

The Patients Before Monopolies (PBM) Act

Rep. Harshbarger, Rep. Auchincloss, Sen. Warren, and Sen. Hawley

Section 1: Short Title

Section 2: Findings

Section 3: Prohibitions Relating to Anticompetitive Pharmacy Ownership and Contracts

Subsection 3(a): Prohibition on pharmacy ownership by entities providing insurance or pharmacy benefit management services

- Makes it unlawful for any entity to own or operate a pharmacy while simultaneously owning or operating an insurance company or pharmacy benefit manager
- Requires any entity in violation of the bill's prohibition on joint ownership to divest its pharmacy business within one year of the bill's enactment

Subsection 3(b): Antitrust enforcement

- Enables the Federal Trade Commission (FTC) and Antitrust Division of the Department of Justice (DOJ) to issue guidelines specifying milestones for divestment within the one-year window
- Creates automatic penalties for failure to comply with said milestones, requiring 10 percent of the profits of the company to be placed in escrow and returned only upon compliance with the ultimate divestment requirements
- In the event of failure to comply by the one year deadline, creates a divestiture trustee to oversee a forced sale of the pharmacy assets of the noncompliant entity

Subsection 3(c): Civil actions

- Permits the FTC, Antitrust Division of the DOJ, Inspector General of the Department of Health and Human Services, or any state attorney general to bring a civil suit against suspected violators of the bill's required divestment provision, and force disgorgement of any revenues earned from the sale of prescription drugs during the period of violation
- Enables private parties, including independent pharmacists, to bring suit against suspected violators of the bill and attain treble damages or injunctive relief in the case of a successful action
- Creates a deposit fund managed by the FTC to collect any revenues collected by government agencies in successful lawsuits, and distribute such funds to serve the health care needs of the harmed communities, including consumers

Subsection 3(d): FTC and DOJ review

- Requires any planned divestitures to be reported to the FTC and Antitrust Division of the DOJ for antitrust review, regardless of the size of the transaction
- Enables the FTC and Antitrust Division of the DOJ to block any future actions that would recreate the anticompetitive conditions prohibited by the bill, and thereby harm competition to the detriment of the public interest
- Instructs the FTC to promulgate rules to effectuate the goals of the bill
- Requires the FTC and Antitrust Division of the DOJ to submit quarterly reports to Congress on the progress of divestitures required by the bill