

Sponsor Testimony on House Bill 177
House Public Health Policy Committee September 20, 2023
Representative Susan Manchester

Chairman Lipps, Vice Chairman Stewart, Ranking Member Liston, and members of the House Public Health Policy Committee. I am happy to provide sponsor testimony to you today on House Bill 177, legislation that unanimously passed the Ohio House of Representatives last General Assembly and is supported by over 60 patient groups and health care provider organizations. 19 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.

HB 177 removes needless health care administrative burdens that interrupt the continuity of care for patients. This 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.

Last General Assembly, my joint sponsor Representative Thomas 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 177 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 177 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 177 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 177 that these accumulator programs are a new form of "surprise billing," a term which Chairman Lipps 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.

PBM’s and insurers are the only parties to have opposed this bill last session, saying manufacturer provided assistance programs and accumulator bans only “raise costs.” First, PBM’s are already accepting financial assistance directly from manufacturers; they are simply called rebates. In addition, during debate on this important bill last session, we discovered that PBM’s *themselves* were using the very same manufacturer assistance programs with certain state universities and other parties as part of those employees’ drug coverage to “reduce costs” and offer “zero out-of-pocket” coverage. What is perhaps even more frustrating to patient groups supporting this bill was that at the same time, representatives for the PBM industry were telling this General Assembly that the same programs they were benefitting from somehow “raised costs” and should be denied for use by many other Ohioans. Just think about that. PBM’s told numerous members of the General Assembly last session that these patient assistance programs were harmful while at the same time they were using those very same programs to offer “zero co-payment” drug benefits to certain plan enrollees. PBM’s told you “patients need to have skin in the game” regarding out of pockets costs, but they themselves were using manufacturer programs to offer certain patients coverage benefits that required no out-of-pocket costs.

As many 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 177 and the utilization of third-party assistance programs in its final report to the Governor and Ohio General Assembly.

In previous testimony before the House Health Committee, no evidence was provided that accumulator antidiscrimination legislation enacted in other states was the direct cause for any rising of premiums to employers. In fact, respected patient groups such as the AIDS Institute and other organizations have completed several studies that have 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 177 in the Ohio House.

Chairman Lipps, Vice Chair Stewart and members of the committee, thank you for allowing me to present sponsor testimony today on HB 177. I 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 last General Assembly and is supported by over 60 patient and health care organizations, the list of which is attached to this testimony. HB 177 is good for patients and families in all our communities, and I believe it is good for Ohio.