

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
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MEMORANDUM

April 26, 2016

To: Committee on Energy and Commerce Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Full Committee Markup of Health, Communications, and Energy Bills

On **Tuesday, April 26, 2016, at 5:00 p.m. in room 2123 of the Rayburn House Office Building**, the Committee on Energy and Commerce will convene a markup for the purpose of delivering opening statements on 22 bills.

The Committee will reconvene on Wednesday, April 27, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, to begin consideration of the bills. On Thursday, April 28, the Committee will reconvene to complete consideration of the bills. The following bills will be considered:

- H.R. 4978, Nurturing and Supporting Healthy Babies Act;
- H.R. 4641, To provide for the establishment of an inter-agency task force to review, modify, and update best practices for pain management and prescribing pain medication, and for other purposes, as amended by the Subcommittee on Health;
- H.R. 3680, Co-Prescribing to Reduce Overdoses Act of 2015, as amended by the Subcommittee on Health;
- H.R. 3691, Improving Treatment for Pregnant and Postpartum Women Act;
- H.R. 1818, Veteran Emergency Medical Technician Support Act of 2015;
- H.R. 4981, Opioid Use Disorder Treatment Expansion and Modernization Act, as amended by the Subcommittee on Health;
- H.R. 3250, DXM Abuse Prevention Act of 2015;
- H.R. 4969, John Thomas Decker Act of 2016, as amended by the Subcommittee on Health;
- H.R. 4586, Lali's Law, as amended by the Subcommittee on Health;
- H.R. 4599, Reducing Unused Medications Act of 2016, as amended by the Subcommittee on Health;

- H.R. 4976, Opioid Review Modernization Act of 2016;
- H.R. 4982, Examining Opioid Treatment Infrastructure Act of 2016;
- H.R. 4889, the Kelsey Smith Act of 2016, as amended by the Subcommittee on Communications and Technology;
- H.R. 4167, Kari's Law Act of 2015;
- H.R. 4111, Rural Health Care Connectivity Act of 2015;
- H.R. 4190, Spectrum Challenge Prize Act of 2015;
- H.R. 3998, Securing Access to Networks in Disasters Act;
- H.R. 2031, Anti-Swatting Act of 2015;
- H.R. 2589, A bill to amend the Communications Act of 1943 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption;
- H.R. 2592, A bill to amend the Communications Act of 1934 to require the Federal Communications Commission to publish on the website of the Commission documents to be voted on by the Commission;
- H.R. 2593, A bill to amend the Communications Act of 1934 to require identification and description on the website of the Federal Communications Commission of items to be decided on authority delegated by the Commission; and,
- H.R. _____, Pipeline Safety Act of 2016.

I. H.R. 4978, NURTURING AND SUPPORTING HEALTHY BABIES ACT

This legislation, introduced by Representatives Bustos (D-IL) and Jenkins (R-KS), authorizes a GAO study to assess the prevalence of Neonatal Abstinence Syndrome (NAS) in the Medicaid program. This study will also examine available treatments for NAS, cost of treatment, and any access barriers to treatment. The GAO is directed to complete the study within one year of enactment. At the subcommittee markup, H.R. 4978 was favorably forwarded to the full committee by a voice vote.

II. H.R. 4641, INTER-AGENCY TASK FORCE TO REVIEW, MODIFY, AND UPDATE BEST PRACTICES FOR PAIN MEDICATION, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

Representatives Kennedy (D-MA) and Brooks (R-IN) introduced H.R. 4641 on February 26, 2016. This legislation was adapted from Section 3 of H.R. 2805, the Heroin and Prescription Drug Abuse Prevention, Education, and Enforcement Act of 2015. The subcommittee held a legislative hearing on H.R. 2850 on October 8, 2015. H.R. 4641 would create an Inter-Agency Task Force, composed of representatives of federal agencies and departments as well as external stakeholders, to review, modify, and update best practices for pain management and prescribing pain medication. The task force would also submit a report to Congress detailing the strategy for disseminating those best practices, the feasibility of linking best practices to receiving and renewing DEA registration to prescribe scheduled substances, and recommendations on how to effectively apply best practices at medical facilities. At the subcommittee markup, a technical amendment to H.R. 4641, offered by Representative Kennedy, was adopted by a voice vote.

III. H.R. 3680, CO-PRESCRIBING TO REDUCE OVERDOSES ACT OF 2015, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

Representative Sarbanes (D-MD) introduced H.R. 3680, the Co-Prescribing to Reduce Overdose Act, on October 1, 2015. The subcommittee held a legislative hearing on this legislation on October 8, 2015. H.R. 3680 would create a demonstration grant program for entities to establish programs for prescribing of naloxone to patients at an elevated risk of overdose as well as to a close relative of such patient. The bill would provide grant funding to eligible entities to train health care providers and pharmacists on co-prescribing, to establish mechanisms for tracking patients and their health outcomes for program evaluation, to purchase naloxone, to offset patient cost-sharing associated with naloxone, to conduct community outreach to raise awareness of naloxone prescribing practices, and to establish protocols to connect patients who have experienced a drug overdose with appropriate treatment. The bill would authorize \$4,000,000 in annual appropriations for each of fiscal years 2017 through 2021. At the subcommittee markup, a technical amendment, offered by Representative Sarbanes, and an amendment to replace state guidelines with federal best practices, offered by Representative Griffith, were adopted by a voice vote.

IV. H.R. 3691, IMPROVING TREATMENT FOR PREGNANT AND POSTPARTUM WOMEN ACT OF 2015

Representative Lujan (D-NM) introduced H.R. 3691, the Improving Treatment for Pregnant and Postpartum Women Act of 2015 on October 6, 2015. The subcommittee held a legislative hearing on this legislation on October 8, 2015. H.R. 3691 would reauthorize the Pregnant and Postpartum Women (PPW) program, and creates a pilot program to allow for up to 25 percent of the grants to be made for outpatient treatment services. This will allow for greater flexibility for state substance abuse agencies to provide access to treatment, and address gaps in services furnished to pregnant women along the continuum of care. The bill would increase the authorization of this program to \$40,000,000 for each of fiscal years 2016 through 2020. At the subcommittee markup, H.R. 3691 was favorably forwarded to the full committee by a voice vote.

V. H.R. 1818, VETERAN EMERGENCY MEDICAL TECHNICIAN SUPPORT ACT OF 2015

Representatives Capps (D-CA) and Kinzinger (R-IL) introduced H.R. 1818, the Veteran Emergency Technician Support Act of 2015 on April 15, 2015. The subcommittee held a legislative hearing on the draft version of this legislation on January 27, 2016. Additionally, during the 113th Congress, the Committee passed this bill by voice vote on February 12, 2013. H.R. 1818 would authorize a demonstration grant program for states to inform government and other stakeholders on ways to streamline certification and licensure requirements for returning veterans with military emergency medical technician (EMT) training, to become emergency medical technicians in their states. At the subcommittee markup, H.R. 1818 was favorably forwarded to the full committee by a voice vote.

VI. H.R. 4981 OPIOID USE DISORDER TREATMENT EXPANSION AND MODERNIZATION ACT, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

Representatives Tonko (D-NY) and Buschon (R-IN) introduced H.R. 4981 on April 18, 2016. This legislation was adapted from H.R. 2536, the Recovery Enhancement for Addiction Treatment Act, and H.R. 2872, the Opioid Addiction Treatment Modernization Act. The subcommittee held a legislative hearing on H.R. 2536 and H.R. 2872 on October 8, 2015. H.R. 4981, as introduced, would expand access to buprenorphine by lifting the current cap on the number of patients physicians can treat with buprenorphine from 100 to 250 and by allowing nurse practitioners and physician assistants to treat up to 100 patients with buprenorphine. The legislation does not apply any new standards on the treatment of patients under the existing cap limit of 100 but includes new quality requirements on physicians who treat patients above 100 to ensure those providers maintain quality treatment practices while treating an increased buprenorphine treatment load. At the subcommittee markup, an amendment, offered by Representative Bucshon to make technical changes to the bill, was adopted by voice vote. An amendment to increase the buprenorphine patient cap to 300, offered by Ranking Member Pallone at subcommittee markup, was defeated by a voice vote.

VII. H.R. 3250, DXM ABUSE PREVENTION ACT OF 2015

H.R. 3250, introduced by Representatives Matsui (D-CA) and Johnson (R-OH), would establish national requirements to prevent those under the age of 18 from purchasing Dextromethorphan (DXM). This legislation would require retailers to have verification systems in place to ensure those under the age 18 cannot purchase DXM, and would prevent the possession, receipt, and distribution of unfinished DXM by entities not registered or licensed with the federal or state government. Violations would result in escalating civil monetary penalties. This legislation is supported by: American Association of Poison Control Centers (AAPCC), Community Anti-Drug Coalitions of America (CADCA), Consumer Healthcare Products Association (CHPA), Drug Abuse Resistance Education (D.A.R.E.), National Association for Alcoholism and Drug Abuse Counselors (NAADAC), National Association of School Nurses (NASN), Partnership for Drug-Free Kids, among others. At the subcommittee markup, H.R. 3250 was favorably forwarded to the full committee by a voice vote.

VIII. H.R. 4969, JOHN THOMAS DECKER ACT OF 2016, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

This legislation, led by Representative Meehan (R-PA) directs the Secretary to issue a report determining the extent to which informational materials and resources are available to teenagers and adolescents who play youth sports on the issue of youth sports injuries for which opioids are potentially prescribed and potentially lead to addiction, the dangers of opioid use and misuse, treatment options for injuries that do not involve the use of opioids, and how to seek treatment for addiction. The legislation also directs the Secretary to develop and disseminate such informational materials, taking into consideration the findings of the report. At the subcommittee markup, a technical amendment offered by Chairman Pitts was adopted by a voice vote.

IX. H.R. 4586, LALI'S LAW, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

This legislation, led by Representatives Dold (R-IL) and Clark (D-MA), creates a grant program for states to develop standing orders and to educate health care professionals regarding the dispensing of opioid overdose reversal medications without person-specific prescriptions. To be eligible for grant funding, the state must have authorized standing orders regarding opioid overdose medications. Preference is given to states that (1) have not issued standing orders regarding opioid overdose reversal medications; (2) authorize standing orders that permit community-based organizations, substance abuse programs, or other nonprofit entities to acquire, dispense, or administer opioid overdose reversal medication; (3) authorize standing orders that permit emergency responders to administer opioid overdose reversal medication; (4) have a higher per capita rate of opioid overdoses than other applicant States; or (5) meet any other criteria deemed appropriate by the Secretary. It authorizes \$10,815,000 for the period of fiscal years 2016 through 2019 for these purposes. At the subcommittee markup, a technical amendment offered by Chairman Pitts was adopted by a voice vote.

X. H.R. 4599, REDUCING UNUSED MEDICATIONS ACT OF 2016, AS AMENDED BY THE SUBCOMMITTEE ON HEALTH

Current Drug Enforcement Administration regulations allow pharmacists to partially fill prescriptions for Schedule III, IV, and V substances¹, however, Schedule II substances can only be partially filled in long term care settings or to terminally ill patients when the full prescription cannot be supplied.² While these regulations do not prohibit partially filling prescriptions for Schedule II substances in other situations, the DEA has acknowledged that the regulations may need to be amended to provide clarity as to when partial fill of Schedule II substances allowable.³ H.R. 4599, introduced by Representatives Clark (D-MA) and Stivers (R-OH), would clarify when Schedule II prescriptions may be partially filled under the Controlled Substances Act.

During consideration by the Subcommittee on Health, an amendment in the nature of a substitute offered by Representative Kennedy (D-MA) was adopted that further targeted when Schedule II prescriptions may be partially filled. In addition to the circumstances outlined in current DEA regulations, the AINS would also allow partial fill of Schedule II substances if requested by a doctor or patient, as long as the prescription is written and dispensed according to federal and state law. It further makes clear that remaining portions of a partially filled prescription for a Schedule II substance may not be filled later than 30 days after the date the prescription is written. H.R. 4599, as amended, was favorably forwarded to the full committee by a voice vote.

¹ 21 CFR §1306.23 (1997).

² 21 CFR §1306.13 (2010).

³ DEA Response to Senate.

XI. H.R. 4976, OPIOID REVIEW MODERNIZATION ACT OF 2016

On February 4, 2016, FDA announced an action plan that outlines the role the agency will play in helping to combat the opioid abuse crisis. These steps include: convening an expert advisory committee before approving any new drug application for an opioid that does not have abuse-deterrent properties; consulting with the Pediatric Advisory Committee regarding a recommendations for a framework for pediatric opioid labeling before any new labeling is approved; updating the Risk Evaluation and Mitigation Strategy (REMS) program for extended-release and long-acting opioids regarding prescriber training; strengthening postmarket requirements; and expanding access to abuse-deterrent formulations, among other steps.⁴

H.R. 4976, the Opioid Review Modernization Act, introduced by Representatives Maloney (D-NY) and Lance (R-NJ), would require FDA to work closely with expert advisory committees before making critical product approval and labeling decisions, and to make recommendations regarding education programs for prescribers of extended-release and long-acting opioids. Further, it would encourage the development and approval of generic opioids with abuse-deterrent properties. At the subcommittee markup, H.R. 4976 was favorably forwarded to the full committee by a voice vote.

XII. H.R. 4982, EXAMINING OPIOID TREATMENT INFRASTRUCTURE ACT OF 2016

This legislation, led by Representative Foster (D-IL), directs GAO to conduct a study on the inpatient and outpatient treatment capacity of the U.S. within 24 months. It directs the agency to examine, to the extent that data is available, the capacity of acute residential or inpatient detoxification programs, inpatient clinical stabilization programs, transitional residential support services, and residential rehabilitation programs, geographic differences in the availability of residential and outpatient treatment and recovery programs for substance use disorders, the availability of residential and outpatient treatment programs that offer treatment options based on reliable scientific evidence of efficacy for the treatment of substance use disorders, including the use of FDA-approved medications, the number of patients in residential and specialty outpatient treatment services for substance use disorders, and an assessment of the need for residential and outpatient treatment for substance use disorders across the continuum of care. At the subcommittee markup, H.R. 4982 was favorably forwarded to the full committee by a voice vote.

XIII. H.R. 4889, THE KELSEY SMITH ACT, AS AMENDED BY THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

H.R. 4889, introduced by Representative Yoder (R-KS), would require—rather than use the permissive standard under current law— wireless carriers to furnish to law enforcement officials the “best available location information” upon request. Wireless carriers would be required to turn over data for (1) a device used to make a 9-1-1 call or (2) a device reasonably

⁴ FDA, Fact Sheet – FDA Opioids Action Plan, (online at: <http://www.fda.gov/NewsEvents/Newsroom/FactSheets/ucm484714.htm>).

believed to be in the possession of an individual that law enforcement reasonably believes is in an emergency situation involving the risk of death or serious physical harm.

Under the Communications Act, wireless carriers may provide location data to a user's family members during an "emergency situation that involves the risk of death or serious physical harm."⁵ In responding to a request, the wireless carrier must determine whether a given situation is an emergency that involves risk of death or serious bodily harm.⁶

During the 113th Congress, the Committee on Energy and Commerce considered another version of the Kelsey Smith Act. Several Democratic members of the committee raised concerns that the version of the bill being considered risked violating consumers' privacy and Fourth Amendment rights. The committee amended the bill to address some of these concerns and then the Committee favorably reported the amended bill.

Specifically, the committee adopted Democratic amendments that would require law enforcement to make a showing closer in line with the standard required under the Fourth Amendment before forcing a carrier to hand over a private citizen's location data.⁷ Even with these improvements, civil liberties groups continued to raise concerns that the amended bill could give the government sweeping new powers to the detriment of personal privacy and contrary to the Fourth Amendment.⁸

Despite these continued criticisms, the version of the bill introduced by Congressman Yoder in this Congress omits specific protections that were adopted in the last Congress. Accordingly, the version of H.R. 4889 being considered in this Congress takes a step back from the bipartisan agreement reached in the last Congress.

During the subcommittee markup for H.R. 4889, full committee Ranking Member Frank Pallone, Jr. (D-NJ) offered an amendment that would replace the bill with the version of the Kelsey Smith Act that was reported out of the Committee last Congress. The Pallone amendment was defeated by a voice vote. In addition, Chairman of the Subcommittee on Communications and Technology, Greg Walden (R-OR) offered an amendment to H.R. 4889 that would provide liability protection to carriers providing call information as required under the bill. The Walden amendment was adopted by a voice vote.

XIV. H.R. 4167, KARI'S LAW ACT OF 2015

H.R. 4167, introduced by Representative Gohmert (R-TX) with bipartisan support, requires that all multi-line telephone systems (MLTSs)—the phone systems that are frequently used in hotels and office buildings—made or imported into the U.S. have a default configuration

⁵ 47 U.S.C. § 222(d)(4)(B).

⁶ *Id.*

⁷ H.R. 1575 (113th Cong.).

⁸ *See e.g.*, Letter from ACLU to Chairman Fred Upton and Ranking Member Henry A. Waxman, House Committee on Energy and Commerce (July 29, 2014).

that allows a user to directly call 9-1-1 without having to dial an additional digit, code, prefix, or post-fix. The bill also requires MLTS installers to configure the system to provide a notification to a central location when 911 is called, as long as the system can be reconfigured without improvements to the MLTS's hardware. The law would take effect two years after the date of enactment.

During the subcommittee markup, Ranking Member Eshoo (D-CA), offered an amendment that would require the FCC to start a proceeding on MLTS location accuracy within 180 days. Representative Eshoo withdrew her amendment after Representative Shimkus (R-IL) committed to working with her toward a bipartisan solution before the full committee markup.

XV. H.R. 4111, THE RURAL HEALTH CARE CONNECTIVITY ACT OF 2015

H.R. 4111, introduced by Representative Lance (R-NJ) and co-sponsored by Representatives Cramer (R-ND) and Loebsack (D-IA), modifies Section 254 of the Communications Act to add "skilled nursing facilities" to the "health care provider" definition used to administer the FCC's Rural Health Care Programs under the USF. Under the bill, skilled nursing facilities in rural areas would be eligible to receive reasonably comparable rates for telecommunications services provided to their urban counterparts. The bill also stipulates that the FCC's Rural Health Care Programs cap will remain unchanged, but it does not specifically define "skilled nursing facilities." At the subcommittee markup, the Rural Health Care Connectivity Act was favorably forwarded to the full committee by a voice vote without amendment.

XVI. H.R. 4190, THE SPECTRUM CHALLENGE PRIZE ACT OF 2015

H.R. 4190, introduced by Representative Matsui (D-CA), would require that the Department of Commerce (Commerce) conduct prize competitions to develop technologies to improve spectrum efficiency that has cost-effective deployment. Representative Matsui's bill would allow Commerce to work with the private sector to administer the competitions, and for other Federal agencies to assist. It specifically requires the FCC to publish a technical paper on spectrum efficiency that provides criteria for the design of the competitions. The bill caps the prize amount at \$5 million. At the subcommittee markup, the Spectrum Challenge Prize Act was favorably forwarded to the full committee by a voice vote without amendment.

XVII. H.R. 3998, THE SECURING ACCESS TO NETWORKS IN DISASTERS (SANDY) ACT

H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act, introduced by Ranking Member Frank Pallone, Jr. (D-NJ), seeks to ensure the resiliency of the nation's communications networks during emergencies. The SANDy Act would ensure that during an emergency, consumers' cell phones work on other carriers' networks if a consumer's own network goes down. The bill would give priority to calls to 9-1-1 services and emergency alerts. It also would increase coordination between wireless carriers, utilities, and public safety officials by creating a directory of the contact information for relevant disaster response officials. The

bill would also require the FCC to report to Congress regarding whether additional outage data should be provided in times of emergency.

In addition, the bill requires the FCC to report to Congress on the viability of providing 9-1-1 services over Wi-Fi hotspots during emergencies. Finally, the SANDy Act modifies the Stafford Act to ensure that all communications providers—radio, TV, and phone: (1) have the ability to access relevant disaster stricken areas during emergencies to restore service and (2) are included in the universal credentialing program for essential service providers. At the subcommittee markup, the SANDy Act was favorably forwarded to the full committee by a voice vote without amendment.

XVIII. H.R. 2031, THE ANTI-SWATTING ACT OF 2015

H.R. 2031, introduced by Representative Engel (D-NY), would modify the FCC’s rules prohibiting the falsification of caller identification (also known as spoofing) to provide enhanced penalties when an individual uses spoofing in a swatting situation. The term “swatting” refers to the practice of making a hoax call to 9-1-1 with the aim of inducing a response from law enforcement—a SWAT team in particular.⁹

The bill would provide for a criminal violation of a fine and/or imprisonment not more than five years for violations intended to trigger a law enforcement response in the absence of circumstances that would require such a response. The potential imprisonment would increase to not more than 20 years for instances resulting in serious bodily injury. Violators also would be required to reimburse the law enforcement entity for its expenses in responding to the hoax. At the subcommittee markup, the Anti-Swatting Act was favorably forwarded to the full committee by a voice vote without amendment.

XIX. H.R. 2589, H.R. 2592, AND H.R. 2593

H.R. 2589, H.R. 2592, and H.R. 2593 are three bills that would affect the process surrounding the FCC’s rulemaking authority. H.R. 2589, introduced by Representative Ellmers (R-NC), would require the FCC to publish changes to its rules on the Commission’s public website no later than 24 hours after adoption. H.R. 2592, introduced by Representative Kinzinger (R-IL) would require the FCC to publish any item the FCC plans to vote on either 21 days prior to a Commission vote on the item or 24 hours after the item goes on circulation. H.R. 2593, introduced by Representative Latta (R-OH), would require the FCC to identify all items that the Commission will decide on delegated authority.

The Subcommittee on Communications and Technology considered these bills along with several other process reform bills earlier this Congress. All of the bills were incorporated into the FCC Process Reform Act when it was passed by the full committee along a largely party-line vote. Following the markup, the provisions in H.R. 2589, H.R. 2592, and H.R. 2593 were

⁹ Federal Bureau of Investigations, *The Crime of ‘Swatting’, Fake 9-1-1 Calls Have Real Consequences* (Sept. 3, 2013) (online at fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences).

dropped as part of a final bipartisan compromise that led to passage of the FCC Process Reform Act by the House last November.

XX. H.R. ____, PIPELINE SAFETY ACT OF 2016

On March 16, 2015, the Subcommittee on Energy and Power favorably forwarded legislation by voice vote to the full committee, which would reauthorize the Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA) programs under the Pipeline Safety Act. For an in-depth description of that legislation, please see the related [Democratic memo](#).

Although the markup vehicle attempted to address Democratic priorities, Democrats filed numerous amendments addressing areas where the legislation fell short. Since that time, the bipartisan staff have been working to address the issues raised by Members at the subcommittee markup. The language circulated by the majority on Friday includes important changes requested by Democrats. A description of these key changes follows below.

A. Limitations on Technical Assistance Grants

The legislation that the subcommittee forwarded includes language offered by the minority that would permit the Secretary of Transportation (Secretary), at his discretion, to access user fees or other sources of funding for technical assistance grants (TAG), provided funding is not made expressly available. Currently, only general revenue monies can be used to fund the TAG grant program, which received no appropriation in the FY 2016 Omnibus Appropriations legislation.

The forwarded legislation also imposes additional, stringent restrictions and limitations on the use of grant funds by those nongovernmental organizations that are eligible for program funding. The legislation also directs the Government Accountability Office (GAO) to audit the grant program and requires that GAO complete a report before any funds derived from user fees could be used in support of the TAG program.

The language circulated for the full committee greatly improves upon the subcommittee legislation by removing onerous grant restriction language and a moratorium on grant making. Instead, the latest version incorporates language from H.R. 4937, a bill that the bipartisan leadership of the House Transportation and Infrastructure Committee introduced just earlier this month. The new provision makes the TAG grant program part of PHMSA's operating budget, negating the need for a separate appropriation for the program. The new legislation would still require a report on the grant program, but this report would be completed by the DOT IG, and the language is less prescriptive than that which is in the subcommittee vehicle.

B. Emergency Order Authority

The legislation forwarded by the subcommittee includes language that Democrats and the Obama Administration requested, which confers emergency order authority on PHMSA. In meetings with committee staff, PHMSA requested that Congress provide the agency with

emergency order authority to prohibit a dangerous practice or to address situations that result in unsafe conditions (e.g. use of the substandard pipe), as well as practices or other activity in interstate pipeline transportation that pose a threat to life or significant harm to property or the environment. The Pipeline Safety Act currently provides PHMSA with authority to issue a Corrective Action Order to a single operator; however, an emergency order would apply to all pipeline operators or systems that face a common imminent hazard.

The legislation circulated for markup at full committee provides the Secretary with emergency authority to order operational controls, restrictions, prohibitions, and safety measures as may be necessary to abate an imminent threat of an emergency situation presenting a substantial likelihood of death, severe personal injury, or significant harm to property or the environment. Like the TAG grant provision, the language in this provision is taken directly from H.R. 4937, as introduced by the bipartisan leaders of the House Transportation and Infrastructure Committee.

C. High Consequence Areas

Language appearing in the legislation forwarded by the subcommittee directed the Secretary to consider the Great Lakes to be a USA ecological resource (as defined in section 195.6(b) of title 49, Code of Federal Regulations) for the purposes of determining whether a pipeline is in a high consequence area (as defined in section 195.450 of that title). Democrats argued that the language should be expanded to include lands adjacent to coastal areas, such as those affected by the 2015 Plains All American pipeline spill in Santa Barbara.

The latest version of the legislation now amends the Pipeline Safety Act directly to designate both the Great Lakes and “coastal beaches” as areas to be considered by PHMSA as areas unusually sensitive to environmental damage under Sec. 60109 of the Act. Pipelines in these “high consequence” areas are subject to more stringent inspection requirements than pipelines in other areas.

D. Information-Sharing System

This provision requires the Secretary to convene a working group to consider the development of a voluntary information-sharing system. The purpose of such a system would be to encourage collaborative efforts to improve inspection information feedback and sharing. The working group would be comprised of PHMSA, industry stakeholders, safety advocates, research institutions, state pipeline safety inspectors, and labor representatives.

Language in the legislation that was forwarded out of the subcommittee had included a provision that would exempt the working group from the provisions of the Federal Advisory Committee Act (FACA). That exemption, which was opposed by the Democrats, has been deleted in the latest version of the legislation.

E. Cost Benefit Analysis Transparency

During the Energy and Power Subcommittee markup, Representative McNerney (D-CA) filed an amendment to eliminate duplicative cost-benefit analyses that have contributed to the slow pace of PHMSA rulemakings. The McNerney amendment would have accomplished this by eliminating the prescriptive cost-benefit analysis required by the existing Pipeline Safety Act.

While the majority opposed the repeal of a statutory cost-benefit analysis, the full committee markup vehicle contains language requiring PHMSA to make the cost-benefit analyses of their rulemakings public, and to identify substantive changes between a draft rulemaking submitted to the Office of Management and Budget (OMB) for review and the final version posted in the Federal Register.

F. Corrosion Control Review

There is an entirely new section in the new discussion draft regarding corrosion control, which did not appear in the bill that was forwarded to the full committee. This section would require the Comptroller General to submit a report to Congress on corrosion control for gas and hazardous liquid pipeline facilities. Internal and external corrosion have been major contributors to the failure of both gas and hazardous liquid lines, including the deadly El Paso natural gas pipeline accident in 2000 and, more recently, the Plains All American pipeline failure in California last year.

G. Authorization of Appropriations

The legislation forwarded by the subcommittee does not contain any reauthorization levels for PHMSA's gas and hazardous liquid programs, One-Call Notification grants program, Emergency Response Grants, Community Pipeline Safety Information Grants, State Damage Prevention programs, or Pipeline Integrity programs.

The new discussion draft reauthorizes PHMSA's programs for five years, beginning in FY 2017, based upon enhanced FY 2016 appropriated levels. It specifically reauthorizes PHMSA's gas and hazardous liquid pipeline safety programs at \$128 million for FY 2017; \$131 million for FY 2018; \$134 million for FY 2019; \$137.3 million for FY 2020; and \$140.7 million for FY 2021.