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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prescription Pricing for the People Act of 2019''.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

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

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

(2) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

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

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

(1) addresses at minimum—

(A) whether pharmacy benefit managers—

(i) charge payers (including Medicare and Medicaid) a higher price than the reimbursement rate at which the pharmacy benefit managers reimburses competing pharmacies while reimbursing pharmacies

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

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

(iii) audit or review proprietary data, including acquisition costs, patient information, or dispensing information, of competing pharmacies that can be used for anticompetitive purposes; or

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

(B) the current state of competition in the pharmaceutical supply chain, particularly with regard to intermediaries and the recent vertical integrations of pharmacy benefit managers with insurance companies or other payers of prescription drug benefits;

(C) how companies and payers assess the benefits, costs, and risks of contracting with intermediaries, including pharmacy services administrative organizations, and whether more information about the roles of intermediaries

should be available to consumers and payers; and

(D) whether there are any specific legal or regulatory obstacles the Commission currently faces in ensuring a competitive and transparent marketplace in the pharmaceutical supply chain, including the pharmacy benefit manager marketplace and pharmacy services administrative organizations; and

(2) provides—

(A) observations or conclusions drawn from the November 2017 roundtable entitled ''Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics'', and any similar efforts;

(B) specific actions the Commission intends to take as a result of the November 2017 roundtable, and any similar efforts, including a detailed description of relevant forthcoming actions, additional research or roundtable discussions, consumer education efforts, or enforcement actions; and

(C) policy or legislative recommendations to—

~~(i) improve transparency and competition in the pharmaceutical supply chain;~~

~~(ii) prevent and deter anticompetitive behavior in the pharmaceutical supply chain; and~~

~~(iii) best ensure that consumers benefit from any cost savings or efficiencies that may result from mergers and consolidations.~~

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prescription Pricing for the People Act of 2019".

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term "appropriate committees of Congress" means—

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(2) COMMISSION.—The term "Commission" means the Federal Trade Commission.

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

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

(1) addresses at minimum—

(A) whether pharmacy benefit managers—

(i) charge payers a higher price than the reimbursement rate at which the pharmacy benefit managers reimburse pharmacies owned by the pharmacy benefit manager and pharmacies not owned by the pharmacy benefit manager;

(ii) steer patients for competitive advantage to any pharmacy, including a retail, mail-order, or any other type of pharmacy, in which the pharmacy benefit managers have an ownership interest;

(iii) audit or review proprietary data, including acquisition costs, patient information, or dispensing information, of phar-

macies not owned by the pharmacy benefit manager and use such proprietary data to increase revenue or market share for competitive advantage; or

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

(B) trends or observations on the state of competition in the healthcare supply chain, particularly with regard to intermediaries and their integration with other intermediaries, suppliers, or payers of prescription drug benefits;

(C) how companies and payers assess the benefits, costs, and risks of contracting with intermediaries, including pharmacy services administrative organizations, and whether more information about the roles of intermediaries should be available to consumers and payers; and

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

chain, including the pharmacy benefit manager marketplace and pharmacy services administrative organizations; and

(2) provides—

(A) observations or conclusions drawn from the November 2017 roundtable entitled "Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics," and any similar efforts;

(B) specific actions the Commission intends to take as a result of the November 2017 roundtable, and any similar efforts, including a detailed description of relevant forthcoming actions, additional research or roundtable discussions, consumer education efforts, or enforcement actions; and

(C) policy or legislative recommendations to—

(i) improve transparency and competition in the pharmaceutical supply chain;

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

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

may result from mergers and consolidations.

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

SEC. 4. REPORT.

The Commission shall submit to the appropriate committees of Congress a report that includes—

(1) the number and nature of complaints received by the Commission relating to an allegation of anticompetitive conduct by a manufacturer of a sole-source drug;

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

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

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