

118TH CONGRESS
2D SESSION

S. _____

To prohibit pharmacy benefit managers and pharmacies from being under common ownership, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To prohibit pharmacy benefit managers and pharmacies from being under common ownership, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patients Before Mo-
5 nopolies Act” or the “PBM Act”.

6 **SEC. 2. PROHIBITIONS RELATING TO ANTICOMPETITIVE**
7 **PHARMACY OWNERSHIP AND CONTRACTS.**

8 (a) PROHIBITION ON PHARMACY OWNERSHIP BY EN-
9 TITIES PROVIDING INSURANCE OR PHARMACY BENEFIT
10 MANAGEMENT SERVICES.—

1 (1) IN GENERAL.—It shall be unlawful for any
2 person to both—

3 (A) directly or indirectly own, operate, con-
4 trol, or direct the operation of the whole or any
5 part of a pharmacy; and

6 (B) directly or indirectly own, operate, or
7 control the whole or any part of—

8 (i) an insurance company; or

9 (ii) a pharmacy benefit manager.

10 (2) DIVESTMENT.—Not later than 3 years after
11 the date of enactment of this Act, any person in vio-
12 lation of paragraph (1) shall divest the pharmacy of
13 such person.

14 (b) CIVIL ACTIONS.—

15 (1) IN GENERAL.—When the Inspector General
16 of the Department of Health and Human Services,
17 the Assistant Attorney General in charge of the
18 Antitrust Division of the Department of Justice, the
19 Federal Trade Commission, or an attorney general
20 of a State has reason to believe that a person is in
21 violation of subsection (a), such Inspector General,
22 Assistant Attorney General, Federal Trade Commis-
23 sion or attorney general of a State may bring a civil
24 action in an applicable district court of the United
25 States for the relief described in paragraph (2).

1 (2) INJUNCTIVE AND EQUITABLE RELIEF.—In
2 any action described in paragraph (1), the applicable
3 court, on a finding that a person is in violation of
4 subsection (a), shall issue an order requiring such
5 person—

6 (A) to cease and desist from such violation,
7 and, if applicable, divest the pharmacy services
8 of such person; and

9 (B) to disgorge any revenue received from
10 the pharmacy from the sale of prescription
11 drugs during the period of such violation.

12 (3) OTHER RELIEF.—In addition to any relief
13 obtained under paragraph (2), the court may grant
14 any other equitable relief necessary to redress and
15 prevent recurrence of the violation.

16 (4) DEPOSIT.—Any revenue received from the
17 sale of prescription drugs disgorged pursuant to an
18 action under this subsection shall be deposited in a
19 fund created by the Federal Trade Commission and
20 distributed by the Federal Trade Commission to be
21 put to use in the interest of serving the health care
22 needs of the harmed community, including con-
23 sumers overcharged at vertically integrated phar-
24 macies.

25 (c) FTC REVIEW.—

1 (d) RULEMAKING AUTHORITY.—The Federal Trade
2 Commission shall promulgate rules to carry out this sec-
3 tion. Such rules shall not diminish any obligation under
4 this section.

5 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion shall be construed to limit the authority of the Fed-
7 eral Trade Commission, the Inspector General of the De-
8 partment of Justice, the Department of Health and
9 Human Services, or the attorney general of a State under
10 any other provision of law.

11 (f) DEFINITIONS.—In this section:

12 (1) HEALTH PLAN.—The term “health plan”
13 means any public or private health insurance plan.

14 (2) PERSON.—The term “person” has the
15 meaning given the term in section 8 of the Sherman
16 Act (15 U.S.C. 7).

17 (3) PHARMACY.—

18 (A) IN GENERAL.—The term “pharmacy”
19 means any person, business, or entity licensed,
20 registered, or otherwise permitted by a State or
21 a territory of the United States to dispense, de-
22 liver, or distribute a controlled substance, pre-
23 scription drug, or other medication—

24 (i) to the general public; or

1 (ii) to a bed patient for immediate ad-
2 ministration.

3 (B) INCLUSIONS.—The term “pharmacy”
4 includes—

5 (i) a mail-order pharmacy;

6 (ii) a specialty pharmacy;

7 (iii) a retail pharmacy;

8 (iv) a nursing home pharmacy;

9 (v) a long-term care pharmacy;

10 (vi) a hospital pharmacy;

11 (vii) an infusion or other outpatient
12 treatment pharmacy;

13 (viii) any organization the National
14 Provider Identifier (NPI) registration of
15 which has 1 or more taxonomy codes under
16 the pharmacy section of the National Uni-
17 form Claim Committee (or a subsequent
18 organization); and

19 (ix) any other type of pharmacy.

20 (4) PHARMACY BENEFIT MANAGER.—The term
21 “pharmacy benefit manager” means any person,
22 business, or other entity, such as a third-party ad-
23 ministrator, regardless of whether such person, busi-
24 ness, or entity identifies itself as a pharmacy benefit
25 manager, that, either directly or indirectly through

1 an intermediary (including an affiliate, subsidiary,
2 or agent) or an arrangement with a third party—

3 (A) acts as a negotiator of prices, rebates,
4 fees, or discounts for prescription drugs on be-
5 half of a health plan or health plan sponsor;

6 (B) contracts with pharmacies to create
7 pharmacy networks and designs and manages
8 such networks; or

9 (C) manages or administers the prescrip-
10 tion drug benefits provided by a health plan, in-
11 cluding the processing and payment of claims
12 for prescription drugs, arranging alternative ac-
13 cess to or funding for prescription drugs, the
14 performance of utilization management services,
15 including drug utilization review, the processing
16 of drug prior authorization requests, the adju-
17 dication of appeals or grievances related to the
18 prescription drug benefit, contracting with net-
19 work pharmacies, controlling the cost of covered
20 prescription drugs, or the provision of related
21 services.