

Sponsor Testimony on House Bill 135
Senate Health Committee
November 16, 2022
Representative Susan Manchester and Representative Thomas West

Chairman Huffman, Ranking Member Antonio and members of the Senate Health Committee. Representative West and I are happy to provide sponsor testimony to you today on House Bill 135, legislation that unanimously passed the Ohio House of Representatives and is supported by over 60 patient groups and health care provider organizations. 15 states, including our neighbors in Kentucky, West Virginia, and Illinois, have already passed and enacted co-pay accumulator bills to the benefit of patients in those states. New York also recently passed an accumulator prohibition bill as well and that legislation is awaiting their Governor's signature.

HB 135 removes needless health care administrative burdens that interrupt the continuity of care for patients. Our bill is simple. It disallows health plans and PBM's from discriminating against patients who use third-party assistance to help pay their increasing out-of-pocket expenses mandated by their coverage plans.

Representative West and I worked closely with the large group of stakeholders who support the bill as well as certain members of House leadership to carefully craft language that gives flexibility to health plans and PBM's so that they can manage formularies in the best interest of their enrollees. HB 135 does not require health plans and PBM's to provide an added coverage benefit nor does the bill prevent a health plan or PBM from removing a particular drug from a formulary. The bill simply says that if a patient utilizes cost-sharing assistance, whether it is from a family member, spouse, friend, church group, manufacturer program, foundation, go fund me campaign or other source, then that amount will be counted to meet any mandated cost-sharing requirement of a health plan or PBM.

HB 135 does not interfere with the utilization of generic medications by a health plan or PBM. The bill does not apply the accumulator program prohibition on a cost-sharing requirement on a drug for which there is a medically appropriate generic equivalent or if the patient's prescriber determines the brand drug is medically necessary. This bill maintains continuity of care for the patient and the ability to have access to lower cost medications. This "generic exemption" language was included from the beginning in HB 135 to prevent any accusations that this bill could cause the "steering" of patients to more expensive drugs.

In addition, you might have already heard from numerous patient groups supporting HB 135 that these accumulator programs are a new form of "surprise billing," a term which Chairman Huffman and the members of this committee are quite familiar with in other sectors of our health care system. In this case, patients and their families are often "surprised" to learn that when they go to their pharmacy to pick up their medications and use third-party assistance, the assistance is not accepted by their insurer or PBM in meeting that patient's mandated out-of-pocket deductible or co-pay. In some cases, patients

and their families learn of these “application denials” after the fact and are informed by their health plans that their out-of-pocket expenses have yet to be met.

As you may recall, in the biennial budget bill of the 133rd General Assembly, the Ohio Legislature created the Ohio Prescription Drug Transparency and Affordability Council. The Council, with an extremely diverse membership representing the Department of Medicaid, MHAS, DAS, as well as organized labor, AARP, local governments and mayors, statewide business organizations, patient advocacy groups, consumer groups, and others, approved the concept of HB 135 and the utilization of third-party assistance programs in its final report to the Governor and Ohio General Assembly. I have included a summary of their report with my testimony.

In testimony before the House Health Committee, ***no evidence*** was provided that accumulator anti-discrimination legislation enacted in other states was the direct cause for any rising of premiums to employers. In fact, the AIDS Institute recently completed a study that showed virtually no impact on health insurance premiums directly and solely due to accumulator prohibition policies being enacted in those states. In addition, none of Ohio’s largest business organizations (The Ohio Chamber of Commerce, the Ohio Business Roundtable or the Ohio Manufacturers’ Association) opposed HB 135 in the Ohio House.

Since the unanimous passage of HB 135 by the House, I have been approached by a few groups asking for consideration of clarification amendments in HB 135. The Ohio Department of Insurance asked Representative West and I for several language clarifications in the bill, most of which we believe we can work out. One of those clarifications involves specifying language in the bill that will make it clear that HB 135 will not apply to public benefit plans, non-federal government plans and multiple employer welfare arrangements, commonly known as MEWA’s. HB 135 does not apply to Medicaid plans as well, as the largest amount of a co-payment an enrollee can face in Medicaid for a prescription drug is \$3.

Representative West and I were also approached by the Ohio Bankers League and the Ohio Credit Union League requesting language be placed into HB 135 that clarifies the use of funds from a health savings account (HSA) in conjunction with third-party assistance. We believe this language will help alleviate any confusion for members of banks and credit unions when it comes to the utilization of HSA’s and third-party assistance, and we have agreed to incorporate the language into the bill.

Mr. Chairman, Ranking Member Antonio, members of the committee, thank you for allowing Representative West and I to present sponsor testimony today on HB 135. We have worked very hard to formulate this bill in a manner that will help patients and families while still providing flexibility to health plans and PBM’s in effectively managing their benefit designs. This hard work and collaboration helped us achieve a bill that passed the House without opposition and is supported by over 60 patient and health care organizations, the list of which is attached to this testimony. HB 135 is good for patients and families in all our communities, and we believe it is good for Ohio.

