

118TH CONGRESS  
2D SESSION

# S. 5503

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

---

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2024

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

---

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

9           (2) TOLLING OF DIVESTMENT PERIOD DURING  
 10          REVIEW.—The divestment period under subsection  
 11          (a) shall be tolled during the pendency of any wait-  
 12          ing period required under section 7A of the Clayton  
 13          Act (15 U.S.C. 18a).

14          (3) REVIEW OF EFFECT OF DIVESTITURE.—  
 15          With respect to each divestiture undertaken pursu-  
 16          ant to subsection (a), in addition to any applicable  
 17          review under section 7A of the Clayton Act (15  
 18          U.S.C. 18a), the Federal Trade Commission and the  
 19          Assistant Attorney General in charge of the Anti-  
 20          trust Division of the Department of Justice shall re-  
 21          view the effect on competition, financial viability,  
 22          and the public interest—

23                       (A) of the divestiture; and

24                       (B) of the subsequent acquisition of the di-  
 25          vested pharmacy by the acquiring person.

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.

○