

119TH CONGRESS
1ST SESSION

S. _____

To prohibit health insurance issuers and certain health care providers under Medicare from being under common ownership, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit health insurance issuers and certain health care providers under Medicare from being under common ownership, 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 “Patients Over Profit
5 Act” or the “POP Act”.

6 **SEC. 2. PROHIBITION ON COMMON OWNERSHIP OF HEALTH**
7 **INSURANCE ISSUERS AND CERTAIN HEALTH**
8 **CARE PROVIDERS UNDER MEDICARE.**

9 (a) IN GENERAL.—It shall be unlawful for any per-
10 son to both—

1 (1) directly or indirectly own, operate, or con-
2 trol the whole or any part of an applicable provider
3 or a management services organization that has a
4 management services agreement with an applicable
5 provider; and

6 (2) directly or indirectly own, operate, or con-
7 trol the whole or any part of a health insurance
8 issuer.

9 (b) DIVESTMENT.—Any person in violation of sub-
10 section (a) shall divest either the applicable provider (or,
11 if applicable, the management services organization) or
12 the health insurance issuer of such person—

13 (1) in the case of an applicable provider, man-
14 agement services organization, or health insurance
15 issuer acquired on or before the date of enactment
16 of this Act, not later than 2 years after such date
17 of enactment; or

18 (2) in the case of an applicable provider, man-
19 agement services organization, or health insurance
20 issuer acquired after the date of enactment of this
21 Act, not later than 1 year after the date of acquisi-
22 tion.

23 (c) CIVIL ACTIONS.—

24 (1) IN GENERAL.—When the Inspector General
25 of the Department of Health and Human Services,

1 the Assistant Attorney General in charge of the
2 Antitrust Division of the Department of Justice, the
3 Federal Trade Commission, or an attorney general
4 of a State has reason to believe that a person is in
5 violation of subsection (a) or (b), such Inspector
6 General, Assistant Attorney General, Federal Trade
7 Commission, or attorney general of a State may
8 bring a civil action in an applicable district court of
9 the United States for the relief described in para-
10 graph (2).

11 (2) INJUNCTIVE AND EQUITABLE RELIEF.—In
12 any action described in paragraph (1), the applicable
13 court, on a finding that a person is in violation of
14 subsection (a) or (b), shall issue an order requiring
15 such person—

16 (A) to cease and desist from such violation,
17 and divest either the applicable provider (or, if
18 applicable, the management services organiza-
19 tion) or the health insurance issuer of such per-
20 son; and

21 (B) to disgorge any revenue received from
22 the provision of health care services during the
23 period of such violation.

24 (3) DEPOSIT AND DISTRIBUTION.—Any revenue
25 disgorged pursuant to an action under this sub-

1 section for a violation of subsection (a) or (b) shall
2 be deposited into a fund created by the Federal
3 Trade Commission and distributed by the Federal
4 Trade Commission to be put to use in the interest
5 of serving the health care needs of the harmed com-
6 munity. Receipt of any funds under this paragraph
7 shall not alter or diminish the rights of an individual
8 to bring an action or recover any amount as other-
9 wise authorized by law.

10 (d) FTC REVIEW.—

11 (1) REPORTING REQUIRED.—Any divestment of
12 an applicable provider, management services organi-
13 zation, or health insurance issuer required under
14 subsection (b) shall be reported to the Federal
15 Trade Commission and the Assistant Attorney Gen-
16 eral in charge of the Antitrust Division of the De-
17 partment of Justice under section 7A of the Clayton
18 Act (15 U.S.C. 18a) without respect to the thresh-
19 olds under subsection (a)(2) of that section.

20 (2) TOLLING OF DIVESTMENT PERIOD DURING
21 REVIEW.—The divestment period under subsection
22 (b) shall be tolled during the pendency of any wait-
23 ing period required under section 7A of the Clayton
24 Act (15 U.S.C. 18a).

1 (3) REVIEW OF EFFECT OF DIVESTITURE.—

2 With respect to each divestiture undertaken pursu-
3 ant to subsection (b), in addition to any applicable
4 review under section 7A of the Clayton Act (15
5 U.S.C. 18a), the Federal Trade Commission and the
6 Assistant Attorney General in charge of the Anti-
7 trust Division of the Department of Justice shall re-
8 view the effect on competition, financial viability,
9 and the public interest—

10 (A) of the divestiture; and

11 (B) of the subsequent acquisition of the
12 applicable provider (or, if applicable, the man-
13 agement services organization) or the health in-
14 surance issuer of such person by the acquiring
15 person.

16 (e) RULEMAKING AUTHORITY.—The Federal Trade
17 Commission shall promulgate rules to carry out this sec-
18 tion. Such rules shall not diminish any obligation under
19 this section.

20 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
21 tion shall be construed to limit the authority of the Fed-
22 eral Trade Commission, the Inspector General of the De-
23 partment of Justice, the Department of Health and
24 Human Services, or the attorney general of a State under
25 any other provision of law.

1 (g) ENFORCEMENT UNDER MEDICARE ADVANTAGE
2 AND MEDICARE PART D.—

3 (1) MEDICARE ADVANTAGE.—Section 1857 of
4 the Social Security Act (42 U.S.C. 1395w–27) is
5 amended by adding at the end the following new
6 subsection:

7 “(j) PROHIBITION ON COMMON OWNERSHIP OF MA
8 ORGANIZATIONS AND APPLICABLE PROVIDERS.—

9 “(1) IN GENERAL.—For plan years beginning
10 on or after January 1, 2026, the Secretary may not
11 contract with, or provide payment under this part
12 to, a Medicare Advantage organization with respect
13 to offering an MA plan or MA–PD plan under this
14 part if the organization—

15 “(A) directly or indirectly owns, operates,
16 or controls the whole or any part of an applica-
17 ble provider or a management services organiza-
18 tion that has a management services agreement
19 with an applicable provider; or

20 “(B) is directly or indirectly owned, oper-
21 ated, or controlled in whole or part by a person
22 who also directly or indirectly owns, operates,
23 or controls the whole or any part of an applica-
24 ble provider or a management services organiza-

1 tion that has a management services agreement
2 with an applicable provider.

3 “(2) CERTIFICATION.—Each Medicare Advan-
4 tage organization shall furnish to the Secretary (in
5 a form and manner, and at a time, specified by the
6 Secretary) a certification of compliance with this
7 subsection, as well as such information as the Sec-
8 retary determines necessary to carry out this sub-
9 section.

10 “(3) FALSE CLAIMS SUBMITTED BY ENTITIES
11 IN VIOLATION OF PROHIBITION ON COMMON OWNER-
12 SHIP.—Any claim for payment from an entity in vio-
13 lation of paragraph (1) constitutes a false or fraudu-
14 lent claim for purposes of subchapter III of title 31,
15 United States Code.

16 “(4) DEFINITIONS.—In this subsection:

17 “(A) APPLICABLE PROVIDER.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), the term ‘applicable provider’ means
20 any entity that receives payment for fur-
21 nishing services covered under part B or
22 under a Medicare Advantage plan under
23 part C.

24 “(ii) EXCLUSIONS.—Such term does
25 not include—

1 “(I) a hospital (as defined in sec-
2 tion 1861(e)), a critical access hos-
3 pital (as defined in section
4 1861(mm)(1)), or a rural emergency
5 hospital (as defined in section
6 1861(kkk)(2));

7 “(II) a supplier of durable med-
8 ical equipment, prosthetics, orthotics,
9 or supplies; or

10 “(III) a pharmacy.

11 “(B) MANAGEMENT SERVICES AGREE-
12 MENT.—The term ‘management services agree-
13 ment’ means a contract between a management
14 services organization and an applicable provider
15 for management or administrative services re-
16 lating to, supporting, or facilitating the provi-
17 sion of health care services.

18 “(C) MANAGEMENT SERVICES ORGANIZA-
19 TION.—The term ‘management services organi-
20 zation’ means any organization or entity that
21 contracts with an applicable provider to perform
22 management or administrative services relating
23 to, supporting, or facilitating the provision of
24 health care services.”.

1 (2) MEDICARE PART D.—Section 1860D–
2 12(b)(3) of the Social Security Act (42 U.S.C.
3 1395w–112(b)(3)) is amended by adding at the end
4 the following new subparagraph:

5 “(G) PROHIBITION ON COMMON OWNER-
6 SHIP.—Section 1857(j).”.

7 (h) DEFINITIONS.—In this section:

8 (1) APPLICABLE PROVIDER.—

9 (A) IN GENERAL.— Subject to subpara-
10 graph (B), the term “applicable provider”
11 means any entity that receives payment for fur-
12 nishing services covered under part B of title
13 XVIII of the Social Security Act (42 U.S.C.
14 1395j et seq.) or under a Medicare Advantage
15 plan under part C of such title (42 U.S.C.
16 1395w–21 et seq.).

17 (B) EXCLUSIONS.—Such term does not in-
18 clude—

19 (i) a hospital (as defined in section
20 1861(e) of the Social Security Act (42
21 U.S.C. 1395x(e))), a critical access hos-
22 pital (as defined in section 1861(mm)(1) of
23 such Act (42 U.S.C. 1395x(mm)(1))), or a
24 rural emergency hospital (as defined in
25 section 1861(kkk)(2));

1 (ii) a supplier of durable medical
2 equipment, prosthetics, orthotics, and sup-
3 plies; or

4 (iii) a pharmacy.

5 (2) HEALTH INSURANCE ISSUER.—The term
6 “health insurance issuer” has the meaning given
7 that term in section 2791 of the Public Health Serv-
8 ice Act (42 U.S.C. 300gg–91).

9 (3) MANAGEMENT SERVICES AGREEMENT.—
10 The term “management services agreement” means
11 a contract between a management services organiza-
12 tion and an applicable provider for management or
13 administrative services relating to, supporting, or fa-
14 cilitating the provision of health care services.

15 (4) MANAGEMENT SERVICES ORGANIZATION.—
16 The term “management services organization”
17 means any organization or entity that contracts with
18 an applicable provider to perform management or
19 administrative services relating to, supporting, or fa-
20 cilitating the provision of health care services.

21 (5) PERSON.—The term “person” has the
22 meaning given the term in section 8 of the Sherman
23 Act (15 U.S.C. 7).