

117TH CONGRESS  
1ST SESSION

# S. 1388

To require the Federal Trade Commission to study the role of intermediaries in the pharmaceutical supply chain and provide Congress with appropriate policy recommendations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 27, 2021

Mr. GRASSLEY (for himself, Ms. CANTWELL, Mrs. BLACKBURN, Mr. BLUMENTHAL, Ms. ERNST, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the Federal Trade Commission to study the role of intermediaries in the pharmaceutical supply chain and provide Congress with appropriate policy recommendations, 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 “Prescription Pricing  
5       for the People Act of 2021”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) APPROPRIATE COMMITTEES OF CON-  
2           GRESS.—The term “appropriate committees of Con-  
3           gress” means—

4                   (A) the Committee on the Judiciary of the  
5           Senate; and

6                   (B) the Committee on the Judiciary of the  
7           House of Representatives.

8           (2) COMMISSION.—The term “Commission”  
9           means the Federal Trade Commission.

10 **SEC. 3. STUDY OF PHARMACEUTICAL SUPPLY CHAIN**  
11 **INTERMEDIARIES AND MERGER ACTIVITY.**

12           (a) REPORT.—Not later than 1 year after the date  
13 of enactment of this Act, the Commission shall submit to  
14 the appropriate committees of Congress a report that—

15                   (1) addresses at minimum—

16                           (A) whether pharmacy benefit managers—

17                                   (i) charge payers a higher price than  
18                                   the reimbursement rate at which the phar-  
19                                   macy benefit managers reimburse phar-  
20                                   macies owned by the pharmacy benefit  
21                                   manager and pharmacies not owned by the  
22                                   pharmacy benefit manager;

23                                   (ii) steer patients for competitive ad-  
24                                   vantage to any pharmacy, including a re-  
25                                   tail, mail-order, or any other type of phar-

1 macy, in which the pharmacy benefit man-  
2 agers have an ownership interest;

3 (iii) audit or review proprietary data,  
4 including acquisition costs, patient infor-  
5 mation, or dispensing information, of phar-  
6 macies not owned by the pharmacy benefit  
7 manager and use such proprietary data to  
8 increase revenue or market share for com-  
9 petitive advantage; or

10 (iv) use formulary designs to increase  
11 the market share of higher cost prescrip-  
12 tion drugs or depress the market share of  
13 lower cost prescription drugs (each net of  
14 rebates and discounts);

15 (B) trends or observations on the state of  
16 competition in the healthcare supply chain, par-  
17 ticularly with regard to intermediaries and their  
18 integration with other intermediaries, suppliers,  
19 or payers of prescription drug benefits;

20 (C) how companies and payers assess the  
21 benefits, costs, and risks of contracting with  
22 intermediaries, including pharmacy services ad-  
23 ministrative organizations, and whether more  
24 information about the roles of intermediaries

1 should be available to consumers and payers;  
2 and

3 (D) whether there are any specific legal or  
4 regulatory obstacles the Commission currently  
5 faces in enforcing the antitrust and consumer  
6 protection laws in the pharmaceutical supply  
7 chain, including the pharmacy benefit manager  
8 marketplace and pharmacy services administra-  
9 tive organizations; and  
10 (2) provides—

11 (A) observations or conclusions drawn  
12 from the November 2017 roundtable entitled  
13 “Understanding Competition in Prescription  
14 Drug Markets: Entry and Supply Chain Dy-  
15 namics,” and any similar efforts;

16 (B) specific actions the Commission in-  
17 tends to take as a result of the November 2017  
18 roundtable, and any similar efforts, including a  
19 detailed description of relevant forthcoming ac-  
20 tions, additional research or roundtable discus-  
21 sions, consumer education efforts, or enforce-  
22 ment actions; and

23 (C) policy or legislative recommendations  
24 to—

1 (i) improve transparency and competi-  
2 tion in the pharmaceutical supply chain;

3 (ii) prevent and deter anticompetitive  
4 behavior in the pharmaceutical supply  
5 chain; and

6 (iii) best ensure that consumers ben-  
7 efit from any cost savings or efficiencies  
8 that may result from mergers and consoli-  
9 dations.

10 (b) INTERIM REPORT.—Not later than 180 days  
11 after the date of enactment of this Act, the Commission  
12 shall submit to the appropriate committees of Congress  
13 an interim report on the progress of the report required  
14 by subsection (a), along with preliminary findings and  
15 conclusions based on information collected to that date.

16 **SEC. 4. REPORT.**

17 The Commission shall submit to the appropriate com-  
18 mittees of Congress a report that includes—

19 (1) the number and nature of complaints re-  
20 ceived by the Commission relating to an allegation  
21 of anticompetitive conduct by a manufacturer of a  
22 sole-source drug;

23 (2) the ability of the Commission to bring an  
24 enforcement action against a manufacturer of a sole-  
25 source drug; and

- 1           (3) policy or legislative recommendations to
- 2           strengthen enforcement actions relating to anti-
- 3           competitive behavior.

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