date over four-plus years, the cost of health care is the top issue of concern to business leaders.

The reason is simple: according to the Kaiser Family Foundation's "Annual Employer Health Benefits Survey," average annual premiums for employer-sponsored health insurance rose an average of 3.9 percent in 2020. Average premiums have gone up 22 percent in the past five years and 55 percent in the past decade. With 99 percent of companies employing 200 or more workers offering health benefits to at least some of their workers, along with 56 percent of smaller firms, it is obvious why health care costs are a top concern for employers.

In an effort to combat these rising costs, employers, third-party administrators, and health insurers utilize a variety of tools. Formularies represent one of these tools, and effectively managing the pharmacy benefit is an essential element of the overall healthcare cost containment equation. Left unmanaged, plan sponsors' costs would rise at faster rates, with the likely result of reduced benefits and higher costs to consumers.

The ability to adjust a formulary provides plans with an important tool to respond to changes in the market. These changes may include a generic equivalent coming to market – a change the bill acknowledges warrants exemption from its prohibitions – or

mid-year price increases from manufacturers – a change for which the bill does not grant exemptions.

Taking away the ability to make mid-year adjustments will, as the LSC Fiscal Note for HB 153 indicates, "restrict health plan issuers ability to control any increase in costs of prescription coverage during a plan year. Thus, the prohibitions are likely to increase costs." It is because of this likelihood that the Ohio Chamber opposes HB 153 in its current form.

However, I would like to offer two alternatives for changes to the bill that, if either were to be adopted, would address our concerns and remove our opposition.

One alternative is to exempt self-insured employer-sponsored plans subject to ERISA, as well as fully-insured employer-sponsored plans, from the bill's provisions, while leaving them intact for individual plans. Doing so would acknowledge the differing motivations each type of purchaser has for why they might choose a particular health plan.

The second alternative is to remove the prohibitions on changes to cost-sharing, tiering, or formularies should the net cost of the drug to the health plan increase during the plan year. This would better ensure that plan sponsors can continue to offer a fair, clinically appropriate, and financially responsible pharmacy benefit.

Prescription drug costs continue to increase for a variety of complex reasons, and a variety of cost-control strategies are needed to ensure employers – particularly small employers – can continue to offer affordable health care coverage to their employees. The present version of HB 153 would substantially weaken one of these tools, likely leading to even higher health insurance premiums. Therefore, unless the bill is amended as outlined above, the Ohio Chamber urges opposition to HB 153. Thank you.