

Calendar No. 131

116TH CONGRESS
1ST SESSION

S. 1227

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.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2019

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

JUNE 28 (legislative day, JUNE 27), 2019

Reported by Mr. GRAHAM, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Prescription Pricing
3 for the People Act of 2019”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **APPROPRIATE COMMITTEES OF CON-**
7 **GRESS.**—The term “appropriate committees of Con-
8 gress” means—

9 (A) the Committee on the Judiciary of the
10 Senate; and

11 (B) the Committee on the Judiciary of the
12 House of Representatives.

13 (2) **COMMISSION.**—The term “Commission”
14 means the Federal Trade Commission.

15 **SEC. 3. STUDY OF PHARMACEUTICAL SUPPLY CHAIN**
16 **INTERMEDIARIES AND MERGER ACTIVITY.**

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

20 (1) addresses at minimum—

21 (A) whether pharmacy benefit managers—

22 (i) charge payers (including Medicare
23 and Medicaid) a higher price than the re-
24 imbursement rate at which the pharmacy
25 benefit managers reimburses competing
26 pharmacies while reimbursing pharmacies

1 in which the pharmacy benefit managers
2 have an ownership interest at the rate
3 charged to payers;

4 (ii) steer patients to pharmacies in
5 which the pharmacy benefit managers have
6 an ownership interest;

7 (iii) audit or review proprietary data,
8 including acquisition costs, patient infor-
9 mation, or dispensing information, of com-
10 peting pharmacies that can be used for
11 anticompetitive purposes; or

12 (iv) use formulary designs to depress
13 the market share of low-cost, lower-rebate
14 prescription drugs;

15 (B) the current state of competition in the
16 pharmaceutical supply chain, particularly with
17 regard to intermediaries and the recent vertical
18 integrations of pharmacy benefit managers with
19 insurance companies or other payers of pre-
20 scription drug benefits;

21 (C) how companies and payers assess the
22 benefits, costs, and risks of contracting with
23 intermediaries, including pharmacy services ad-
24 ministrative organizations, and whether more
25 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 ensuring a competitive and transparent
6 marketplace 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 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Prescription Pricing*
 18 *for the People Act of 2019”.*

19 **SEC. 2. DEFINITIONS.**

20 *In this Act:*

21 (1) APPROPRIATE COMMITTEES OF CONGRESS.—
 22 *The term “appropriate committees of Congress”*
 23 *means—*

24 (A) *the Committee on the Judiciary of the*
 25 *Senate; and*

1 (B) the Committee on the Judiciary of the
2 House of Representatives.

3 (2) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 **SEC. 3. STUDY OF PHARMACEUTICAL SUPPLY CHAIN INTER-**
6 **MEDIARIES AND MERGER ACTIVITY.**

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

10 (1) addresses at minimum—

11 (A) whether pharmacy benefit managers—

12 (i) charge payers a higher price than
13 the reimbursement rate at which the phar-
14 macy benefit managers reimburse phar-
15 macies owned by the pharmacy benefit
16 manager and pharmacies not owned by the
17 pharmacy benefit manager;

18 (ii) steer patients for competitive ad-
19 vantage to any pharmacy, including a re-
20 tail, mail-order, or any other type of phar-
21 macy, in which the pharmacy benefit man-
22 agers have an ownership interest;

23 (iii) audit or review proprietary data,
24 including acquisition costs, patient infor-
25 mation, or dispensing information, of phar-

1 *macies not owned by the pharmacy benefit*
2 *manager and use such proprietary data to*
3 *increase revenue or market share for com-*
4 *petitive advantage; or*

5 *(iv) use formulary designs to increase*
6 *the market share of higher cost prescription*
7 *drugs or depress the market share of lower*
8 *cost prescription drugs (each net of rebates*
9 *and discounts);*

10 *(B) trends or observations on the state of*
11 *competition in the healthcare supply chain, par-*
12 *ticularly with regard to intermediaries and their*
13 *integration with other intermediaries, suppliers,*
14 *or payers of prescription drug benefits;*

15 *(C) how companies and payers assess the*
16 *benefits, costs, and risks of contracting with*
17 *intermediaries, including pharmacy services ad-*
18 *ministrative organizations, and whether more*
19 *information about the roles of intermediaries*
20 *should be available to consumers and payers;*
21 *and*

22 *(D) whether there are any specific legal or*
23 *regulatory obstacles the Commission currently*
24 *faces in enforcing the antitrust and consumer*
25 *protection laws in the pharmaceutical supply*

1 chain, including the pharmacy benefit manager
2 marketplace and pharmacy services administra-
3 tive organizations; and

4 (2) provides—

5 (A) observations or conclusions drawn from
6 the November 2017 roundtable entitled “Under-
7 standing Competition in Prescription Drug Mar-
8 kets: Entry and Supply Chain Dynamics,” and
9 any similar efforts;

10 (B) specific actions the Commission intends
11 to take as a result of the November 2017 round-
12 table, and any similar efforts, including a de-
13 tailed description of relevant forthcoming ac-
14 tions, additional research or roundtable discus-
15 sions, consumer education efforts, or enforcement
16 actions; and

17 (C) policy or legislative recommendations
18 to—

19 (i) improve transparency and competi-
20 tion in the pharmaceutical supply chain;

21 (ii) prevent and deter anticompetitive
22 behavior in the pharmaceutical supply
23 chain; and

24 (iii) best ensure that consumers benefit
25 from any cost savings or efficiencies that

1 *may result from mergers and consolida-*
2 *tions.*

3 *(b) INTERIM REPORT.—Not later than 180 days after*
4 *the date of enactment of this Act, the Commission shall sub-*
5 *mit to the appropriate committees of Congress an interim*
6 *report on the progress of the report required by subsection*
7 *(a), along with preliminary findings and conclusions based*
8 *on information collected to that date.*

9 **SEC. 4. REPORT.**

10 *The Commission shall submit to the appropriate com-*
11 *mittees of Congress a report that includes—*

12 *(1) the number and nature of complaints re-*
13 *ceived by the Commission relating to an allegation of*
14 *anticompetitive conduct by a manufacturer of a sole-*
15 *source drug;*

16 *(2) the ability of the Commission to bring an en-*
17 *forcement action against a manufacturer of a sole-*
18 *source drug; and*

19 *(3) policy or legislative recommendations to*
20 *strengthen enforcement actions relating to anti-*
21 *competitive behavior.*

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