

Calendar No. 19

118TH CONGRESS
1ST SESSION

S. 113

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

JANUARY 26, 2023

Mr. GRASSLEY (for himself, Ms. CANTWELL, Mr. BLUMENTHAL, Mr. LANKFORD, Mrs. BLACKBURN, Mr. TUBERVILLE, Mr. TILLIS, Mrs. CAPITO, Mr. BRAUN, Mr. BOOZMAN, Mr. WELCH, Mr. COONS, Ms. HIRONO, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 1, 2023

Reported by Mr. DURBIN, 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 2023”.

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 a higher price than
23 the reimbursement rate at which the phar-
24 macy benefit managers reimburse phar-
25 macies owned by the pharmacy benefit

1 manager and pharmacies not owned by the
2 pharmacy benefit manager;

3 (ii) steer patients for competitive ad-
4 vantage to any pharmacy, including a re-
5 tail, mail-order, or any other type of phar-
6 macy, in which the pharmacy benefit man-
7 agers have an ownership interest;

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

15 (iv) use formulary designs to increase
16 the market share of higher cost prescrip-
17 tion drugs or depress the market share of
18 lower cost prescription drugs (each net of
19 rebates and discounts);

20 (B) trends or observations on the state of
21 competition in the healthcare supply chain, par-
22 ticularly with regard to intermediaries and their
23 integration with other intermediaries, suppliers,
24 or payers of prescription drug benefits;

1 (C) how companies and payers assess the
2 benefits, costs, and risks of contracting with
3 intermediaries, including pharmacy services ad-
4 ministrative organizations, and whether more
5 information about the roles of intermediaries
6 should be available to consumers and payers;
7 and

8 (D) whether there are any specific legal or
9 regulatory obstacles the Commission currently
10 faces in enforcing the antitrust and consumer
11 protection laws in the pharmaceutical supply
12 chain, including the pharmacy benefit manager
13 marketplace and pharmacy services administra-
14 tive organizations; and

15 (2) provides—

16 (A) observations or conclusions drawn
17 from the November 2017 roundtable entitled
18 “Understanding Competition in Prescription
19 Drug Markets: Entry and Supply Chain Dy-
20 namics” and any similar efforts;

21 (B) specific actions the Commission in-
22 tends to take as a result of the November 2017
23 roundtable, and any similar efforts, including a
24 detailed description of relevant forthcoming ac-
25 tions, additional research or roundtable discus-

1 sions, consumer education efforts, or enforce-
2 ment actions; and

3 (C) policy or legislative recommendations
4 to—

5 (i) improve transparency and competi-
6 tion in the pharmaceutical supply chain;

7 (ii) prevent and deter anticompetitive
8 behavior in the pharmaceutical supply
9 chain; and

10 (iii) best ensure that consumers ben-
11 efit from any cost savings or efficiencies
12 that may result from mergers and consoli-
13 dations.

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

20 **SEC. 4. REPORT.**

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

23 (1) the number and nature of complaints re-
24 ceived by the Commission relating to an allegation

1 of anticompetitive conduct by a manufacturer of a
 2 sole-source drug;

3 ~~(2) the ability of the Commission to bring an~~
 4 ~~enforcement action against a manufacturer of a sole-~~
 5 ~~source drug; and~~

6 ~~(3) policy or legislative recommendations to~~
 7 ~~strengthen enforcement actions relating to anti-~~
 8 ~~competitive behavior.~~

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Prescription Pricing*
 11 *for the People Act of 2023”.*

12 **SEC. 2. DEFINITIONS.**

13 *In this Act:*

14 (1) *APPROPRIATE COMMITTEES OF CONGRESS.—*
 15 *The term “appropriate committees of Congress”*
 16 *means—*

17 (A) *the Committee on the Judiciary of the*
 18 *Senate; and*

19 (B) *the Committee on the Judiciary of the*
 20 *House of Representatives.*

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

1 **SEC. 3. STUDY OF PHARMACEUTICAL SUPPLY CHAIN INTER-**
2 **MEDIARIES AND MERGER ACTIVITY.**

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

6 (1) *addresses at minimum—*

7 (A) *whether pharmacy benefit managers—*

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15 *vantage to any pharmacy, including a re-*
16 *tail, mail-order, or any other type of phar-*
17 *macy, in which the pharmacy benefit man-*
18 *agers have an ownership interest;*

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20 *including acquisition costs, patient infor-*
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24 *increase revenue or market share for com-*
25 *petitive advantage; or*

1 (iv) use formulary designs to increase
2 the market share of higher cost prescription
3 drugs or depress the market share of lower
4 cost prescription drugs (each net of rebates
5 and discounts);

6 (B) trends or observations on the state of
7 competition in the healthcare supply chain, par-
8 ticularly with regard to intermediaries and their
9 integration with other intermediaries, suppliers,
10 or payers of prescription drug benefits;

11 (C) how companies and payers assess the
12 benefits, costs, and risks of contracting with
13 intermediaries, including pharmacy services ad-
14 ministrative organizations, and whether more
15 information about the roles of intermediaries
16 should be available to consumers and payers;

17 (D) whether there are any specific legal or
18 regulatory obstacles the Commission currently
19 faces in enforcing the antitrust and consumer
20 protection laws in the pharmaceutical supply
21 chain, including the pharmacy benefit manager
22 marketplace and pharmacy services administra-
23 tive organizations; and

1 (E) whether there are any specific legal or
2 regulatory obstacles that contribute to the cost of
3 prescription drug prices; 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;

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22 behavior in the pharmaceutical supply
23 chain; and

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25 from any cost savings or efficiencies that

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

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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.*

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15 *source drug;*

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