



**SENATE BILL 2040**

By Harshbarger

AN ACT to amend Tennessee Code Annotated, Title 63,  
relative to the ownership or control of pharmacies  
by pharmacy benefits managers.

WHEREAS, the General Assembly finds that protecting the health and welfare of Tennesseans requires access to affordable and safely dispensed prescription medications through a fair and transparent pharmacy system; and

WHEREAS, increasing consolidation of pharmacy benefits managers (PBMs) with pharmacies has created conflicts of interest that can restrict patient choice, increase costs, and jeopardize continuity of care; and

WHEREAS, the General Assembly recognizes the importance of promoting patient choice, preserving pharmacy access, particularly in rural and medically underserved areas, and protecting public health by preventing conflicts of interest that result in inflated costs, reduced transparency, and steering of patients to PBM-owned entities; and

WHEREAS, the General Assembly further recognizes that pharmacists play a vital role in medication safety, counseling, and chronic-disease management, and that these public health functions must be preserved through competitive and independent pharmacy access; and

WHEREAS, eliminating the conflict of interest inherent when a pharmacy benefits manager both sets and receives reimbursement, commonly described as the "fox guarding the henhouse," is necessary to ensure transparent pricing, maintain trust in the pharmacy system, and promote better health outcomes for Tennessee patients; and

WHEREAS, the General Assembly finds that all pharmacies dispensing prescription drugs to residents of this State are subject to registration and licensure by the Tennessee Board

of Pharmacy, regardless of physical location or business model, and that regulation of ownership and control of such registered pharmacies is necessary to protect patient access, fair competition, and public health; and

WHEREAS, the General Assembly finds that ownership, control, and management of a pharmacy directly affect the professional judgment, independence, and ethical obligations of licensed pharmacists, including decisions related to medication dispensing, patient counseling, continuity of care, and clinical safety; and

WHEREAS, it is the intent of this act that it not be construed to prohibit any duly licensed, unaffiliated pharmacy from providing mail-order, specialty, or delivery-based services under new, unaffiliated ownership; and

WHEREAS, this act is intended to strengthen the integrity of Tennessee's healthcare delivery system by separating financial control from patient care decisions, improving affordability, and protecting rural and community pharmacy access; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Freedom, Access, and Integrity in Registered Pharmacy (FAIR Rx) Act."

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 10, Part 3, is amended by adding the following as a new section:

**63-10-316.**

(a) As used in this section and § 63-10-317:

(1) "Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

(2) "Beneficial owner" means a natural person or entity who, directly or indirectly, through any contract, agreement, or other formal or informal arrangement:

(A) Owns or controls five percent (5%) or more of a pharmacy; or

(B) Receives or shares in five percent (5%) or more of the economic benefits of a pharmacy;

(3) "Board" means the board of pharmacy;

(4) "Control" means the power, directly or indirectly, to direct, manage, or influence the operations or policies of a pharmacy, whether through ownership, contract, shared governance, overlapping management, audit authority, exclusive provider agreement, formulary management clause, or other arrangement conferring material influence over the professional practice of pharmacy, including dispensing decisions, patient steering, clinical operations, or the independent judgment of a licensed pharmacist;

(5) "Pharmacy" has the same meaning as defined in § 63-10-204; and

(6) "Pharmacy benefits manager" has the same meaning as defined in § 56-7-3102.

(b)

(1) On and after January 1, 2027, a pharmacy benefits manager shall not, directly or indirectly, acquire, hold, control, or otherwise possess any ownership or beneficial interest in, or exercise control over, a pharmacy license or a pharmacy license holder, whether through ownership, contract, or any other arrangement, including through management, staffing, leasing, supply, franchise, service, formulary, or revenue-sharing agreements, or any other arrangement that transfers operational control or economic benefit to the pharmacy benefits manager.

(2) Subdivision (b)(1) applies regardless of the percentage of ownership interest held by a pharmacy benefits manager.

(3) Compliance with this section is a condition of the issuance, renewal, and continued validity of a pharmacy license under this part.

(c)

(1) The board of pharmacy may issue a limited-use pharmacy license only for certain rare, orphan, or FDA-designated limited-distribution drugs that are otherwise unavailable in this state.

(2) An applicant for a limited-use pharmacy license must provide to the board of pharmacy documentation of FDA orphan designation under 21 U.S.C. § 360bb, or manufacturer confirmation of a restricted distribution program.

(3) This subsection (c) must not be construed to require a drug manufacturer to expand, modify, or alter a limited-distribution network or to authorize dispensing by any pharmacy not otherwise approved by the manufacturer.

(4) The board of pharmacy shall annually review each limited-use pharmacy license.

(5) The holder of a limited-use pharmacy license shall not transfer, assign, or sell the limited-use pharmacy license to a pharmacy benefits manager or an affiliate of a pharmacy benefits manager.

(6) This subsection (c) is repealed on September 1, 2028.

(d)

(1) Each applicant for a pharmacy license shall file at the time of application, and each holder of a pharmacy license shall file annually, in a manner determined by the board, a verified disclosure with the board of pharmacy that identifies:

(A) All direct and indirect owners and beneficial owners of five percent (5%) or more of the entity that is the applicant or holder;

(B) Any parent company, subsidiary, affiliate, or contractor that provides management, staffing, purchasing, inventory, or technology services to the applicant or holder; and

(C) Any agreement granting a pharmacy benefits manager or affiliate authority to influence or control operations.

(2) The board of pharmacy may request supporting documentation, including corporate charts, contracts, and financial records. Failure to provide accurate information constitutes grounds for license denial, suspension, or revocation by the board.

(3) A trustee, executor, administrator, or other fiduciary acting solely in a passive capacity, and not affiliated with or under common control with a pharmacy benefits manager or its parent company, and without authority to direct, influence, or control the operations, management, or policies of the pharmacy, is not a beneficial owner or controller for purposes of this subsection (d).

(4) This subsection (d) must not be construed to permit, authorize, or validate any ownership, beneficial interest, or control of a pharmacy by a pharmacy benefits manager or its affiliate, whether direct or indirect, regardless of percentage or form.

(e) An entity shall not evade or attempt to evade this section through the use of corporate structuring, intermediary ownership, management contracts, leases, or other indirect means. The board shall construe and enforce this section to prevent

circumvention and may disregard corporate form or take other necessary actions to determine true beneficial ownership or control of an entity.

(f)

(1) This section applies to any pharmacy licensed under the law of this state and to any non-resident pharmacy that holds a Tennessee license to operate a pharmacy under § 63-10-310 and that dispenses or ships prescription drugs to residents of this state and is subject to the ownership and control requirements of this part. As used in this subdivision (f)(1), "pharmacy" includes any mail-order, specialty, central fill, telepharmacy, or automated dispensing facility owned, operated, or controlled by a pharmacy benefits manager or an affiliate of its parent company that dispenses or ships prescription drugs to residents of this state.

(2) This section must not be construed to regulate activities beyond the jurisdictional boundaries of this state.

(3) This section applies uniformly to all pharmacy licenses issued by this state, without regard to the state of incorporation, principal place of business, or residency of the licensee or its owners.

(4) This section regulates the qualifications, licensure, ownership, and control of pharmacies as a condition of professional practice within this state and does not regulate drug manufacturing, labeling, interstate shipment, pricing, reimbursement, insurance benefits, or the design or administration of employee benefit plans governed by the federal Employee Retirement Income Security Act (ERISA) (29 U.S.C. § 1001 et seq.).

(g)

(1) This section does not apply to customary payer-pharmacy network contracts or minority ownership interests that do not convey managerial control or exclusive dispensing authority. For purposes of this subdivision (g)(1), a hospital or health-system pharmacy that provides pharmacy benefit management services solely for its own employees, dependents, or patients is not deemed a pharmacy benefits manager; provided, that this exemption does not apply if the hospital or health system provides such services to unaffiliated employers or third parties.

(2) This section does not limit the ability of independently owned or unaffiliated pharmacies to provide mail-order, specialty, or delivery services directly to patients of such pharmacies.

(h)

(1) For a violation of this section, the board may impose a civil penalty of up to ten thousand dollars (\$10,000) per violation. Each day a violation continues constitutes a separate violation.

(2) In addition to subdivision (h)(1), the board may seek injunctive relief from a court of competent jurisdiction for a violation of this section.

(3) The board may issue subpoenas to obtain records the board deems necessary to enforce this section.

(4) On or before January 15, 2028, and no later than January 15 of each subsequent year, the board shall publish, in a manner accessible to the general public, a report that identifies the board's enforcement actions taken pursuant to this section during the previous calendar year, and list active limited-use pharmacy licenses. The report may be published by electronic means.

(i) A pharmacy license issued pursuant to title 63, chapter 10, is a revocable privilege and is not a vested property right. This section and § 63-10-317 do not create a property right or entitlement to any pharmacy license. The regulation of pharmacy ownership and control pursuant to this section constitutes a lawful exercise of the state's police power to protect public health and safety and does not constitute a taking of private property.

(j) The board shall notify the office of the attorney general and reporter of any sale, divestiture, or transfer of ownership involving a pharmacy benefits manager or affiliate that results in the acquiring entity owning or controlling more than twenty-five percent (25%) of pharmacy locations within any geographic region of this state for purposes of antitrust and market competition review.

SECTION 3. Tennessee Code Annotated, Title 63, Chapter 10, Part 3, is amended by adding the following as a new section:

**63-10-317.**

(a) No later than July 1, 2026, the board of pharmacy shall assess each active pharmacy license and shall send notice to any holder reasonably anticipated to be in violation of § 63-10-316 no later than October 1, 2026.

(b) The written notice required by subsection (a) must include:

(1) The name of each pharmacy benefits manager with a direct or indirect interest in the pharmacy;

(2) Board contact information; and

(3) A list or web address of a website listing pharmacies that are not believed to violate § 63-10-316.

(c) A licensee that receives the notice required by subsection (a) shall notify each patient and prescribing healthcare provider who has used the pharmacy within the

previous twelve (12) months no later than November 1, 2026, that the pharmacy may no longer dispense as of the date of the notice.

(d) A pharmacy affiliated with a pharmacy benefits manager may continue operations through December 31, 2026, if the pharmacy demonstrates to the board that it is actively pursuing a bona fide sale to an unaffiliated entity. For purposes of this subsection (d), "bona fide sale" means an arm's-length transfer evidenced by a written letter of intent or purchase agreement filed with the board. The board may grant a single extension, not to exceed six (6) months, upon proof of substantial progress toward completion of such sale.

(e) A pharmacy or pharmacy benefits manager aggrieved by a determination under this section may request a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any hearing must occur within sixty (60) days of filing the request for hearing, and be concluded within thirty (30) days after the date of the hearing. A stay shall not issue unless the appellant shows substantial likelihood of success and irreparable harm.

(f) An action to contest the enforcement or validity of this section or § 63-10-316 must be filed exclusively in the chancery court for Davidson County.

SECTION 4. The board of pharmacy is authorized to promulgate rules to effectuate this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 2 to SB2040

Watson  
Signature of Sponsor

**AMEND Senate Bill No. 2040\***

**House Bill No. 1959**

by deleting all language after the caption and substituting:

WHEREAS, the General Assembly finds that protecting the health and welfare of Tennesseans requires access to affordable and safely dispensed prescription medications through a fair and transparent pharmacy system; and

WHEREAS, increasing consolidation of health insurers and pharmacy benefits managers (PBMs) with pharmacies has created conflicts of interest that can restrict patient choice, increase costs, and jeopardize continuity of care; and

WHEREAS, the General Assembly recognizes the importance of promoting patient choice, preserving pharmacy access, particularly in rural and medically underserved areas, and protecting public health by preventing conflicts of interest that result in inflated costs, reduced transparency, and steering of patients to PBM-owned entities; and

WHEREAS, the General Assembly further recognizes that pharmacists play a vital role in medication safety, counseling, and chronic-disease management, and that these public health functions must be preserved through competitive and independent pharmacy access; and

WHEREAS, eliminating the conflict of interest inherent when a pharmacy benefits manager both sets and receives reimbursement, commonly described as the "fox guarding the henhouse," is necessary to ensure transparent pricing, maintain trust in the pharmacy system, and promote better health outcomes for Tennessee patients; and

WHEREAS, it is the intent of this act that it not be construed to prohibit any duly licensed, unaffiliated pharmacy from providing mail-order, specialty, or delivery-based services under new, unaffiliated ownership; and

WHEREAS, this act is intended to strengthen the integrity of Tennessee's healthcare delivery system by separating financial control from patient care decisions, improving affordability, and protecting rural and community pharmacy access; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Freedom, Access, and Integrity in Registered Pharmacy (FAIR Rx) Act."

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 10, Part 3, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Affiliate" means a person or entity that directly or indirectly controls, is controlled by, or is under common ownership or control with another entity;

(2) "Board" means the board of pharmacy;

(3) "Control" means the power, directly or indirectly, to direct, manage, or influence the operations or policies of a pharmacy, whether through ownership, contract, shared governance, overlapping management, audit authority, exclusive provider agreement, formulary management clause, or other arrangement conferring material influence over the professional practice of pharmacy, including dispensing decisions, patient steering, clinical operations, or the independent judgment of a licensed pharmacist;

(4) "Health insurance issuer" has the same meaning as defined in § 56-7-2802;

(5) "Pharmacy" has the same meaning as defined in § 63-10-204; and

(6) "Pharmacy benefits manager" has the same meaning as defined in § 56-7-3102.

(b) On and after January 1, 2028, a person or entity shall not:

(1) Directly or indirectly own, operate, control, or direct the operation of, the whole or any part of a pharmacy; and

(2) Directly or indirectly own, operate, control, or direct the operation of, the whole or any part of:

(A) A health insurance issuer; and

(B) A pharmacy benefits manager.

(c) Subsection (b) applies when the percentage of ownership interest held by a person, entity, or affiliate is greater than five percent (5%).

(d)

(1) For purposes of subsection (b), a hospital or health-system pharmacy is not a pharmacy benefits manager.

(2) This section does not limit the ability of independently owned or unaffiliated pharmacies to provide mail-order, specialty, or delivery services directly to patients of such pharmacies.

(3) This section does not apply to an FDA-designated orphan drug with limited distribution, or to a drug that is subject to an FDA-required risk evaluation and mitigation strategy (REMS) that includes limited distribution.

(e) A pharmacy that is affiliated with both a pharmacy benefits manager and a health insurance issuer in violation of subsection (b) may continue operations through December 31, 2028, if the pharmacy demonstrates to the board that it is actively pursuing a bona fide sale to an unaffiliated entity. For purposes of this subsection (e), "bona fide sale" means an arm's-length transfer evidenced by a written letter of intent or purchase agreement filed with the board. The board may grant a single extension, not to exceed six (6) months, upon proof of substantial progress toward completion of such sale.

(f)

(1) The attorney general and reporter is authorized to enforce this section.

(2) The board shall refer information of potential violations of this section to the attorney general and reporter.

(3) A violation of this section is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. Each day a violation continues constitutes a separate violation.

(g) A pharmacy, health insurance issuer, or pharmacy benefits manager aggrieved by a determination under this section may request a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any hearing must occur within sixty (60) days of filing the request for hearing, and be concluded within thirty (30) days after the date of the hearing. A stay shall not issue unless the appellant shows substantial likelihood of success and irreparable harm.

(h) An action to contest the enforcement or validity of this section must be filed exclusively in the chancery court for Sumner County.

(i) This section does not prohibit an employer from owning and operating a pharmacy or administering pharmacy benefits solely for its own employees under an employee benefit plan.

(j) This section does not apply to pharmacy services provided pursuant to a contract with the United States government for the administration of a federal healthcare program by the department of defense, department of veterans affairs, Indian health service, or office of personnel management.

SECTION 3. The board of pharmacy is authorized to promulgate rules to effectuate this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 3 to SB2040

Watson  
Signature of Sponsor

**AMEND Senate Bill No. 2040\***

**House Bill No. 1959**

by deleting subsection (i) in Section 2 and substituting:

(i) This section does not prohibit an employer from owning or operating a pharmacy or administering pharmacy benefits solely for its own employees, retirees, and dependents under an employee benefit plan.

Amendment No. 4 to SB2040

Harshbarger  
Signature of Sponsor

**AMEND Senate Bill No. 2040\***

**House Bill No. 1959**

by deleting "January 1, 2028" from subsection (b) in SECTION 2 and substituting "July 1, 2028".