The Patients Before Monopolies (PBM) Act
Sen. Warren, Sen. Hawley, Rep. Harshbarger, and Rep. Auchincloss

Over the past decade, pharmacy benefit managers (PBMs) – once little-known middlemen – have morphed into giant, vertically-integrated health care conglomerates that exercise control over every link in the drug coverage and delivery chain. Today, the three largest PBMs – CVS Caremark, Express Scripts, and Optum Rx – manage 80% of prescription drug claims. These PBMs are each owned by a parent company that also owns one of the top five health insurers – CVS/Aetna, Cigna, and United Healthcare, respectively – and a massive retail, mail-order, and/or specialty pharmacy chain.

These health care giants have successfully manipulated the drug delivery chain to enrich themselves and squash competition. This is particularly concerning when the same parent company owns a PBM – the entity that sets rates and pays for pharmacy services – and the pharmacy that provides those services. According to a recent Federal Trade Commission (FTC) investigation, the largest PBMs have exploited this market advantage to funnel prescriptions to their affiliated pharmacy chains, while using anti-competitive tactics to sideline competing pharmacies. This has contributed to the closure of more than 3,700 independent pharmacies since 2019, including many in rural and underserved areas. Meanwhile, federal and state audits have revealed that the largest PBMs, which are integrated with the largest health insurers, massively overpay their affiliated pharmacy chains – with markups in some cases as high as 38,000 percent on expensive, specialty drugs, raising costs for patients and taxpayers.

The **Patients Before Monopolies (PBM) Act** will address this unacceptable conflict of interest, which allows corporate giants to put profits over the interests of patients, taxpayers, employers, and independent pharmacies. The legislation will:

- Prohibit a parent company of a PBM or an insurer from owning a pharmacy business;
- Require that a parent company in violation of the *PBM Act* divest its pharmacy business within three years;
- Enable the FTC, Department of Health and Human Services, Antitrust Division of the Department of Justice, and state attorneys general to issue orders requiring violators of the PBM Act to divest its pharmacy business and disgorge any revenue received during the period of such violation;
- Direct the FTC to distribute any disgorged revenue to harmed communities, including consumers overcharged at vertically integrated pharmacies.
- Mandate reporting of all divestitures to the FTC, and allow the FTC to review all divestitures and subsequent acquisitions to protect competition, financial viability, and the public interest.

There is clear precedent for government prohibitions on joint ownership to protect consumers and promote competition, including in the railroad and banking industry.