

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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. FINDINGS.**

7 The Congress finds the following:

8 (1) Pharmacy benefit managers are corporate  
9 entities that play a dominant role in pharmaceutical  
10 supply chains, determining which drugs health plans

1 will cover for enrollees, what prices patients and  
2 health plans will pay for those drugs, and how much  
3 health plans will reimburse pharmacies for dis-  
4 pensing them.

5 (2) The market for pharmacy benefit manager  
6 services has become highly concentrated. As of 2025,  
7 the 6 largest pharmacy benefit managers are each  
8 integrated into large health care conglomerates that  
9 include downstream businesses such as retail, mail  
10 order, and specialty pharmacies. These conglom-  
11 erates also processed more than 90 percent of the  
12 prescriptions in the United States in 2023.

13 (3) The 3 largest pharmacy benefit managers  
14 are also vertically integrated into health care plat-  
15 forms that include both upstream business lines, like  
16 health insurance, and downstream suppliers, like  
17 pharmacies and providers.

18 (4) The Federal Trade Commission has found  
19 that vertically-integrated pharmacy benefit managers  
20 have both the ability and incentive to steer business  
21 to their own affiliated pharmacies, which reduces  
22 competition and increases prescription drug costs for  
23 patients.

24 (5) Pharmacy benefit managers increasingly le-  
25 verage their market power to pressure smaller, unaf-

1        affiliated, independent pharmacies to enter into unfa-  
2        vorable contracts with the largest pharmacy benefit  
3        managers. This dynamic has likely contributed to  
4        the closure of more than 7,000 pharmacies between  
5        2019 and 2024.

6            (6) Self-preferencing of affiliated pharmacies  
7        may also allow large, vertically-integrated health  
8        conglomerates to evade statutory limits on profits  
9        known as the Medical Loss Ratio. Gaming of the  
10       profit constraint using transfer pricing techniques  
11       may allow affiliated health insurance businesses to  
12       hide profits in the unregulated pharmacy business  
13       segment, costing enrollees and taxpayers money.

14           (7) Pursuant to its powers under article I, sec-  
15       tion 8, of the United States Constitution, Congress  
16       has the ability to create any law necessary and ap-  
17       propriate to regulate interstate commerce. As phar-  
18       macy benefit managers are part of large, national  
19       health conglomerates that operate across state lines,  
20       and engage in intrastate activities that also substan-  
21       tially relate to interstate commerce, Congress in-  
22       tends to regulate pharmacy benefit managers in the  
23       public interest.

24           (8) In order to eliminate the conflicts of inter-  
25       est described in paragraphs (1) through (7) and re-

1 store competition to the marketplace, the Federal  
2 Government should—

3 (A) protect patients, independent phar-  
4 macies, and taxpayers by structurally sepa-  
5 rating vertically-integrated health conglom-  
6 erates;

7 (B) require parent companies that own a  
8 pharmacy benefit manager or insurer to divest  
9 their pharmacy businesses;

10 (C) enable Federal agencies, state attor-  
11 neys general, and private citizens to bring civil  
12 actions to enforce the structural separation of  
13 these companies; and

14 (D) grant the Federal Trade Commission  
15 and Department of Justice additional authority  
16 to review and block future transactions that  
17 would re-create these conflicts of interest.

18 **SEC. 3. PROHIBITIONS RELATING TO ANTICOMPETITIVE**

19 **PHARMACY OWNERSHIP AND CONTRACTS.**

20 (a) PROHIBITION ON PHARMACY OWNERSHIP BY EN-  
21 TITIES PROVIDING INSURANCE OR PHARMACY BENEFIT  
22 MANAGEMENT SERVICES.—

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

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

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

6 (i) an insurance company; or

7 (ii) a pharmacy benefit manager.

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

12 (b) ANTITRUST ENFORCEMENT.—

13 (1) IN GENERAL.—Both the Federal Trade  
14 Commission and the Assistant Attorney General in  
15 charge of the Antitrust Division shall have jurisdic-  
16 tion, jointly or separately, to enforce this section.

17 (2) PENALTIES FOR FAILURE TO DIVEST.—

18 (A) GUIDANCE.—Not later than 30 days  
19 after the date of enactment of this Act, the  
20 Chair of the Federal Trade Commission and the  
21 Assistant Attorney General in charge of the  
22 Antitrust Division shall issue guidance speci-  
23 fying milestones for divestment within the dead-  
24 line under subsection (a)(2).

25 (B) PENALTIES.—

1 (i) IN GENERAL.—For any person  
2 that does not comply with the milestones  
3 specified under subparagraph (A), the  
4 Chair of the Federal Trade Commission or  
5 the Assistant Attorney General in charge  
6 of the Antitrust Division shall cause 10  
7 percent of the profits of the person to be  
8 transferred into escrow on a monthly basis,  
9 to be—

10 (I) returned to the person if di-  
11 vestment occurs by the deadline under  
12 subsection (a)(2); or

13 (II) deposited into the fund de-  
14 scribed in subsection (e)(7) if divest-  
15 ment does not occur by the deadline  
16 under subsection (a)(2).

17 (C) TRUSTEE.—If divestiture does not  
18 occur by the deadline under subsection (a)(2),  
19 a divestiture trustee shall oversee the divesti-  
20 ture required under that paragraph. The dives-  
21 titure trustee shall have the authority to sell the  
22 pharmacy.

23 (e) CIVIL ACTIONS.—

24 (1) IN GENERAL.—When the Inspector General  
25 of the Department of Health and Human Services,

1 the Assistant Attorney General in charge of the  
2 Antitrust Division of the Department of Justice, the  
3 Federal Trade Commission, or an attorney general  
4 of a State has reason to believe that a person is in  
5 violation of subsection (a), such Inspector General,  
6 Assistant Attorney General, Federal Trade Commis-  
7 sion or attorney general of a State may bring a civil  
8 action in an appropriate district court of the United  
9 States.

10 (2) PRIVATE RIGHT OF ACTION.—

11 (A) IN GENERAL.—An individual alleging  
12 damages as a result of a violation of this Act  
13 may bring a civil action in any court of com-  
14 petent jurisdiction, State or Federal.

15 (B) RELIEF.—In a civil action brought  
16 under subparagraph (A) in which the plaintiff  
17 prevails, the court may award—

18 (i) treble damages;

19 (ii) reasonable attorney's fees and liti-  
20 gation costs; and

21 (iii) any other relief, including equi-  
22 table or declaratory relief, that the court  
23 determines appropriate.

24 (3) ACTIONS BY STATE ATTORNEYS GEN-  
25 ERAL.—If the attorney general of a State has reason

1 to believe that an interest of the residents of the  
2 State has been or is being threatened or adversely  
3 affected by a practice that violates subsection (a),  
4 the attorney general of the State may, as *parens*  
5 *patriae*, bring a civil action on behalf of the resi-  
6 dents of the State in an appropriate district court of  
7 the United States to obtain appropriate relief, in-  
8 cluding monetary damages.

9 (4) INJUNCTIVE AND EQUITABLE RELIEF.—In  
10 any action described in paragraph (1), (2), or (3),  
11 the applicable court, on a finding that a person is  
12 in violation of subsection (a), shall issue an order re-  
13 quiring such person—

14 (A) to cease and desist from such violation,  
15 and, if applicable, divest the pharmacy services  
16 of such person; and

17 (B) to disgorge any revenue received from  
18 the pharmacy from the sale of prescription  
19 drugs during the period of such violation.

20 (5) OTHER RELIEF.—In addition to any relief  
21 obtained under paragraph (1), (2), or (3), the court  
22 may grant any other equitable relief necessary to re-  
23 dress and prevent recurrence of the violation.

24 (6) RIGHT TO JURY TRIAL.—Either party, upon  
25 request, shall have the right to a jury trial.

1           (7) DEPOSIT.—Any revenue received from the  
2           sale of prescription drugs disgorged pursuant to an  
3           action under paragraph (1) shall be deposited in a  
4           fund created by the Federal Trade Commission and  
5           distributed by the Federal Trade Commission to be  
6           put to use in the interest of serving the health care  
7           needs of the harmed community, including con-  
8           sumers overcharged at vertically integrated phar-  
9           macies.

10          (d) FTC AND DOJ REVIEW.—

11           (1) REPORTING REQUIRED.—Any divestment of  
12           a pharmacy or pharmacy benefit manager required  
13           under subsection (a) shall be reported to the Federal  
14           Trade Commission and the Assistant Attorney Gen-  
15           eral in charge of the Antitrust Division of the De-  
16           partment of Justice under section 7A of the Clayton  
17           Act (15 U.S.C. 18a) without respect to the thresh-  
18           olds under subsection (a)(2) of that section.

19           (2) TOLLING OF DIVESTMENT PERIOD DURING  
20           REVIEW.—The divestment period under subsection  
21           (a) shall be tolled during the pendency of any wait-  
22           ing period required under section 7A of the Clayton  
23           Act (15 U.S.C. 18a).

24           (3) REVIEW OF EFFECT OF DIVESTITURE.—  
25           With respect to each divestiture undertaken pursu-

1 ant to subsection (a), in addition to any applicable  
2 review under section 7A of the Clayton Act (15  
3 U.S.C. 18a), the Federal Trade Commission and the  
4 Assistant Attorney General in charge of the Anti-  
5 trust Division of the Department of Justice shall re-  
6 view the effect on competition, financial viability,  
7 and the public interest—

8 (A) of the divestiture; and

9 (B) of the subsequent acquisition of the di-  
10 vested pharmacy by the acquiring person.

11 (4) BLOCKING OF ACTIONS.—The Federal  
12 Trade Commission and the Assistant Attorney Gen-  
13 eral in charge of the Antitrust Division of the De-  
14 partment of Justice, jointly or separately, may bring  
15 a civil action in any court of competent jurisdiction  
16 to block any action that would harm competition to  
17 the detriment of the public interest with respect to  
18 the conflicts of interest described in subsection (a).

19 (e) RULEMAKING AUTHORITY.—The Federal Trade  
20 Commission shall promulgate rules to carry out this sec-  
21 tion. Such rules shall not diminish any obligation under  
22 this section.

23 (f) REPORTS REQUIRED.—The Chair of the Federal  
24 Trade Commission and the Assistant Attorney General in  
25 charge of the Antitrust Division of the Department of Jus-

1 tice shall submit to the appropriate congressional commit-  
2 tees quarterly reports on compliance with this Act, includ-  
3 ing the status of any divestitures required under this Act.

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

10 (h) SEVERABILITY.—If any provision of this Act or  
11 the application thereof to any person or circumstance is  
12 held invalid, the remainder of this Act, or the application  
13 of that provision to persons or circumstances other than  
14 those as to which it is held invalid, shall not be affected  
15 thereby.

16 (i) DEFINITIONS.—In this section:

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

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

22 (3) PHARMACY.—

23 (A) IN GENERAL.—The term “pharmacy”  
24 means any person, business, or entity licensed,  
25 registered, or otherwise permitted by a State or

1 a territory of the United States to dispense, de-  
2 liver, or distribute a controlled substance, pre-  
3 scription drug, or other medication—

4 (i) to the general public; or

5 (ii) to a bed patient for immediate ad-  
6 ministration.

7 (B) INCLUSIONS.—The term “pharmacy”  
8 includes—

9 (i) a mail-order pharmacy;

10 (ii) a specialty pharmacy;

11 (iii) a retail pharmacy;

12 (iv) a nursing home pharmacy;

13 (v) a long-term care pharmacy;

14 (vi) a hospital pharmacy;

15 (vii) an infusion or other outpatient  
16 treatment pharmacy;

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

23 (ix) any other type of pharmacy.

24 (4) PHARMACY BENEFIT MANAGER.—The term  
25 “pharmacy benefit manager” means any person,

1 business, or other entity, such as a third-party ad-  
2 ministrator, regardless of whether such person, busi-  
3 ness, or entity identifies itself as a pharmacy benefit  
4 manager, that, either directly or indirectly through  
5 an intermediary (including an affiliate, subsidiary,  
6 or agent) or an arrangement with a third party—

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

10 (B) contracts with pharmacies to create  
11 pharmacy networks and designs and manages  
12 such networks; or

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