

Lawmakers Target the Power of Health Insurance Giants

UnitedHealth Group, CVS Health and Cigna are battling efforts to break up their control over prescription drugs.



By **Reed Abelson** and **Rebecca Robbins**

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After years of rampant expansion into nearly every corner of the health care system, the biggest insurance conglomerates are confronting new efforts to break up their businesses.

Arguing that the companies have become too dominant, Arkansas and Tennessee passed laws that aim to prevent the companies from managing prescription benefits and running retail and mail-order pharmacies. Lawmakers in other states and in Washington have proposed similar restrictions.

In response, the three companies — UnitedHealth Group, CVS Health and Cigna — are fiercely fighting back. They and their allies have filed lawsuits, deployed lobbyists, pestered customers with texts and blanketed the airwaves with advertisements.

Hours after Gov. Bill Lee of Tennessee, a Republican, signed the new law in May, CVS sued in federal court to block it. In a matter of weeks, UnitedHealth, Cigna's Express Scripts and a trade association for the companies all followed with additional lawsuits against the legislation.

The companies said that patients would lose access to their pharmacies.

"We owe it to our patients to do everything in our power to stop these misguided laws from taking effect," said Susan Peppers, an executive overseeing Express Scripts.

At a time when affordability has become a key concern, the companies say that the laws would make prescription drugs more expensive. The laws' supporters say that dismantling the conglomerates would have the opposite effect on prices, by eliminating business practices that inflate costs.

Federal and state lawmakers who are pharmacists, doctors and nurses have been driving many of the legislative proposals, contending that the big conglomerates have harmed patient care and [pushed small drugstores out of business](#).

The lawmakers' efforts reflect growing public worry that the three conglomerates have become too large and rife with conflicts. Increasingly, Americans rely on one of the three titans for nearly all aspects of their medical care. The same company that insures them also employs their provider and dispenses their drugs.

UnitedHealth, for example, now includes a major insurer; a [pharmacy benefit manager](#), or P.B.M.; a vast network of doctors and clinicians; a chain of surgery centers; a clearinghouse that processes insurance claims; a mail-order pharmacy; and a bank.

Today, with hundreds of billions of dollars in annual revenue, the three conglomerates each rank among the largest 15 U.S. public companies by sales. None of the three were in that category as recently as 2011, according to FactSet, a financial data provider.

Critics say the conglomerates have exploited conflicts to profit from their vast array of businesses, driving up medical costs and dampening competition. For example, a P.B.M. often directs patients to its parent company's pharmacies. The P.B.M. is responsible for compensating drugstores for a patient's medications — but often pays other pharmacies less than it does its affiliated pharmacies.

Those conflicts most recently spurred Florida to [investigate](#) CVS Health, whose sprawling business encompasses an insurer, a P.B.M., clinics and the nation's largest chain of retail pharmacies.

"Here you have a situation where it appears one company has gotten so big that they are controlling market power in a way that might manipulate pricing at the cost of consumers," James Uthmeier, Florida's attorney general, said at a [news conference](#) last month.

CVS said it would work with Mr. Uthmeier to address any concerns.

In Washington, the companies face three separate federal legislative proposals, including two that echo the Arkansas and Tennessee laws. [A third bill](#) would ban ownership of both health insurers and doctors' practices, which could have far-reaching consequences for UnitedHealth and some hospital systems that operate a health plan and a vast array of physician services.

These proposals, with names like the [Break Up Big Medicine Act](#), have not gained much traction and are intended to broadcast bold ideas. But they pose a much bigger threat to the companies than do the state actions.

The idea that P.B.M.s should be severed from pharmacies has garnered support from [39 state attorneys general](#); [25 policy and advocacy groups](#); and [Mark Cuban](#), the billionaire entrepreneur who runs an online pharmacy and has been a vocal critic of the big conglomerates.

Also backing the breakup legislation are Democrats like Senator Elizabeth Warren of Massachusetts and Representative Alexandria Ocasio-Cortez of New York, and prominent Republicans like Senator Josh Hawley of Missouri and the president's son [Donald Trump Jr.](#)

"The only way to make health care more affordable is to break up these health care conglomerates," Ms. Warren said in a [news release](#) in February.

Despite high-profile endorsements, there are huge obstacles to dismantling the companies. Even after [passing legislation](#) this year regulating some of the companies' practices, most lawmakers in Washington seem to have little appetite for a drastic overhaul. The companies have enormous lobbying might. And one federal judge has already raised serious objections to the legality of the Arkansas legislation.

If the laws in Arkansas and Tennessee prevail, the companies would most likely not break up their businesses. Instead, they would probably close or sell dozens of pharmacies, which are not crucial to their bottom line. The P.B.M. units are far more profitable.



CVS Health has the nation's largest chain of retail pharmacies.Credit...Brandon Bell/Getty Images

A major step in Arkansas

In addition to the laws in Arkansas and Tennessee, similar bills have been proposed in at least eight other states but have not advanced.

State officials have reached a heightened "level of frustration" with the conglomerates, said Erin Fuse Brown, a health policy professor at Brown University. "Now we're at the point they've thrown up their hands."

A year ago, Arkansas took the first major step, passing a law that prohibited the owner of a P.B.M. from holding a pharmacy license.

"I have no problem with big business," said Jeremiah Moore, a Republican state representative who introduced the bill. "But I believe in competition, and when organizations, such as some of the P.B.M.s, don't fight fair, I believe that there are occasions for the government to step in and ensure a level playing field."

The conglomerates sued, arguing that the legislation was unconstitutional because it favored in-state businesses over outsiders. A federal judge temporarily [blocked the law](#) from going into effect, saying the conglomerates' argument would probably hold up. The case is pending.

A flurry of ads and texts in Tennessee

The Arkansas legislation caught the attention of Bobby Harshbarger, a pharmacist and Republican state senator in Tennessee. He is the son of U.S. Representative Diana Harshbarger, a Republican from Tennessee, who is also a pharmacist and among the sponsors of one of the federal bills.

Mr. Harshbarger manages Premier Pharmacy in Kingsport, Tenn., to which his family has been connected for years. (The conglomerates claim that the Harshbarger family owns the pharmacy, but the Harshbargers denied that.)

Tennessee already prohibits the companies from steering patients to their pharmacies and from shortchanging small drugstores.

Mr. Harshbarger said a more drastic fix was necessary. “Why continue to push legislation that would just be violated?” he asked. “To me, it’s to the point where it’s got to be structural.”

He went on to introduce the Tennessee bill that became law. He called the companies’ warnings “fear-mongering,” saying they would not have to close pharmacies to comply.

In their lawsuits, the companies said the disruption would be worst for older and more rural patients who rely on mail-order pharmacies and specialized services, like nurses who make home visits. They claim the legislation is a thinly veiled attempt to prevent them from doing business in Tennessee.

The law’s true purpose, CVS argued in its lawsuit, is “protecting local pharmacies against out-of-state competitors.”

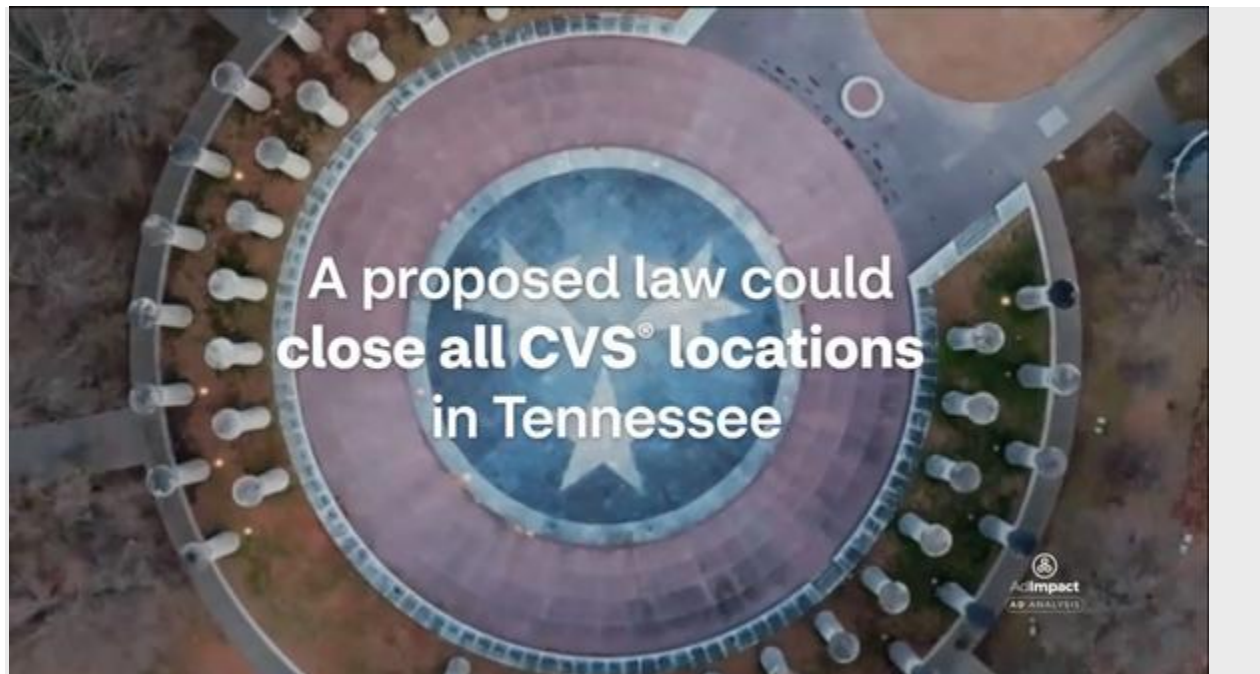
Of the state’s more than 1,000 retail pharmacies, CVS said it had 134 retail pharmacies that would have to close or be sold. In its lawsuit, the company said that the law would bar it from mailing treatments to state residents, and cited the examples of Sunlenca, an H.I.V. drug, and Balversa, a bladder cancer drug.

In its lawsuit, UnitedHealth said Tennessee’s law would force it to close or divest 20 pharmacies that specialize in serving people with severe mental health issues and chronic health conditions.

“These laws reduce access to affordable, reliable care and destabilize safety-net services that improve health outcomes for patients,” said Robert Josephson, a spokesman for UnitedHealth.

Express Scripts said it would have to close and relocate a major warehouse-based pharmacy in Memphis that serves patients nationwide.

In the four months leading up to the Tennessee bill's passage, CVS spent at least \$3 million on advertising to try to defeat it, according to AdImpact, an advertising tracking firm.



A screenshot of an advertisement from CVS warning Tennessee residents about the legislation there.

A dark money group, Shaping Health Initiatives for Tomorrow, which does not disclose its funding sources, spent at least \$1.5 million. The group [ran advertisements](#) attacking several Tennessee lawmakers for supporting the legislation, claiming they were “working against” President Trump’s [TrumpRx website](#) and his “plan to lower drug costs.” The group and its lawyer did not return requests for comment.

CVS took the fight directly to its customers. Using its text threads that remind people to pick up their prescriptions, CVS in early March sent a mass message to Tennessee customers. It warned them that their pharmacy was at risk of closing and linked to a form to [contact their elected officials](#).

Less than two weeks later, Tennessee’s attorney general, Jonathan Skrmetti, told the company to stop trying to influence its customers through messages.

“My office has received reports from Tennessee consumers that CVS is abusing customer trust — and violating state law — by misusing the pharmacy text system to send political advocacy messages,” he said in a letter.

David Whitrap, a spokesman for CVS, said the company did not send more text messages on the subject.

Reed Abelson covers the business of health care, focusing on how financial incentives are affecting the delivery of care, from the costs to consumers to the profits to providers.

Rebecca Robbins is a Times reporter covering the pharmaceutical industry. She has been reporting on health and medicine since 2015