

118TH CONGRESS  
1ST SESSION

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To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Ms. CANTWELL (for herself, Mr. GRASSLEY, Mrs. HYDE-SMITH, Mr. BRAUN, Mr. MORAN, Mr. TILLIS, Mr. TESTER, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, 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*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pharmacy Benefit  
5 Manager Transparency Act of 2023”.

1 **SEC. 2. PROHIBITION ON UNFAIR OR DECEPTIVE PRE**  
2 **SCRIPTION DRUG PRICING PRACTICES.**

The following 3 types of conduct are prohibited:

3 → (a) CONDUCT PROHIBITED.—Except as provided in  
4 subsection (b), it shall be unlawful for any pharmacy ben-  
5 efit manager (or affiliate, subsidiary, or agent of a phar-  
6 macy benefit manager), directly or indirectly, to engage  
7 in any of the following activities related to pharmacy ben-  
8 efit management services:

Prohibits spread pricing

9 → (1) Charge a health plan or payer a different  
10 amount for a prescription drug’s ingredient cost or  
11 dispensing fee than the amount the pharmacy ben-  
12 efit manager reimburses a pharmacy for the pre-  
13 scription drug’s ingredient cost or dispensing fee  
14 where the pharmacy benefit manager retains the  
15 amount of any such difference.

Prohibits claw backs

16 → (2) Arbitrarily, unfairly, or deceptively, by con-  
17 tract or any other means, reduce, rescind, or other-  
18 wise claw back any reimbursement payment, in  
19 whole or in part, to a pharmacist or pharmacy for  
20 a prescription drug’s ingredient cost or dispensing  
21 fee.

Prohibits increasing fees or lowering reimbursements in response to changes in Federal reimbursement rates

22 → (3) Arbitrarily, unfairly, or deceptively, by con-  
23 tract or any other means, increase fees or lower re-  
24 imbursement to a pharmacy in order to offset reim-  
25 bursement changes instructed by the Federal Gov-

1 ernment under any health plan funded by the Fed-  
2 eral Government.

Prohibited conduct above is permitted if the PBM engages in the following conduct:

3 →(b) EXCEPTIONS.—A pharmacy benefit manager  
4 shall not be in violation of subsection (a) if the pharmacy  
5 benefit manager meets the following conditions:

Requires 100% pass through of rebates to health plans and payors

6 →(1) The pharmacy benefit manager, affiliate,  
7 subsidiary, or agent passes along or returns 100 per-  
8 cent of any price concession to a health plan or  
9 payer, including any rebate, discount, or other price  
10 concession.

11 (2) The pharmacy benefit manager, affiliate,  
12 subsidiary, or agent provides full and complete dis-  
13 closure of—

Requires disclosures of cost, price and reimbursement rates to health plans, payors and pharmacies

14 →(A) the cost, price, and reimbursement of  
15 the prescription drug to each health plan,  
16 payer, and pharmacy with which the pharmacy  
17 benefit manager, affiliate, subsidiary, or agent  
18 has a contract or agreement to provide phar-  
19 macy benefit management services;

Requires disclosures of fees, markups and discounts to health plans, payors and pharmacies

20 →(B) each fee, markup, and discount  
21 charged or imposed by the pharmacy benefit  
22 manager, affiliate, subsidiary, or agent to each  
23 health plan, payer, and pharmacy with which  
24 the pharmacy benefit manager, affiliate, sub-

1 subsidiary, or agent has a contract or agreement  
 2 for pharmacy benefit management services; or  
 3 →(C) the aggregate amount of all remunera-  
 4 tion the pharmacy benefit manager receives  
 5 from a prescription drug manufacturer for a  
 6 prescription drug, including any rebate, dis-  
 7 count, administration fee, and any other pay-  
 8 ment or credit obtained or retained by the phar-  
 9 macy benefit manager, or affiliate, subsidiary,  
 10 or agent of the pharmacy benefit manager, pur-  
 11 suant to a contract or agreement for pharmacy  
 12 benefit management services to a health plan,  
 13 payer, or any Federal agency (upon the request  
 14 of the agency).

Requires disclosure to health plans, payors and Federal agencies of total remuneration PBM received from manufacturers

15 **SEC. 3. PROHIBITION ON FALSE INFORMATION.**

16 →It shall be unlawful for any person to report informa-  
 17 tion related to pharmacy benefit management services to  
 18 a Federal department or agency if—

19 (1) the person knew, or reasonably should have  
 20 known, the information to be false or misleading;

21 (2) the information was required by law to be  
 22 reported; and

23 (3) the false or misleading information reported  
 24 by the person would affect analysis or information  
 25 compiled by the Federal department or agency for

Prohibits mis-reporting information if  
 1) PBM knew or should have known the information is false or misleading;  
 2) reporting the information was legally required; and  
 3) false or misleading information changed the analysis.

1 statistical or analytical purposes with respect to the  
2 market for pharmacy benefit management services.

3 **SEC. 4. TRANSPARENCY.**

Annual reports to the FTC from each PBM:

4 →(a) REPORTING BY PHARMACY BENEFIT MAN-  
5 AGERS.—Not later than 1 year after the date of enactment  
6 of this Act, and annually thereafter, each pharmacy ben-  
7 efit manager (or affiliate, subsidiary, or agent of a phar-  
8 macy benefit manager) shall report to the Commission the  
9 following information:

Total difference between reimbursements received from each health plan and paid to each pharmacy

10 →(1) The aggregate amount of the difference be-  
11 tween the amount the pharmacy benefit manager  
12 was paid by each health plan and the amount that  
13 the pharmacy benefit manager paid each pharmacy  
14 on behalf of the health plan for prescription drugs.

15 (2) The aggregate amount of any—

Aggregate amount of generic effective rate for each pharmacy

16 →(A) generic effective rate fee charged to  
17 each pharmacy;

Aggregate amount of direct and indirect remuneration for each pharmacy

18 →(B) direct and indirect remuneration fee  
19 charged or other price concession to each phar-  
20 macy; and

Aggregate amount of claw backs for each pharmacy

21 →(C) payment rescinded or otherwise clawed  
22 back from a reimbursement made to each phar-  
23 macy.

Narrative description of changes to formulary that moves drug to a higher formulary tier

24 →(3) If, during the reporting year, the pharmacy  
25 benefit manager moved or reassigned a prescription

1 drug to a formulary tier that has a higher cost,  
2 higher copayment, higher coinsurance, or higher de-  
3 ductible to a consumer, or a lower reimbursement to  
4 a pharmacy, an explanation of the reason why the  
5 drug was moved or reassigned from 1 tier to an-  
6 other, including whether the move or reassignment  
7 was determined or requested by a prescription drug  
8 manufacturer or other entity.

Difference in treatment of  
pharmacies that are owned,  
controlled or affiliated with  
PBM versus pharmacies that  
are not

9 →(4) With respect to any pharmacy benefit man-  
10 ager that owns, controls, or is affiliated with a phar-  
11 macy, a report regarding any difference in reim-  
12 bursement rates or practices, direct and indirect re-  
13 munerations fees or other price concessions, and  
14 clawbacks between a pharmacy that is owned, con-  
15 trolled, or affiliated with the pharmacy benefit man-  
16 ager and any other pharmacy.

17 (b) REPORT TO CONGRESS.—

Annual reports from FTC to  
Congress:

18 →(1) IN GENERAL.—Not later than 1 year after  
19 the date of enactment of this Act, and annually  
20 thereafter, the Commission shall submit to the Com-  
21 mittee on Commerce, Science, and Transportation of  
22 the Senate and the Committee on Energy and Com-  
23 merce of the House of Representatives a report that  
24 addresses, at a minimum—

Number of actions brought by the FTC for violations of this Act

1 →(A) the number actions brought by the  
2 Commission during the reporting year to en-  
3 force this Act and the outcome of each such en-  
4 forcement action;

Number of open investigations by the FTC for violations of this Act

5 →(B) the number of open investigations or  
6 inquiries into potential violations of this Act as  
7 of the time the report is submitted;

Number and nature of complaints received by the FTC for violations of this Act

8 →(C) the number and nature of complaints  
9 received by the Commission relating to an alle-  
10 gation of a violation of this Act during the re-  
11 porting year;

Anonymized summaries reports submitted by the PBMs to the FTC

12 →(D) an anonymized summary of the re-  
13 ports filed with the Commission pursuant to  
14 subsection (a) for the reporting year; and

Potential policy or legislative changes to strengthen enforcement of the Act

15 →(E) policy or legislative recommendations  
16 to strengthen any enforcement action relating  
17 to a violation of this Act, including rec-  
18 ommendations to include additional prohibited  
19 conducted in section 2(a).

One time reports from FTC to Congress:

20 →(2) FORMULARY DESIGN OR PLACEMENT PRAC-  
21 TICES.—Not later than 1 year after the date of en-  
22 actment of this Act, the Commission shall submit to  
23 the Committee on Commerce, Science, and Trans-  
24 portation of the Senate and the Committee on En-  
25 ergy and Commerce of the House of Representatives

1 a report that addresses the policies, practices, and  
 2 role of pharmacy benefit managers (including their  
 3 affiliates, subsidiaries, and agents) regarding for-  
 4 mulary design or placement, including whether—

Whether PBMs use formulary design to increase revenue without increasing patient access or decreasing patient cost

5 →(A) pharmacy benefit managers (including  
 6 their affiliates, subsidiaries, and agents) use  
 7 formulary design or placement to increase their  
 8 gross revenue without an accompanying in-  
 9 crease in patient access or decrease in patient  
 10 cost; or

Whether PBMs policies or practices violate Section 5 of the FTC Act

11 →(B) such policies or practices of pharmacy  
 12 benefit managers regarding formulary design or  
 13 placement violate section 5(a) of the Federal  
 14 Trade Commission Act (15 U.S.C. 45(a)).

This Act does not require disclosure of trade secrets or confidential information; but, the Act also does not provide any additional protections for trade secrets or confidential information

15 →(3) CONSTRUCTION.—Nothing in this section  
 16 shall be construed as authorizing the Commission to  
 17 disclose any information that is a trade secret or  
 18 confidential information described in section  
 19 552(b)(4) of title 5, United States Code.

One time GAO reports to Congress:

20 →(c) GAO STUDY.—Not later than 1 year after the  
 21 date of enactment of this Act, the Comptroller General  
 22 of the United States shall submit to the Committee on  
 23 Commerce, Science, and Transportation, the Committee  
 24 on Finance, and the Committee on Health, Education,  
 25 Labor, and Pensions of the Senate and to the Committee



1 on Ways and Means and the Committee on Energy and  
2 Commerce of the House of Representatives a report  
3 that—

4 (1) addresses, at minimum—

Role of PBMs in  
pharmaceutical supply chain

5 →(A) the role that pharmacy benefit man-  
6 agers play in the pharmaceutical supply chain;

State of competition of  
PBMs, including  
identification of 10 largest  
PBMs by market share

7 →(B) the state of competition among phar-  
8 macy benefit managers, including the market  
9 share for the Nation’s 10 largest pharmacy  
10 benefit managers;

Use of rebates and fees by  
PBMs for each drug on the  
formularies of the 10 largest  
PBMs by market share

11 →(C) the use of rebates and fees by phar-  
12 macy benefit managers, including data for each  
13 of the 10 largest pharmacy benefit managers  
14 that reflects, for each drug in the formulary of  
15 each such pharmacy benefit manager—

16 (i) the amount of the rebate passed on  
17 to patients;

18 (ii) the amount of the rebate passed  
19 on to payors;

20 (iii) the amount of the rebate kept by  
21 the pharmacy benefit manager; and

22 (iv) the role of fees charged by the  
23 pharmacy benefit manager;

Whether PBMs favor high-  
rebate drugs over low-cost  
drugs on their formularies

24 →(D) whether pharmacy benefit managers  
25 structure their formularies in favor of high-re-



1 benefit management, and provide transparency in  
2 pharmacy benefit management.

3 **SEC. 5. WHISTLEBLOWER PROTECTIONS.**

Protects whistleblowers from PBMs who engage in the following conduct:

4 →(a) IN GENERAL.—A pharmacy benefit manager,  
5 health plan, pharmaceutical manufacturer, pharmacy, or  
6 any affiliate, subsidiary, or agent thereof shall not, directly  
7 or indirectly, discharge, demote, suspend, diminish, or  
8 withdraw benefits from, threaten, harass, or in any other  
9 manner discriminate against or adversely impact a covered  
10 individual because—

Provide Federal or state government with information regarding a violation of this Act

11 →(1) the covered individual, or anyone perceived  
12 as assisting the covered individual, takes (or is sus-  
13 pected to have taken or will take) a lawful action in  
14 providing to Congress, an agency of the Federal  
15 Government, the attorney general of a State, a State  
16 regulator with authority over the distribution or in-  
17 surance coverage of prescription drugs, or a law en-  
18 forcement agency relating to any act or omission  
19 that the covered individual reasonably believes to be  
20 a violation of this Act;

Provide information regarding a violation to 1) the whistleblower's supervisor; OR 2) another individual who has the authority to investigate, discover, terminate or take other action regarding the violation

21 →(2) the covered individual provides information  
22 that the covered individual reasonably believes evi-  
23 dences such a violation to—

24 (A) a person with supervisory authority  
25 over the covered individual at the pharmacy

1 benefit manager, health plan, pharmaceutical  
 2 manufacturer, pharmacy, or any affiliate, sub-  
 3 sidiary, or agent thereof; or

4 (B) another individual working for the  
 5 pharmacy benefit manager, health plan, phar-  
 6 maceutical manufacturer, pharmacy, or any af-  
 7 filiate, subsidiary, or agent thereof who the cov-  
 8 ered individual reasonably believes has the au-  
 9 thority to investigate, discover, or terminate the  
 10 violation or to take any other action to address  
 11 the violation;

Testifying regarding a violation

12 →(3) the covered individual testifies (or it is sus-  
 13 pected that the covered individual will testify) in an  
 14 investigation or judicial or administrative proceeding  
 15 concerning such a violation;

Assisting or participating in the investigation of a violation

16 →(4) the covered individual assists or participates  
 17 (or it is expected that the covered individual will as-  
 18 sist or participate) in such an investigation or judi-  
 19 cial or administrative proceeding; or

Takes any action to assist with carrying out the purpose of this Act

20 →(5) the covered individual takes any other ac-  
 21 tion to assist in carrying out the purposes of this  
 22 Act.

Gives whistleblowers private right to action in response to retribution

23 →(b) ENFORCEMENT.—An individual who alleges any  
 24 adverse action in violation of subsection (a) may bring an

1 action for a jury trial in the appropriate district court of  
2 the United States for the following relief:

Temporary relief

3 →(1) Temporary relief while the case is pending.

Reinstatement

4 →(2) Reinstatement with the same seniority sta-  
5 tus that the individual would have had, but for the  
6 discharge or discrimination.

Double back pay

7 →(3) Twice the amount of back pay otherwise  
8 owed to the individual, with interest.

Consequential and  
compensatory damages and  
reimbursement for costs  
associated with bringing  
action

9 →(4) Consequential and compensatory damages,  
10 and compensation for litigation costs, expert witness  
11 fees, and reasonable attorneys' fees.

Cannot waive whistleblower  
rights provided by the Act

12 →(c) WAIVER OF RIGHTS AND REMEDIES.—The rights  
13 and remedies provided for in this section shall not be  
14 waived by any policy form or condition of employment, in-  
15 cluding by a predispute arbitration agreement.

Predispute arbitration  
agreements are invalid for  
disputes arising from this Act

16 →(d) PREDISPUTE ARBITRATION AGREEMENTS.—No  
17 predispute arbitration agreement shall be valid or enforce-  
18 able if the agreement requires arbitration of a dispute  
19 arising under this section.

20 **SEC. 6. ENFORCEMENT.**

21 (a) ENFORCEMENT BY THE COMMISSION.—

Violations of this Act shall  
be treated as violations of  
the FTC Act

22 →(1) UNFAIR AND DECEPTIVE ACTS OR PRAC-  
23 TICES.—A violation of this Act shall be treated as  
24 a violation of a rule defining an unfair or deceptive  
25 act or practice under section 18(a)(1)(B) of the Fed-

1       eral Trade Commission Act (15 U.S.C.  
2       57a(a)(1)(B)).

3               (2) POWERS OF THE COMMISSION.—

FTC is authorized to enforce this Act as if it were part of the FTC Act

4                               → (A) IN GENERAL.—Except as provided in  
5               subparagraph (C), the Commission shall enforce  
6               this Act in the same manner, by the same  
7               means, and with the same jurisdiction, powers,  
8               and duties as though all applicable terms and  
9               provisions of the Federal Trade Commission  
10              Act (15 U.S.C. 41 et seq.) were incorporated  
11              into and made a part of this Act.

Violations of this Act are subject to all of the penalties of the FTC Act

12                              → (B) PRIVILEGES AND IMMUNITIES.—Sub-  
13              ject to paragraph (3), any person who violates  
14              this Act shall be subject to the penalties and  
15              entitled to the privileges and immunities pro-  
16              vided in the Federal Trade Commission Act (15  
17              U.S.C. 41 et seq.).

Non-profits and insurance businesses are subject to the Act

18                              → (C) NONPROFIT ORGANIZATIONS AND IN-  
19              SURANCE.—Notwithstanding section 4 or 6 of  
20              the Federal Trade Commission Act (15 U.S.C.  
21              44, 46), section 2 of McCarran-Ferguson Act  
22              (15 U.S.C. 1012), or any other jurisdictional  
23              limitation of the Commission, the Commission  
24              shall also enforce this Act, in the same manner

1 provided in subparagraphs (A) and (B) of this  
2 paragraph, with respect to—

3 (i) organizations not organized to  
4 carry on business for their own profit or  
5 that of their members; and

6 (ii) the business of insurance, and  
7 persons engaged in such business.

This Act is not intended to limit the FTC's existing authority in any way

8 →(D) AUTHORITY PRESERVED.—Nothing in  
9 this section shall be construed to limit the au-  
10 thority of the Commission under any other pro-  
11 vision of law.

12 (3) PENALTIES.—

In addition to penalties available under the FTC Act, violations of this Act will also be subject to a civil penalty of up to \$1 million per violation

13 →(A) ADDITIONAL CIVIL PENALTY.—In ad-  
14 dition to any penalty applicable under the Fed-  
15 eral Trade Commission Act (15 U.S.C. 41 et  
16 seq.), any person that violates this Act shall be  
17 liable for a civil penalty of not more than  
18 \$1,000,000.

19 (B) METHOD.—The penalties provided by  
20 subparagraph (A) shall be obtained in the same  
21 manner as civil penalties imposed under section  
22 18(a)(1)(B) of the Federal Trade Commission  
23 Act (15 U.S.C. 57a(a)(1)(B)).

1 (C) MULTIPLE OFFENSES; MITIGATING  
 2 FACTORS.—In assessing a penalty under sub-  
 3 paragraph (A)—

Each day of a continuing violation shall be considered a separate violation

4 →(i) each day of a continuing violation  
 5 shall be considered a separate violation;

6 and

Mitigating circumstance

7 →(ii) the court shall take into consider-  
 8 ation, among other factors—

Seriousness of the violation

9 →(I) the seriousness of the viola-  
 10 tion;

Efforts to remedy the violation in a timely manner

11 →(II) the efforts of the person  
 12 committing the violation to remedy  
 13 the harm caused by the violation in a  
 14 timely manner; and

Whether the violation was intentional

15 → (III) whether the violation was  
 16 intentional.

17 (b) ENFORCEMENT BY STATES.—

State AGs are authorized to enforce the Act

18 →(1) IN GENERAL.—If the attorney general of a  
 19 State has reason to believe that an interest of the  
 20 residents of the State has been or is being threat-  
 21 ened or adversely affected by a practice that violates  
 22 this Act, the attorney general of the State may bring  
 23 a civil action on behalf of the residents of the State  
 24 in an appropriate district court of the United States  
 25 to obtain appropriate relief.



1 (2) RIGHTS OF THE COMMISSION.—

2 (A) NOTICE TO THE COMMISSION.—

3 →(i) IN GENERAL.—Except as provided  
 4 in clause (iii), the attorney general of a  
 5 State, before initiating a civil action under  
 6 paragraph (1), shall provide written notifi-  
 7 cation to the Commission that the attorney  
 8 general intends to bring such civil action.

9 →(ii) CONTENTS.—The notification re-  
 10 quired under clause (i) shall include a copy  
 11 of the complaint to be filed to initiate the  
 12 civil action.

13 →(iii) EXCEPTION.—If it is not feasible  
 14 for the attorney general of a State to pro-  
 15 vide the notification required under clause  
 16 (i) before initiating a civil action under  
 17 paragraph (1), the attorney general shall  
 18 notify the Commission immediately upon  
 19 instituting the civil action.

20 →(B) INTERVENTION BY THE COMMIS-  
 21 SION.—The Commission may—

22 (i) intervene in any civil action  
 23 brought by the attorney general of a State  
 24 under paragraph (1); and

25 (ii) upon intervening—

State AGs must notify FTC prior to bringing enforcement actions

Must provide a copy of complaint before filing

If it is not feasible to notify the FTC prior to filing an action, the state AG must notify the FTC immediately after filing the action

The FTC is authorized to intervene in an action brought by a state AG

FTC must be heard on all matter arising from a state AG action

1  
2

→(I) be heard on all matters arising in the civil action; and

FTC is authorized to appeal a decision in a state AG action

3  
4

→(II) file petitions for appeal of a decision in the civil action.

This Act is not intended to interfere or limit state laws

5  
6

→(3) CONSTRUCTION.—Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

13

(4) VENUE; SERVICE OF PROCESS.—

Actions under this Act may be brought in any appropriate Federal district court

14  
15

→(A) VENUE.—Any action brought under paragraph (1) may be brought in—

16  
17  
18  
19

(i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code; or

20  
21

(ii) another court of competent jurisdiction.

22  
23  
24

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which—

1 (i) the defendant is an inhabitant,  
2 may be found, or transacts business; or

3 (ii) venue is proper under section  
4 1391 of title 28, United States Code.

5 (5) ACTIONS BY OTHER STATE OFFICIALS.—

6 →(A) IN GENERAL.—If an attorney general  
7 lacks appropriate jurisdiction to bring a civil ac-  
8 tion under paragraph (1), any other officer of  
9 a State who is authorized by the State to do so  
10 may bring a civil action under paragraph (1),  
11 subject to the same requirements and limita-  
12 tions that apply under this subsection to civil  
13 actions brought by attorneys general.

If a state AG is unable to bring an action, other authorized officers of the state may bring the action

14 →(B) CLARIFICATION OF AUTHORITY.—The  
15 authority provided by subparagraph (A) shall  
16 supplant, and not supplement, the authorities of  
17 State attorneys general under paragraph (1).

The state AG must be unable to bring the action before another state officer is allowed to bring the action

18 →(C) SAVINGS PROVISION.—Nothing in this  
19 subsection may be construed to prohibit an au-  
20 thorized official of a State from initiating or  
21 continuing any proceeding in a court of the  
22 State for a violation of any civil or criminal law  
23 of the State.

This Act does not prohibit or limit state officials' authority in state courts

24 →(c) AFFIRMATIVE DEFENSE.—In an action brought  
25 under this section to enforce section 2, it shall be an af-

Affirmative defenses to violations of this Act are as follows:

1 firmative defense, on which the defendant has the burden  
 2 of persuasion by a preponderance of the evidence, that the  
 3 conduct alleged to be a violation of section 2 was  
 4 nonpretextual and reasonably necessary to—

1) Prevent a violation or  
 comply with Federal or State  
 law

- 5 → (1) prevent a violation of, or comply with, Fed-  
 6 eral or State law;  
 7 (2) protect patient safety; or  
 8 (3) protect patient access.

9 **SEC. 7. EFFECT ON STATE LAWS.**

Not intended to change any  
 existing laws

10 → Nothing in this Act shall be construed to preempt,  
 11 displace, or supplant any State laws, rules, regulations,  
 12 or requirements, or the enforcement thereof.

13 **SEC. 8. DEFINITIONS.**

14 In this Act:

15 (1) COMMISSION.—The term “Commission”  
 16 means the Federal Trade Commission.

17 (2) COVERED INDIVIDUAL.—The term “covered  
 18 individual” means a current or former employee,  
 19 contractor, subcontractor, service provider, or agent  
 20 of a pharmacy benefit manager, health plan, phar-  
 21 maceutical manufacturer, pharmacy, or any affiliate,  
 22 subsidiary, or agent thereof.

23 (3) HEALTH PLAN.—The term “health plan”  
 24 means any group or individual health insurance plan  
 25 or coverage, including any health insurance plan or

1 coverage sponsored or funded by the Federal Gov-  
2 ernment or the government of any State, Territory,  
3 or subdivision thereof.

4 (4) PHARMACY BENEFIT MANAGER.—The term  
5 “pharmacy benefit manager” means any entity that  
6 provides pharmacy benefit management services on  
7 behalf of a health plan, a payer, or health insurance  
8 issuer.

9 (5) PHARMACY BENEFIT MANAGEMENT SERV-  
10 ICES.—The term “pharmacy benefit management  
11 services” means, pursuant to a written agreement  
12 with a payer or health plan offering group or indi-  
13 vidual health insurance coverage, directly or through  
14 an intermediary, the service of—

15 (A) negotiating terms and conditions, in-  
16 cluding rebates and price concessions, with re-  
17 spect to a prescription drug on behalf of the  
18 health plan, coverage, or payer; or

19 (B) managing the prescription drug bene-  
20 fits provided by the health plan, coverage, or  
21 payer, which may include formulary manage-  
22 ment the processing and payment of claims for  
23 prescription drugs, the performance of drug uti-  
24 lization review, the processing of drug prior au-  
25 thorization requests, the adjudication of appeals

1 or grievances related to the prescription drug  
2 benefit, contracting with network pharmacies,  
3 or the provision of related services.

4 (6) PRESCRIPTION DRUG.—The term “prescrip-  
5 tion drug” means—

6 (A) a drug, as that term is defined in sec-  
7 tion 201(g) of the Federal Food, Drug, and  
8 Cosmetic Act (21 U.S.C. 321(g)), that is—

9 (i) approved by the Food and Drug  
10 Administration under section 505 of such  
11 Act (21 U.S.C. 355); and

12 (ii) subject to the requirements of sec-  
13 tion 503(b)(1) of such Act (21 U.S.C.  
14 353(b)(1));

15 (B) a biological product as that term is de-  
16 fined in section 351 of the Public Health Serv-  
17 ice Act (42 U.S.C. 262(i)(1)); or

18 (C) a product that is biosimilar to, or  
19 interchangeable with, a biologic product under  
20 section 351 of the Public Health Service Act  
21 (42 U.S.C. 262(i)).