RPTR BRYANT

EDTR ROSEN

MARKUP OF: SUBCOMMITTEE VOTE ON H.R. 3325, H.R. 3891, H.R. 5306, H.R. __, STRENGTHENING THE HEALTH CARE FRAUD PREVENTION TASK FORCE ACT OF 2018; H.R. __, TO AMEND TITLE XXVII OF THE PUBLIC HEALTH SERVICE ACT AND TITLE XVIII OF THE SOCIAL SECURITY ACT; AND H.R. __, TO AMEND TITLE XIX
OF THE SOCIAL SECURITY ACT

FRIDAY, SEPTEMBER 7, 2018

House of Representatives,

Subcommittee on Health,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:05 a.m., in Room 2124, Rayburn House Office Building, Hon. Michael Burgess, M.D. [chairman of the subcommittee] presiding.

Present: Representatives Burgess, Guthrie, Upton, Shimkus, Latta, Lance, Griffith, Bilirakis, Bucshon, Brooks, Mullin, Carter, Walden (Ex Officio), Green, Schakowsky, Matsui, Castor, Schrader, DeGette, and Pallone (ex officio).

Staff Present: Mike Bloomquist, Staff Director; Adam Buckalew, Professional

Staff Member, Health; Daniel Butler, Legislative Clerk, Health; Karen Christian, General Counsel; Kelly Collins, Legislative Clerk, Energy/Environment; Adam Fromm, Director of Outreach and Coalitions; Ali Fulling, Legislative Clerk, Oversight and Investigations, DCCP; Caleb Graff, Professional Staff Member, Health; Jay Gulshen, Legislative Associate, Health; Peter Kielty, Deputy General Counsel; Ed Kim, Policy Coordinator, Health; Ryan Long, Deputy Staff Director; Mark Ratner, Policy Coordinator; Jennifer Sherman, Press Secretary; Austin Stonebraker, Press Assistant; Josh Trent, Chief Health Counsel, Health; Evan Viau, Legislative Clerk, C&T; Hamlin Wade, Special Advisor, External Affairs; Jacquelyn Bolen, Minority Professional Staff Member; Jeff Carroll, Minority Staff Director; Elizabeth Ertel, Minority Office Manager; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Una Lee, Minority Senior Health Counsel; Dan Miller, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Samantha Satchell, Minority Senior Policy Analyst; and Andrew Souvall, Minority Director of Communications, Outreach and Member Services.

Mr. Burgess. The subcommittee will come to order, and the chair recognizes himself for 3 minutes for an opening statement.

Again, good morning. The legislation and discussion drafts before us today are thoughtful and bipartisan, addressing a range of issues from Medicaid and Medicare fraud to lowering patient out-of-pocket costs for prescription drugs.

Following the discussions at our legislative hearing on Wednesday, we are moving forward with this legislation process with due dispatch, and bringing these bills to markup. I will note that some of these bills and discussion drafts have scores from the Congressional Budget Office that we must offset in order to move these to the floor. The bills have broad bipartisan support.

The Medicaid bills build upon proven State-level successes. For example, the Money Follows the Person Demonstration, which was established in 2005, has allowed individuals receiving long-term services and supports across our Nation in 43 States and the District of Columbia, to move from receiving care in institutions to community-based settings.

The EMPOWER Act, authored by Representatives Guthrie and Dingell, would extend this funding, enabling patients to continue receiving high-quality care in their homes or other community settings.

Similarly, H.R. 3891 would clarify the authority of State Medicaid Fraud Control Units, allowing them to investigate fraud as it occurs in any setting. This would ensure that the Medicaid dollars used to support individuals, such as Medicaid beneficiaries participating in the Money Follows the Person Demonstration, are being used appropriately.

The ACE Kids Act has undergone many revisions and extensive productive stakeholder discussions. I certainly want to thank those who have helped our

subcommittee iron out the language that will provide medically complex children with coordinated healthcare.

We are considering Representative Carter's discussion draft on prohibiting health plans from instituting, the colloquial term is gag clauses, which bar pharmacists from informing patients that paying cash would be cheaper than utilizing their health insurance. This is an effort to drive down drug prices, an issue that hits home with all of our constituents.

The Health Subcommittee will consider two other discussion drafts. One seeks to codify the Healthcare Fraud Prevention Partnership, which would better equip public and private organizations to combat and prevent fraud and abuse in our healthcare system. The other makes a technical correction to current statute that inhibits the Medicare Payment Advisory Commission and the Medicaid CHIP Payment Advisory Commission from accessing drug rebate data from the Centers for Medicare and Medicaid Services. This change will allow the commissioners to use this data to conduct research and produce data-centric recommendations to Congress on lowering drug costs.

So certainly, we look forward to getting these bills through our subcommittee today, and ultimately moving them to the full committee and to the House floor.

I now recognize the gentleman from Texas, Mr. Green, 3 minutes for his opening statement, please.

Mr. Green. Thank you, Mr. Chairman, for holding today's markup on six bills and discussion drafts to improve the delivery and cost of healthcare. I am happy to see that all six measures are bipartisan support and are expected to move to the full committee.

I am particularly happy to see the ACE Kids Act, H.R. 3325, being considered this morning. This legislation, introduced by our colleagues, Representative Barton and Castor, will improve the delivery of care for children with complex medical conditions

served by Medicaid. I am a proud original cosponsor of the ACE Kids Act.

The amendment, in the nature of a substitute, we will be considering today, is seeking to achieve three primary goals: improve the coordination of care for children; address problems with fragmented access, especially when the necessary care is only available out of State; gather national data to help researchers improve services and treatments for children with complex medical conditions.

Rick Merrill with the Cook Children's healthcare system in Fort Worth testified earlier this week that this legislation would improve health outcomes for children with complex medical conditions while decreasing cost on the overall health system. This is smart legislation, and it will greatly help children with complex medical conditions and our vulnerable population to have access to pediatric specialists and medical care they need.

As of this morning, the ACE Kids Act now has 102 cosponsors, evidence that the health of our children is an issue that is above partisanship and brings us all together. I look forward to the ACE Kids Act clearing our subcommittee this morning and receive strong support before the full committee in the coming weeks.

I will also be voting to support the Ensuring Medicaid Provides Opportunities for Widespread Equity Resources and Care Act, EMPOWER Care Act, H.R. 5306, introduced by Representatives Guthrie and Dingell, also members of our committee. The aims to EMPOWER Act will reauthorize, if successful, Money Follows the Person Rebalancing Demonstration Grant Program for a year at $450 million.

The MFP program provides funding to States to help Medicaid beneficiaries who receive treatment in institutions to transition to home- and the community-based care. This program expired in 2016, and States have 2 more years to expend existing funds.

I agree with our panelists who testified earlier this week that while it would be

best to pass a multiyear reauthorization for the MFP program, given budgetary constraints, a 1-year reauthorization is far better than no reauthorization at all.

I will also be supporting the discussion draft to prohibit the use of so-called gag clauses in Medicare and private health insurance plans that prohibit pharmacists from informing consumers that their prescription can be purchased for a lower price out of pocket.

I thank Representative Carter and Representative Doggett, who have introduced two bills on this issue and our committee, and the Ways and Means Committee, for their leadership in removing those artificial barriers between patients and their local pharmacist.

This is a major issue for seniors in our district in Houston and Harris County, Texas. I hope our committee will consider further investigations into the rising price of prescription drugs.

Thank you, Mr. Chairman, and I yield back the remainder of my time.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. The chair recognizes now the chairman of the full committee, Mr. Walden of Oregon, 3 minutes for an opening statement, please.

The Chairman. Thank you, Mr. Chairman. I don't know if we officially sang happy birthday to Buddy Carter yesterday, but we will forego that today and just acknowledge that he is older than he was when the week started. That is not old, by the way, yet. I know to you.

Mr. Carter. It seems younger every day.

The Chairman. It does, isn't that right? I can almost see that age in the rearview mirror. All right. Back to business.

Good morning. Earlier this week, as you have all heard, we held a hearing on five

bills to improve healthcare. Today, we will take another step, moving forward with this really important legislation. All of these bills are good products.

We will consider a bill to prohibit the so-called gag clauses that have limited a pharmacist's ability to inform a consumer about the lower cost, out-of-pocket price of a prescription. We are all about trying to figure out how to get more affordable healthcare. And with so many people paying for their healthcare out of pocket with high deductibles and everything else in the marketplace, it is important we have more transparency so consumers have more power to make decisions over their healthcare.

This was first brought to my attention by Michelle, who is a pharmacist and a friend from Grants Pass, Oregon. She told me that, as a pharmacist, she was precluded, under certain insurance contracts, from sharing such information with consumers. She told me that she once even received a cease and desist order, a letter saying cease and desist for trying to help a child with a terminal disease access that child's medication at a more affordable rate.

It is simply unacceptable to have these clauses. So banning these gag clauses has bipartisan support, and in both Chambers. I hope we can act on this to help lower the cost of some drugs that patients rely on.

We are also taking a look at important bills that would give the administration additional authority to better detect and stop fraud and abuse in the healthcare system. We will also consider three bills in the Medicaid space that will help ensure that beneficiaries are receiving the support and care they deserve in the setting that best works for them.

Mr. Guthrie and Ms. Dingell's bill, H.R. 5306, for example, will extend funding for the Money Follows the Person Demonstration Program in Medicaid. It is a really popular initiative which has been very successful.

We will also consider a bill authored by Mr. Walberg and Mr. Welch, H.R. 3891, that will improve the authority of the State Medicaid Fraud Control Units. This legislation would broaden the authority of these units to investigate and prosecute abuse and neglect of Medicaid beneficiaries in noninstitutional and other settings, improving their ability to help protect vulnerable Medicaid patients.

We will consider an amendment in the nature of a substitute to a familiar bill authored by our full committee vice chair, Mr. Barton, and Representative Castor, the ACE Kids Act. And lastly, we will review a discussion draft that would allow MedPAC and MACPAC to access certain drug rebate data from CMS.

Mr. Chairman, with that, good work by the subcommittee, once again, on healthcare issues, and I yield back the balance of my time.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. The chair recognizes the ranking member of the full committee, Mr. Pallone, 3 minutes for your opening statement, please.

Mr. Pallone. Thank you, Mr. Chairman. I am pleased we are here today to move forward several bipartisan bills. H.R. 3325, the ACE Kids Act, creates a Medicaid health home State option specifically targeted for children with medically complex conditions. This new State option will incentivize providers to better coordinate care for children with the greatest healthcare needs. I would like to thank the sponsors, Representative Castor and Barton, for their continued work on this issue.

Next is H.R. 5306, the EMPOWER Care Act, led by Representatives Dingell and Guthrie. It reauthorizes funding for the Money Follows the Person Rebalancing Demonstration Grant. The MFP program helps individuals transition from institutional care to care in their community, where they can live more independent lives.

Thanks to MFP and other initiatives, more than half of Medicaid spending on

long-term care services now occurs in the home- and community-based settings. In recognition of this shift, H.R. 3891, introduced by Representatives Welch and Walberg, expands the authority of Medicaid Fraud Control Units to investigate and prosecute Medicaid fraud and beneficiary abuse and neglect in noninstitutional settings.

We will also consider a bill that I introduced with Chairman Walden to authorize the Healthcare Fraud Prevention Partnership. This partnership is a public-private partnership between the Department of Health and Human Services, private payers, Federal and State law enforcement agencies, and State healthcare agencies. It aims to improve the detection and prevention of healthcare fraud by promoting the exchange of data and information between the public and private sectors on fraud trends and successful antifraud practices and methodologies.

We will also review a discussion draft that bans so-called gag clauses in Medicare as well as the private health insurance market that can limit pharmacists from informing consumers that their prescription may be purchased for a lower price if paid out of pocket instead of through their insurance plan. And this is a good bill, but I strongly believe that this cannot, and should not be the committee's only effort to reduce drug prices this Congress. We must do more, and I continue to urge my colleagues to work together to find solutions that can actually meaningfully lower drug prices.

And finally, we will review a bipartisan discussion draft that ensures the Medicare Payment Advisory Commission, MedPAC, and the Medicaid and CHIP Payment and Access Commission, MACPAC, have access to drug pricing and rebate data. And this is a commonsense bill that will help Congress better understand the true cost of prescription drugs to beneficiaries and taxpayers.

All five of these bills, Mr. Chairman, are good. Original versions of many were first proposed by Democratic sponsors, and I thank them and all of my colleagues for their

work in getting these bills to the subcommittee today.

And I yield back. Thank you, Mr. Chairman.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. The chair reminds members that pursuant to committee rules, all members' opening statements will be made part of the record.

On the majority side, is anyone seeking time for an opening statement? Seeing none, on the minority side. For what purpose does the gentlelady from Florida seek recognition?

Ms. Castor. For an opening statement.

Mr. Burgess. The gentlelady is recognized for 1 minute for an opening statement.

Ms. Castor. Thank you, Mr. Chairman.

On behalf of the families with children with complex medical conditions all across America, I want to thank the committee for including the ACE Kids Act in today's markup. And I want to thank Representative Barton and our stalwart partners, Representatives Herrera Beutler, Gene Green, Eshoo and Reichert, and all of the cosponsors of the ACE Kids Act for moving our bill forward today. I also want to thank the committee's professional staff for working very diligently on this initiative, and American children's hospitals and the numerous organizations who are in support of the bill.

The aim of the bill is to assist families to better coordinate care. If you have a complex medical condition, so many families, it is so fragmented and difficult to work through your healthcare provider. So this will provide incentives for a health home, a medical home for children with complex conditions. It will help make Medicaid more efficient, and we think save those families a lot of money down the road, and most importantly, ensure that children with complex conditions get the highest quality medical

care.

I would like to ask unanimous consent to submit for the record another letter in support of the bill from America's Essential Hospitals, and I will yield back the balance of my time.

Mr. Burgess. Without objection, so ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Burgess. And this concludes member opening statements. And, again, members' opening statements will be made part of the record.

The chair calls up H.R. 3891 and asks the clerk to report.

The Clerk. H.R. 3891, to amend title XIX of the Social Security Act to clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in any setting, and for other purposes.

[The bill follows:]

******** INSERT 1-1 ********

Mr. Burgess. Without objection, the first reading of the bill is dispensed with, so the bill will be open for amendment at any point. So ordered.

And let me recognize myself to strike the last word for 5 minutes to speak in support of the bill. And I do want to support Mr. Walberg and Mr. Welch's bill, H.R. 3891. Both Members are not on the Health Subcommittee, but they have and their staffs have expended much time and effort to ensure that the language in this bill would be effective.

Medicaid Fraud Control Units play a vital role in bringing those who commit Medicaid provider fraud and patient abuse and neglect to justice. Nationally, the Medicaid Fraud Control Units are responsible for almost $2 billion in recovered funds and 2,500 convictions.

H.R. 3891, authored by Representative Jim Walberg and Peter Welch, will clarify the authority of the State Medicaid fraud and abuse control units. This clarification will give these important units the authority to investigate and prosecute abuse and neglect of Medicaid beneficiaries in noninstitutional settings as well as broaden the permissible use of Medical Fraud Control Units to screen complaints or reports alleging potential abuse or neglect of the beneficiary themselves.

It is critical we protect the most vulnerable, and this bill does just that. I thank my colleagues for the work on this bill and recommend the subcommittee move this bill to the full committee. And I will yield back my time.

And are there any bipartisan amendments to the bill? Are there any amendments to the bill? Seeing none, the question then occurs on the motion to report the bill to the full committee, H.R. 3891 to the full committee. All those in favor say aye. All those opposed, no. The ayes appear to have it, the ayes have it, and the bill is agreed to.

The chair calls up H.R. 5306 and asks the clerk to report.

The Clerk. H.R. 5306, to reauthorize the Money Follows the Person Demonstration Program.

[The bill follows:]

******** INSERT 1-2 ********

Mr. Burgess. Without objection, the first reading of the bill is dispensed with. The bill is open for amendment at any point. So ordered. Are there bipartisan amendments to the bill?

Mr. Guthrie. Mr. Chairman, I have an amendment at the desk.

Mr. Burgess. The clerk will report.

The Clerk. Amendment in the nature of a substitute to H.R. 5306, offered by Mr. Guthrie.

[The amendment of Mr. Guthrie follows:]

******** INSERT 1-3 ********

Mr. Burgess. Without objection, the reading of the amendment is dispensed with, and Mr. Guthrie is recognized for 5 minutes in support of his amendment.

Mr. Guthrie. Thank you, Mr. Chairman. I want to thank my colleague, Debbie Dingell, and her staff for their great bipartisan work on this bill. This amendment extends Money Follows the Person through 2019. This important program helps certain Medicaid beneficiaries transition from a nursing home or institution back to their home, providing empowerment and freedom.

I do want to clarify that the Money Follows the Person Demonstration Program is strictly voluntary, and an individual must choose to want to move back into their home or the community. In Kentucky, Transition Kentucky works with individuals who wish to move back home and assess the health, safety, and overall welfare before they will move an individual from their institution. Transition Kentucky also will create an emergency backup plan should something change. There is certainly no-size-fits-all for healthcare, much less for those disabled, but the Money Follows the Person Program provides great flexibility for those who wish to be back home.

I ask unanimous consent for a number of letters regarding the program. I have letters from AHIP, letters from National Association for Areas on Aging. I have letters from Easterseals, and a letter from -- that is the conclusion. I have those letters.

Mr. Burgess. Without objection, so ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Guthrie. I urge my colleagues to support this amendment, which will empower individuals for those who are best fit for community-based services. And I yield back my time.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. Is there any other member wishing to speak on the amendment? Seeing none, the question is on the amendment in the nature of a substitute. All those in favor shall signify by saying aye. All those opposed, no. The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on forwarding H.R. 5306, as amended, to the full committee. All those in favor will say aye. All those opposed, no. The ayes appear to have it, the ayes have it, and the bill is agreed to.

The chair calls up H.R. 3325 and asks the clerk to report.

The Clerk. H.R. 3325, to amend title XIX of the Social Security Act to provide States with the option of providing coordinated care for children with complex medical conditions through a health home and for other purposes.

[The bill follows:]

******** INSERT 1-4 ********

Mr. Burgess. Without objection, the first reading of the bill is dispensed with, and the bill is open for amendment at any point. So ordered.

Are there any bipartisan amendments to the bill? For what purpose does the gentleman from Texas seek recognition?

Mr. Barton. Mr. Chairman, I have an amendment in the nature of a substitute. It is not an amendment to the bill. It is a replacement for the bill.

Mr. Burgess. The clerk will report the amendment.

The Clerk. Amendment in the nature of a substitute to H.R. 3325, offered by Mr. Barton.

[The amendment of Mr. Barton follows:]

******** COMMITTEE INSERT ********

Mr. Burgess. The first reading is dispensed with, and the gentleman from Texas is recognized for 5 minutes in support of his amendment.

Mr. Barton. Thank you, Mr. Chairman, and I hopefully won't take 5 minutes. First, I want to thank Congresswoman Doris Matsui. She came on as a sponsor of the bill yesterday. And I won't get Ms. Castor to give her a pat on the back or a hug for doing that. In spite of what Markwayne Mullin said in the Republican Conference, I am not going to hug any Republicans that want to be cosponsors unless Susan Brooks does. I will hug her. But we would love to have some more Republicans on the bill too.

This bipartisan piece of legislation, Mr. Chairman, is a culmination of about 6 years of work by many, many people in the healthcare community, and in the committee staffs and the personal staffs in the House and the Senate here in Washington, D.C. With the refinements and the modest changes in this substitute, I am not aware of any major opposition from the healthcare community other than the managed care insurance sector.

So we have done a good job putting a bill together that -- it is really a unique piece of legislation in my time on the committee, Mr. Chairman, because it is one of these bills that it is really about the kids. It is not expanding coverage. It shouldn't cost any more money. It is just changing the system to allow States that want to and healthcare providers that want to to create these networks, to create these communities where you really put the kids and the family first. And in the pilot projects that have been done using this concept, money has been saved, quality of care has improved. I think one of the most telling statistics in one of the pilot projects, in-hospital care, in other words, overnight hospital stays, went down over 30 percent under this model.

So I think it is a great piece of legislation. I do want to, again, thank all the people who have worked on it. The ranking member of this subcommittee, Gene Green,

has been a tireless advocate; as we have already pointed out, Congresswoman Castor; the subcommittee chairman, Dr. Burgess has been tireless in making sure that we looked at it and tried to make sure that we improved it, so I want to thank him.

And, with that, Mr. Chairman, I will yield time to anybody or I yield back.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. Does any other member wish to be heard on the bill? For what purpose does the gentleman from Texas seek recognition?

Mr. Green. Mr. Chairman, I have got a three-page statement here. Instead of me giving it, I would just like to submit it to talk about how great the ACE Kids Act is.

I yield back my time.

Mr. Burgess. Without objection, the gentleman's statement will be made part of the record.

[The statement of Mr. Green follows:]

******** COMMITTEE INSERT ********

Mr. Burgess. Other members seeking to be heard? The gentleman from Georgia, for what purpose do you seek recognition?

Mr. Carter. Mr. Chairman, I move to strike the last word.

Mr. Burgess. The gentleman is recognized for 5 minutes.

Mr. Carter. Mr. Chairman, I am pleased that the committee is moving on the Advancing Care for Exceptional Kids Act, the ACE Kids Act. Back in July, I met with a young girl and her family visiting D.C. to share their care story. This young lady had Down Syndrome and cerebral palsy as a result of brain damage from a benign brain tumor that was discovered in utero. I keep a picture of her and every child that I meet with these complex medical conditions in my binder as a daily reminder of why I am here, and why it is so important that we bring up life-changing bills like this one.

Meeting with brave children like this young lady made me proud to cosponsor the ACE Kids Act. This critical legislation improves how care is delivered to children with complex medical conditions by addressing coordination of care and fragmented care across State lines, as well as gathers national data to help researchers improve treatments for rare diseases. I look forward to passing this legislation out of the subcommittee to the full committee and then on to the House floor.

Thank you, Mr. Chairman, and I yield back.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back. Seeing no other members wishing to be heard on the amendment in the nature of a substitute, the vote occurs on the amendment in the nature of a substitute. All those in favor will signify by saying aye. All those opposed, no. The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on forwarding H.R. 3325, as amended, to the full committee. All those in favor say aye, please. Those opposed, no. The ayes appear

to have it, and the bill is agreed to.

The chair calls up discussion draft entitled: To amend title XVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance insurers, prescription drug sponsors, and Medicare Advantage organizations from limiting certain information on drug prices, and ask the clerk to report.

The Clerk. Discussion draft: To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance issuers, prescription drug plan sponsors, and Medicare Advantage organizations from limiting certain information on drug prices.

[The bill follows:]

******** INSERT 1-5 ********

Mr. Burgess. Without objection, the first reading of the discussion draft is dispensed with, and it is open for amendment at any point. So ordered.

Are there bipartisan amendments to the discussion draft? Are there other amendments? Does anyone wish to be heard on the draft? For what purpose does the gentleman from Georgia seek recognition?

Mr. Carter. Mr. Chairman, I move to strike the last word.

Mr. Burgess. The gentleman is recognized for 5 minutes.

Mr. Carter. Mr. Chairman, I am pleased that the committee is moving swiftly on my discussion draft prohibiting gag clauses in group and individual health plans in addition to Medicare Advantage drug plans and Medicare Part D. Often, gag clauses are part of a take-it-or-leave-it contract where the pharmacist has no other option if they want to continue providing care for patients in their community.

As the only pharmacist currently serving in Congress, I can remember having to hold my tongue as I watched patient after patient struggle to pay for their prescriptions, all out of fear of PBM repercussions. My legislation would allow pharmacists to properly advise their patients on the option to potentially spend less by paying out of pocket rather than with insurance. Banning gag clauses has received national support from State legislators, most Chambers of Commerce, HHS, and the President.

I want to thank you, Mr. Chairman, for holding this important markup today and for including this discussion draft. I look forward to passing this legislation out of this subcommittee to the full committee, and then on to the House floor.

I thank you, Mr. Chairman, and I yield back.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back.

Any other member wishing to be heard on the discussion draft or any further amendments to the discussion draft? Seeing none, the question now occurs on

forwarding the discussion draft to the full committee. All those in favor, please say aye. All those opposed, no. Ayes appear to have it, the ayes have it, and the bill is agreed to.

The chair calls up discussion draft entitled: Strengthening Healthcare Fraud Prevention Task Force Act of 2018, and asks the clerk to report.

The Clerk. Discussion draft: To amend title XI of the Social Security Act to direct the Secretary of Health and Human Services to establish a public-private partnership for purposes of identifying healthcare waste, fraud, and abuse.

[The bill follows:]

******** INSERT 1-6 ********

Mr. Burgess. Without objection, the first reading of the bill is dispensed with. The bill is open for amendment at any point. So ordered.

For what purpose does the gentleman from New Jersey seek recognition?

Mr. Pallone. I have an amendment in the nature of a substitute to the discussion draft, which was offered originally by Mr. Walden, but I will offer it.

Mr. Burgess. The clerk will report the amendment.

The Clerk. Amendment in the nature of a substitute, offered by Mr. Pallone.

[The amendment of Mr. Pallone follows:]

******** INSERT 1-7 ********

Mr. Burgess. Without objection, the reading is dispensed with, and Mr. Pallone is recognized for 5 minutes in support of his amendment.

Mr. Pallone. Thank you. This amendment represents the appropriate next step in codifying and improving the Healthcare Fraud Prevention Partnership, a public-private partnership between the government and the private sector to fight healthcare waste, fraud, and abuse.

The goal of the bill is simple, yet significant. Congress should give the administration better defined authority to detect and stop fraud and abuse in the healthcare system. As one of our expert witnesses testified before the subcommittee, health fraud costs taxpayers a staggering $68 billion every year and accounts for between 3 and 10 percent of all healthcare spending in the United States, according to the National Healthcare Antifraud Association.

The partnership must improve the collection and dissemination of best practices to prevent fraud and abuse. And with this amendment and the underlying bill, we are aiming to give them the right tools to achieve their mission.

The amendment in the nature of a substitute incorporates feedback from the U.S. Department of Health and Human Services, and these revisions are technical in nature. Our staffs continue to work in a bipartisan nature with the administration to strengthen the mission of the partnership, while being careful to not be overly prescriptive in granting statutory authority for the public-private partnership. Again, this is the appropriate next step to move this legislation forward and protect taxpayers from fraud in our healthcare system, and I urge adoption of the amendment.

Mr. Burgess. Does the gentleman yield back?

Mr. Pallone. Yes.

Mr. Burgess. The chair thanks the gentleman. Are there other members

wishing to be heard on the amendment in the nature of a substitute? Are there any amendments to the amendment in the nature of a substitute? Seeing no further discussion, the vote now occurs on the amendment in the nature of a substitute. All those in favor signify by saying aye. Those opposed, no. The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on forwarding the discussion draft, as amended, to the full committee. All those in favor, please say aye. Those opposed, no. The ayes appear to have it, the ayes have it, and the bill is agreed to.

The chair finally calls up discussion draft entitled, to amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information, and asks the clerk to report.

The Clerk. Discussion draft: To amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information.

[The amendment follows:]

******** COMMITTEE INSERT ********

Mr. Burgess. Without objection, the first reading of the bill is dispensed with. It is open for amendment at any point. So ordered. Are there any bipartisan amendments to the bill? Are there any other amendments?

Mr. Lance. Mr. Chairman, I move to strike the last word.

Mr. Burgess. The gentleman is recognized for 5 minutes.

Mr. Lance. Thank you, Mr. Chairman. I commend you for including the discussion draft that provides the Medicare Payment Advisory Commission and Medicaid and CHIP Advisory Commission with access to certain drug rebate information. I have read the letters from the Centers for Medicare and Medicaid Services about current statutory limitations on how drug rebate data can be shared at the moment, and I believe this legislation is a commonsense solution that will provide MedPAC with a full picture of rebates.

This is an issue I flagged for the committee earlier this year. I am interested in working with you and with all members of the committee, and I am hopeful that I might be involved to get the policy right and can make sure this technical correction is moved through our process.

Thank you very much. I yield back the balance of my time.

Mr. Burgess. The gentleman yields back. Who seeks recognition? For what purpose does the gentlelady from Illinois seek recognition?

Ms. Schakowsky. Strike the last word.

Mr. Burgess. The gentlelady is recognized for 5 minutes.

Ms. Schakowsky. So I, too, am glad that we are considering this bill today, because it is critical that MedPAC and MACPAC have the data that they need to serve as a resource to Congress. It is impossible for the Commission to adequately analyze the true cost of prescription drugs to beneficiaries and taxpayers without access to rebate

data in Medicare Parts B and D, as well as in Medicaid, and for this reason I am supportive of the bill and urge my colleagues to support it as well.

However, as we consider this bill, I am struck by the idea that Congress lacks access to this data currently. Not just the MACPAC and MedPAC, but Congress will not be included. How are we, as policymakers, to understand the true landscape of prescribing drug costs without having the full information that is similarly available to the Secretary, the Congressional Budget Office, and the Comptroller General.

I understand this is highly confidential data, but Congress has access to many forms of confidential data, from intelligence information to tax information. If we are to adequately address drug pricing and consider the different policy options that are available to us, we have to have a clear understanding of what is happening currently.

MedPAC and MACPAC need this data so they can do their own analysis, but Congress should also have this data so that we can make informed policy decisions.

I just wanted to put that on the record, Mr. Chairman, and I yield back.

Mr. Burgess. The chair thanks the gentlelady. The gentlelady yields back. Is there any other member wishing to be heard on the draft? If not, the question now occurs on forwarding the discussion draft to the full committee. All those in favor, say aye. All those opposed, no. The ayes appear to have it, the ayes have it, and the draft is agreed to.

Without objection, staff is authorized to make technical and conforming changes to the legislation approved by the subcommittee today. So ordered.

I want to take a moment and thank our staff, because this did come together between the hearing and the markup relatively quickly, and everyone moved with great effectiveness and dispatch, and for that, we on the dais are very grateful. Without objection, the subcommittee stands adjourned.

[Whereupon, at 9:42 a.m., the subcommittee was adjourned.]