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Legislative Update: Senate Introduces Bipartisan Legislation to Combat Health Care Consolidation

Overview:

This month, Senators Elizabeth Warren (D-MA) and Josh Hawley (R-MO) introduced the Break Up Big Medicine Act ([S. 3822](#)). The bipartisan legislation, referred to the [Senate Judiciary Committee](#), aims to prohibit pharmacy benefit managers (PBMs), health insurers, and prescription drug or medical device wholesalers from being under common ownership with certain medical service providers or provider groups, including in-patient or outpatient pharmacies. Public interest around vertical consolidation in health care surged following the publication of the Federal Trade Commission's (FTC) [interim staff report on prescription drug middlemen](#) last year. The report identified consequential effects on health care affordability by the actions of the country's three largest PBMs, which are vertically integrated with insurers, provider groups, and other supply chain entities. FTC followed up on this publication by reaching [a landmark settlement with ExpressScripts](#) earlier this year, ordering the company to adopt fundamental changes to its business practices.

Introduction of the bill signifies bipartisan appetite in the 119th Congress for additional actions to reduce the prices of prescription drugs. Previous health policy efforts, including the recently passed [Consolidated Appropriations Act, 2026](#) and a series of [congressional hearings focused on health care affordability](#), primarily targeted PBMs. The Break Up Big Medicine Act extends scrutiny to other actors within the pharmaceutical supply chain, including wholesalers and group purchasing organizations (GPOs). This new legislation would prohibit pharmaceutical drug and medical device wholesalers, as well as PBMs and insurers, from common ownership of providers and provider groups. Similar antitrust reforms relating to common ownership exist already in both the [banking](#) and [railroading](#) sectors, but it remains to be seen whether this proposal will muster the necessary support for passage this Congress.

Legislative Summary:

The bill lists several assertions regarding the role of large, vertically integrated health care platforms within the greater U.S. health care system. These findings include an overview of the functions of PBMs, insurers, and drug/medical device wholesalers, as well as an outline of common business practices viewed by the FTC as anticompetitive. The findings section also outlines the existing statutory authority for Congress and the administration to regulate such entities. These findings are used to outline congressional intent and desired outcomes, providing justification for the introduction of reformatory legislation.

Section 3 (Prohibitions Relating to Anticompetitive Ownership and Contracts) seeks to both restrict and unwind health care consolidation through four specific approaches, including:

1. Prohibiting certain common ownership – This provision would prohibit insurers, PBMs, *and* wholesalers, or the parent companies of such entities, from directly or indirectly owning, controlling, or operating health providers, provider groups, or management services organizations.¹ In regards to this bill, providers are defined as entities whose National Provider Identifier registration includes at least one code under the National Uniform Claim Committee taxonomy, including in-patient and outpatient pharmacies, physicians practices, ambulatory surgical centers, urgent care centers, post-acute care facilities, home-health providers, and hospitals. Insurers, PBMs, or wholesalers operating in violation of this provision would be required to divest either their provider or insurer/PBM/wholesaler lines of business within one year of the bill's enactment.
2. Antitrust enforcement – Enforcement of the bill's antitrust provisions would be vested with both the FTC and the Department of Justice's (DOJ) Antitrust Division. Within 30 days of enactment, these agencies would be required to issue guidance on divestment milestones for entities affected by the prohibition on certain common ownership. Entities that fail to divest would be required to transfer 10% of their monthly profits into escrow, to be returned if the entity divests within the required one-year timeframe. If an entity fails to divest by this deadline, monthly profits are deposited into a fund established and managed by the FTC and may be awarded to individuals affected by what the legislative language describes as the negative consequences of vertical integration, such as consumers being overcharged for certain services by vertically integrated entities. If divestiture does not occur, FTC or the DOJ Antitrust Division would appoint a divestiture trustee with the authority to sell the applicable entity as required by the bill's prohibition on certain common ownership.
3. Civil actions – The bill would empower the FTC, HHS, DOJ, state attorneys general, and private individuals to file civil lawsuits in state and federal court against entities (PBMs, insurers, wholesalers, parent companies) believed to be operating in violation of the aforementioned common ownership prohibition. Successful individual plaintiffs may be awarded treble damages, attorney fees, or other relief determined as appropriate by the court. State attorneys general would be permitted to file on behalf of state residents. In instances where the court finds an entity to be in violation of the law, the court may require such entities to cease and desist, divest their appropriate line of business as outlined by the legislation, and disgorge any revenue received from the divested entity during the period of such violation. All revenue disgorged through civil litigation, as well as the monthly 10% profit transfer required under the antitrust subsection, would be placed in the fund created and managed by the FTC. The FTC would hold discretion over how the fund is dispersed, in a matter that serves the "health care needs of the harmed community." It is unclear how the FTC may determine who qualifies as harmed communities in this case. Applicable parties would also be entitled to a jury trial upon request.

¹ Management services organizations are defined in the legislation as entities that enter into an agreement with a provider to furnish services to such provider, including services relating to payroll, human resources, employment screening, payer contracting, billing and collection, coding, information technology services, patient scheduling, property or equipment leasing, and administrative or business services that do not constitute the practice of medicine.

4. FTC and DOJ review – The bill carries several reporting requirements, mandating that any divestments must be reported to FTC and the DOJ Antitrust Division. The legislative language is unclear as to which entity is required to report such disclosures. The FTC and DOJ would be required to compile and submit quarterly compliance reports to relevant congressional committees. This subsection also requires the FTC and the DOJ Antitrust Division to review the effects of divestitures on market competition, financial viability, and the public interest. This subsection grants the FTC and the DOJ Antitrust Division with the power to block anticompetitive actions in relation to divestiture or common ownership through civil litigation, while the FTC would be granted the ultimate rulemaking authority to carry out the provisions found under Sec. 3.

The Break Up Big Medicine Act also lists a series of definitions to establish meaning for such terms where applicable. This includes the terms drug, health plan, management services organization, provider, pharmacy benefit manager, prescription drug or medical device wholesaler, and wholesale distribution.

Links:

- Senator Warren Press Release: <https://www.warren.senate.gov/newsroom/press-releases/warren-hawley-introduce-bipartisan-bill-to-break-up-big-medicine>
- Senator Hawley Press Release: <https://www.hawley.senate.gov/hawley-warren-introduce-bill-to-break-up-big-medicine/>
- Congress.gov: <https://www.congress.gov/bill/119th-congress/senate-bill/3822>