As Passed by the Senate

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Senators Liston, Johnson

Cosponsors: Senators Antonio, Blackshear, Cirino, Craig, DeMora, Hicks-Hudson, Patton, Reineke, Reynolds, Schaffer

To enact section 3902.65 of the Revised Code regarding prescription drugs and medication switching under health benefit plans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3902.65 of the Revised Code be enacted to read as follows:

Sec. 3902.65. (A) As used in this section:

(1) "Interchangeable biological product" and "generically equivalent drug" have the same meanings as in section 3715.01 of the Revised Code.

(2) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code.

(3) "Rate of inflation" has the same meaning as in section 107.032 of the Revised Code.

(4) "Wholesale acquisition cost" has the same meaning as in 42 U.S.C. 1395w-3a.

(B) Subject to divisions (C), (D), and (E) of this section, a health plan issuer shall not do any of the following

during a health benefit plan year:

(1) Increase a covered person's cost sharing with respect to a drug;

(2) Move a drug to a greater cost-share tier of a health benefit plan's formulary;

(3) Remove a drug from a health benefit plan's formulary, unless one of the following occurred:

(a) The United States food and drug administration issued a statement about the drug calling into question the clinical safety of the drug.

(b) The drug manufacturer notified the United States food and drug administration of a permanent discontinuance or interruption of the manufacture of the drug as required by 21 U.S.C. 356c.

(c) The drug manufacturer has removed the drug from sale in the United States.

(4) Limit or reduce coverage of a drug with respect to a covered person in any other way, including subjecting it to a new prior authorization requirement during a plan year if the drug had not previously been subjected to prior authorization requirement during the plan year.

(C) All of the following are permissible activities regarding a prescribed drug for which a generically equivalent drug or interchangeable biological product is available:

(1) A pharmacist substituting the generically equivalent drug or interchangeable biological product for the prescribed drug in accordance with section 4729.38 of the Revised Code;

(2) A health plan issuer permitting a covered person to use the generically equivalent drug or interchangeable biological product instead of the prescribed drug;

(3) A covered person electing to use the generically equivalent drug or interchangeable biological drug product instead of the prescribed drug.

(D) This section shall not be construed to do any of the following:

(1) Prevent a health plan issuer from adding a drug to its formulary;

(2) Prevent a health plan issuer from removing a drug from its formulary if the drug manufacturer has removed the drug from sale in the United States;

(3) Prevent a health care provider from prescribing another drug covered by the health benefit plan that the provider considers medically appropriate for the covered person;

(4) Prevent a pharmacist from substituting for a prescribed epinephrine autoinjector another epinephrine autoinjector pursuant to section 4729.382 of the Revised Code.

(E) If, at any point during a health benefit plan year, the wholesale acquisition cost for a drug increases by more than five per cent plus the rate of inflation, as compared to the average wholesale acquisition cost for the previous plan year, division (B) of this section does not apply to that drug for the remainder of the plan year. If a health plan issuer seeks to take an action described in division (B) of this section for a drug subject to such a price increase, it shall maintain supporting documentation that justifies the action for a period of three years after the effective date of the price increase

and shall provide the supporting documentation to the department of insurance upon the department's request.

(F) A violation of this section shall be considered an unfair and deceptive practice in the business of insurance for purposes of section 3901.21 of the Revised Code.

(G) This section applies notwithstanding section 3901.71 of the Revised Code.

Section 2. Section 3902.65 of the Revised Code, as enacted by this act, applies to health benefit plans, as defined in section 3922.01 of the Revised Code, that are delivered, issued for delivery, modified, or renewed on or after January 1, 2028.