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MARKUP ON:

H.R. 2666, NO RATE REGULATION OF BROADBAND INTERNET ACCESS ACT; AND

H.R. 4725, COMMON SENSE SAVINGS ACT OF 2016

MONDAY, MARCH 14, 2016

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The committee met, pursuant to call, at 5:03 p.m., in Room 2322, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Pitts, Kinzinger, Pallone (ex officio), Schakowsky, and Kennedy.

Staff Present: Jen Berenholz, Chief Clerk; Christine Brennan, Press Secretary; Jeff Carroll, Staff Director; David Goldman, Chief Counsel, Communications and Technology; Waverly Gordon, Professional Staff Member; Tiffany Guarascio, Deputy Staff Director and Chief Health

Advisor; Jerry Leverich, Counsel; Lori Maarbjerg, FCC Detailee; Tim Robinson, Chief Counsel; Matt Schumacher, Press Assistant; Ryan Skukowski, Policy Analyst; Andrew Souvall, Director of Communications, Outreach and Member Services; Gary Andres, Minority Staff Director; Mike Bloomquist, Minority Deputy Staff Director; Leighton Brown, Minority Deputy Press Secretary; Karen Christian, Minority General Counsel; Paul Edattel, Minority Chief Counsel, Health; Giulia Giannanageli, Minority Legislative Clerk, CMT; Peter Kielty, Minority Deputy General Counsel; Carly McWilliams, Minority Professional Staff Member, Health; Tim Pataki, Minority Professional Staff Member; Graham Pittman, Minority Legislative Clerk; David Redl, Minority Chief Counsel, Telecom; Adrianna Schneider, Minority Legislative Associate, Health; and Heidi Stirrup, Minority Health Policy Coordinator.

The Chairman. All right. The committee will come to order. The Chair recognizes himself for an opening statement.

Today we are kicking off proceedings to mark up two bills, H.R. 2666, the No Rate Regulation of Broadband Internet Access Act, authored by Mr. Kinzinger, and H.R. 4725, the Common Sense Savings Act of 2016, authored by Health Subcommittee Chairman Pitts.

We will first consider H.R. 2666, which will help ensure a promise, from the administration, is kept regarding how broadband is regulated. When the FCC reclassified access to the Internet as the utility under Title II of the Communications Act we were assured by President Obama and Chairman Wheeler, that the commission was not going to use Title II to regulate rates for broadband. The bill will enshrine a commitment into law simply ensuring that the FCC cannot use its self-declared expansive authority over the Internet to engage in rate regulation. This means no tariffing and no use of rulemaking, or enforcement powers to pass judgment on the rates charged to ISPs customers for delivery of broadband data.

At the subcommittee level we heard some concerns over the way the bill would impact the FCC's authority over truth in lending, universal service, and fraud. I understand that Chairman Walden plans to offer an amendment to address these concerns. Unfortunately, in our negotiations we were asked to accept modifications that would still allow the FCC to regulate at its discretion. These changes would be inconsistent with the President's statement, with Chairman Wheeler's statement, and ultimately create an exception that would swallow that

rule.

This should not be a controversial bill. President Obama has said that there shouldn't be rate regulation of broadband, Chairman Wheeler has said same to multiple committees in both the House and the Senate. This bill ensures that these promises are kept by future commissions. It is a good bill that deserves our support.

We are also considering H.R. 4725, the Common Sense Savings Act of 2016. We are on an unsustainable fiscal path. And it will be future generations in Michigan, and across the country, that will pay the price if we do not get our fiscal house in order. This effort to save \$30 billion, over the next decade, is a responsible step in the right direction.

Among the commonsense reforms included is ending Medicaid for lottery winners. An idea for this reform came from events in Michigan where the State was forced to continue to provide taxpayer funded Medicaid benefits to a multimillion dollar lottery winner.

This fix will help ensure States across the country will be able to concentrate their limited and precious resources on the most vulnerable. We also seek to eliminate enhanced Medicaid payments for prisoners. Under the President's healthcare law, Medicaid currently pays a larger share of healthcare expenses for prisoner populations compared to many disabled children and pregnant moms. This provision levels the playing field and reduces Medicaid reimbursement rates paid to States for services for those who are incarcerated.

The bill also reforms the illogical changes made to the SCHIP

under the President's health law, which upset the Federal State balance by increasing Federal financial responsibility. This reform would help ensure that SCHIP remains a true partnership between the Federal Government and States by returning matching rates to normal levels.

CBO has said that this reform would stretch Federal dollars in helping to ensure that these vital dollars are available to provide coverage to children in the future. Common Sense Reform is like moving million dollar jackpot winners off the taxpayers' dime, it deserves our support. Reforms that also strengthen Medicaid in the SCHIP programs so they can better serve the most vulnerable who rely on most critical services.

With that, I would recognize the gentleman from New Jersey, the ranking member, my good friend, for 5 minutes for an opening statement.

[The prepared statement of The Chairman follows:]

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Mr. Pallone. Thank you, Mr. Chairman. Today we are considering two unnecessary and I believe dangerous bills, the No Rate Regulation of Broadband Internet Access Act, and the so-called Common Sense Savings Act.

Let me first say regarding the so-called Common Sense Savings Act we made a budget deal already. A deal is a deal. Putting everyone through a meaningless exercise because the Republican Party is in disarray, and unable to govern, is simply a waste of time, especially considering the incredibly pressing issues before this committee. And it is worth mentioning that nothing in this bill is common sense or saving anything. It doesn't pull any cost out of system or bend the cost curve. Instead, the legislation merely shifts costs on to States, thus leaving a gaping budget hole for financing care for our most vulnerable populations.

We are talking about forcing States to cut access to benefits in health coverage for low-income children, the frail elderly, the severely physically, or intellectually disabled.

I also find it unbelievable that in the midst of serious public health crisis Republicans have again proposed to eliminate the prevention and public health fund placing Americans health at risk. This legislation would defund critical public health investments in efforts such as preventing childhood lead poisoning, and building epidemiology and arbitrary capacity to respond to infectious disease outbreaks like Zika.

The Common Sense Savings Act is a sham of a bill thrown together

at the last minute to once again appease the extreme right of the House Republican Conference. It has no chance of becoming law and I strongly oppose its passage.

The second bill we are considering is, I think, a deceptively simple communications bill. It says only that the FCC may not regulate rates. But as many experts have pointed out, the term rate regulation could mean anything. While the Republicans claim they intend the bill to be narrow, we have heard over and over that the draft could swallow vast sections of the Communications Act. Most notably as written, the bill could undermine the FCC's ability to protect consumers.

Democrats have repeatedly offered help to improve this bill and I continue to be willing to work on a bill that prevents the FCC from setting rates, but I have also said that I can't allow the bill to undermine the FCC's core mission. For instance, I can't support a bill that prevents the agency from acting in the public interest. I can't support a bill that prevents the agency from protecting consumers from discriminatory practices. And I can't support a bill that undercuts the FCC's net neutrality rules.

If Republicans are truly serious about passing a narrow bill, accomplishing these goals should not be hard. Our collective interests should be aligned. Unfortunately previous attempts to compromise have failed so far. I therefore, encourage my colleagues to support amendments offered by Ranking Members Eshoo and Congresswoman Matsui. Together these amendments can accomplish many of the Republicans goals without the same risk to consumers.

And I believe these amendments offer a fair compromise, but without those changes, I can't support the underlying legislation. Instead of being partisan, I urge my Republican colleagues to work with us to find a solution that is equitable to everyone. And I yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

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The Chairman. The chairman yields back. Thank you. The Chair would recognize the chairman of the Health Subcommittee, Mr. Pitts for 3 minutes, for an opening statement.

Mr. Pitts. Thank you, Mr. Chairman. We have an opportunity to approve commonsense measures that will begin to reduce the Federal deficit through reforms in spending under Medicaid, CHIP and the prevention of public health fund. Many of these commonsense measures are not new to this committee as we have considered them previously in the Health Subcommittee, or in the budget reconciliation and instructions.

First I would like to remind the committee members why we are here today. Federal spending on our largest healthcare entitlements is the largest driver of Federal debt and annual budget deficits. In its long-term budget outlook the Congressional Budget Office recently warned that our current spending path will soon lead to the return of trillion dollar annual deficits, thus raising the likelihood of another fiscal crisis like the Great Recession.

Thankfully this future need not be our fate. We can make changes now to avoid a crisis in the future. And the bill before us would reduce the Federal deficit by about \$30 billion over a decade. About \$15 billion of those savings would come from Medicaid and CHIP.

During that time total Medicaid spending alone is projected to total more than \$8.3 trillion. The savings in this bill represents less than .2 percent of that amount.

Second, let me briefly comment on the importance of policies in

H.R. 4725, the Common Sense Savings Act. Section 2 of this bill would change how States calculate the treatment of lottery winnings, and other lump sum income, when assessing the income eligibility of a person who has applied for Medicaid coverage. This is important because today, large dollar lottery winners actually still receive Medicaid benefits. That is because Medicaid rules count lump sum payments only in the month they are received. Which means individuals are able to retain their Medicaid benefits even after winning millions in the lottery. Sadly, this change is needed. As just one example, a State reported to us that a family was receiving Medicaid even after the father won over \$440,000 in the lottery. This bill makes the commonsense change to require States to count tens of thousands of dollars of winnings when determining if an applicant is eligible.

Next, section three of the bill, would eliminate the enhanced Federal Medicaid match for prisoners. While Medicaid does not typically pay for health care for prisoners, under the rules of the books, Medicaid can pay for prisoners' healthcare costs if they are in an inpatient facility for more than 24 hours, and otherwise meet eligibility criteria for State Medicaid programs.

The Affordable Care Act's enhanced matching rate for childless adults means that today, in many States, the Federal Government is paying for a greater portion of the cost of care for prisoners than it is for mothers, and children, or the disabled. Surely this is an unintended consequence of the ACA. So this provision will eliminate the enhanced Federal matching assistance program rate just for such

prisoners.

The bill also extends a previous Medicaid threshold applied for determining acceptable provider taxes, and sunsets PPACA increase, and increased FMAP under CHIP. And finally section 6 of the bill repeals the prevention public health fund created by section 4002 of the Affordable Care Act.

My colleagues will recall my longstanding interest in seeing that part of the healthcare law repealed, as I have repeatedly sponsored bills to do just that. Under current law, the Secretary of Health and Human Services has the full authority to use this account to fund any programs or activities under Public Health Service Act that she chooses, without congressional input, approval, or oversight. Keep in mind this funding is over and above the amount that Congress has already decided should go to such activities and the amount that Congress has already appropriated for these activities.

The wide secretarial discretion in deciding how to allocate mandatory funds should concern every Member of Congress. This is a slush fund from which the Secretary can fund pet projects without any congressional oversight or approval. Because there are so few restrictions on the funding no one here can tell us what the funding will be used for in the next decade or beyond. Not only can we not influence how the money will be spent, we can't even predict it. So by eliminating the fund, we are reasserting Congress' appropriate role in prioritizing Federal taxpayer dollars spent on Federal priorities. Thank you, Mr. Chairman. I yield back.

[The prepared statement of Mr. Pitts follows:]

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The Chairman. The gentleman's has time expired.

The Chair recognizes the gentleman from Texas, the ranking member of the Health Subcommittee, Mr. Green, for an opening statement.

Mr. Green. Thank you, Mr. Chairman. And I am deeply disappointed in the inaccurately named Common Sense Savings Act which would again cut programs to the people with limited incomes and vulnerable population seeking to balance the budget on the backs of those most in need.

The policies included in H.R. 4725 would increase the ranks of the uninsured and harm low-income families. The bill would cut Medicaid, children's health programs by repealing a boost in Federal matching rate for the children's health insurance program, and cruelly kicking low-income kids off the Medicaid program.

The enhanced match was maintained in the Medicare Access and CHIP Reauthorization, which was signed into law last year after being voted for by an overwhelming majority of the House. This marks another attack on the Affordable Care Act and this time at the expense of America's children.

At the same time the bill unduly restricts State's ability to use healthcare provider taxes to help finance their Medicaid programs. Provider taxes are a critical source of revenue for every State except Alaska. Restricting a State's decision to use this revenue stream will have serious consequences for low-income families, and States will be forced to cut Medicaid, to offset the loss of funds, and would likely be deterred from Medicaid expansion. Yet again attempts to repeal the

prevention and public health fund.

This short-sighted policy will significantly roll back funding for preventive health measures such as child immunization programs, programs to reduce tobacco use, and efforts to prevent heart disease, stroke, and diabetes. The fund provides \$16.5 billion to improve preventive health, public health quality, and overall health outcomes. Primary through the Centers for Disease Control and Prevention, it funds vital initiatives like those that strengthen State and local entities ability to respond to infectious diseases, prevent lead poisoning in children, reduce racial disparities in healthcare access, and health outcomes.

H.R. 4725 is a transparent effort to generate support for our fiscal year 2017 budget resolution on the House floor and is not worthy of our great committee. We should be using this time to strengthen Medicaid and CHIP and advanced efforts on prevention so we can meaningfully bend the healthcare curve and improve the overall health of the American people.

I am strongly opposed to the FCC setting rates on the Internet broadband access, government intrusion into what services should cost, particularly when there is a competitive growing marketplace for broadband access is not only unnecessary, but harmful to consumers and innovation. That is why I am disappointed in the failure to find an agreement on No Rate Regulation and Broadband Internet Access Act.

There is a bipartisan support for rate regulation, legislation that would promote innovation and broadband deployment and ensure our

country continues to be the world leader in digital economy. I am hopeful that an agreement may be found before tomorrow morning that I can support. This issue is too important to fail over partisan bickering.

And I thank you, and I yield back my time.

[The prepared statement of Mr. Green follows:]

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The Chairman. The gentleman's time has expired. The Chair will now recognize the gentleman from Illinois Mr. Kinzinger for 3 minutes.

Mr. Kinzinger. Well thank you, Mr. Chairman. I want to thank you for holding the markup, and more specifically, for going through regular order on H.R. 2666, legislation I introduced to ensure a more stable and effective regulatory environment for broadband customers across this country.

You know, over a year ago we were able to start this process by holding hearings in our committee with Chairman Wheeler, as well as, with members from the stakeholder community, to gain a better understanding of the implementation of the regulatory regime that was placed upon us through the Open Internet Order, as well as the potential impact of those regulations on businesses and consumers.

Since that time, our committee has been working diligently on completing the background work necessary to bring the No Rate Regulation of Broadband bill before us today.

It is straightforward and a narrowly tailored piece of legislation which is a way of ensuring through statute that the FCC will not be in the business of regulating the Internet rates of private industry through tariffs or enforcement actions.

Although Chairman Wheeler has given our committee his word that he will not use this new authority to regulate rates, his word does not bind any future chairman to that same oath, which is why we feel there is a need to move quickly to enshrine this commitment into statute.

It is for this reason that I proposed the text in H.R. 2666, to the chairman, during one of our oversight hearings. The text in question was straightforward, would you, Mr. Wheeler, support legislation that stated quote, "notwithstanding any other provision of the law the FCC may not regulate the rates charged for broadband Internet access service." In front of this very committee, the chairman agreed with that language. Not only that, but then Chairman Wheeler was asked the same question by my colleague on the other side of the Capitol. In that hearing Senator Boozman posed the same question to the chairman and once again Chairman Wheeler reiterated his support for the premise of this legislation.

In our hearing since that time a number of valid questions have been brought forward expressing concerns that the wording of this bill may impact some additional areas of the regulatory environment. It is not my intention to bring into the conversation many, or frankly any of those issues, which is why I am still open to making changes to the legislation to ensure we keep the purpose and intent of this bill intact.

As we progress through this markup, it is my hope that all of my colleagues on this committee will be able to vote not only for the amendments we will be offering to tailor this legislation, but ultimately to support its final passage as it heads to the floor of the House. With that, Mr. Chairman, I would ask everyone on the committee to support the effort and I yield back.

[The prepared statement of Mr. Kinzinger follows:]

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The Chairman. The gentleman yields back. The Chair recognizes the gentleman from Massachusetts, Mr. Kennedy, for an opening statement.

Mr. Kennedy. Thank you very much, Mr. Chairman. I appreciate you calling an important hearing. I don't have an opening statement to offer, however, so I will bless everybody by yielding back.

The Chairman. You yield back? Your presence will be duly noted, especially when the markup continues tomorrow.

With that the chair recognizes the gentlelady, my friend from Chicago, Ms. Schakowsky for 3 minutes.

Ms. Schakowsky. Thank you, Mr. Chairman. And Mr. Kennedy, I feel blessed. Thank you. So I do have major concerns of both the bills that we are marking up, H.R. 2666 as its name states for quote, "No Rate Regulation of Broadband Internet Access" unquote. Unfortunately, the bill as introduced is overbroad and could go much further than that.

It sounded to me like my colleague from Illinois, Mr. Kinzinger, was saying that it was not his intention to go much further, and so there may be amendments that we could support. But I do urge my colleagues to make sure that the bill is narrow and focused enough to best serve consumers.

I also want to express my strong opposition to H.R. 4725 the so-called Common Sense Savings Act, which truly is not common sense as it shifts Medicaid costs to States, makes it harder for individuals to stay on Medicaid, and eliminates the Federal Government's only

dedicated investment in prevention.

Despite claims that a provision in this legislation would simply prevent lottery winners from receiving Medicaid it would -- and in Illinois the issue is, do you actually get the money if you win the lottery, because so far that has been a question -- it would actually remove many deserving children because Medicaid eligibility is determined by household income. Children in these households have not collected any winnings, or lump sum payments, and yet this bill would result in these children losing Medicaid coverage. I really ask my colleagues did you really come here to take health care from little children?

Moreover this provision is unnecessary CMS already requires enrollees to notify their State Medicaid agency if they have any change in income, and Affordable Care Act implemented additional safeguards to detect when an individual's income increases.

I also strongly oppose the proposal to eliminate the public and prevention health fund. Eliminating funding for prevention is incredibly short-sighted and will only increase health costs in the long run. The reason the Affordable Care Act has slowed the rise of healthcare costs is because it invests in prevention by increasing investments in public health programs and through access to free preventive care in both private and public insurance.

Chronic diseases like obesity and diabetes account for 86 percent of healthcare costs in the United States, investing in public health is one of the smartest investments we can make. My home State of

Illinois has received \$92 million from the fund since its creation in 2010. And these funds have helped to create programs, for example, prevent diabetes, assist smoking cessation, reduce childhood obesity.

And finally I oppose efforts that would make it harder for States to finance their portion of Medicaid program as the legislation would do. Many States, including Illinois, use provider assessments to ensure stability in their Medicaid program by restricting States abilities to create financing policies that work for them we are placing a greater burden on States that are already struggling to finance their Medicaid programs and I will submit the full statement for the record. I yield back.

[The prepared statement of Ms. Schakowsky follows:]

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The Chairman. The gentlelady yields back. I would note that the Chair reminds all members that pursuant to committee rules all members' opening statements will be made part of record.

Are there further opening statements?

Seeing none the Chair would call up H.R. 2666 and ask the clerk to report.

The Clerk. H.R. 2666, to prohibit the Federal Communications Commission from regulating the rates charged for broadband Internet access service.

[The bill follows:]

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The Chairman. And without objection the first reading of the bill is dispensed with. And the bill will be open for amendment at any point, so ordered.

We are now on H.R. 2666 as noted. The committee will reconvene tomorrow at 10 o'clock downstairs, the big House. I remind members that the chair will give priority recognition to bipartisan amendments. I look forward to seeing all of you tomorrow. Without objection the committee stands in recess.

[Whereupon, at 5:26 p.m., the committee recessed to reconvene at 10:00 a.m., Tuesday, March 15, 2016.]