

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**September 12, 2018**

**To: Committee on Energy and Commerce Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Markup of H.R. 6511, Strategic Petroleum Reserve Reform Act; H.R. 3325, Advancing Care for Exceptional (ACE) Kids Act; 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; H.R. 5306, Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and (EMPOWER) Care Act; H.R. 6733, 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; and H.R. 6753, 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 health care waste, fraud, and abuse**

On **Thursday, September 13, 2018 at 10 a.m. in room 2123 of the Rayburn House Office Building**, the full Committee will markup H.R. 6511, Strategic Petroleum Reserve Reform Act; H.R. 3325, Advancing Care for Exceptional (ACE) Kids Act; 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; H.R. 5306, Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and (EMPOWER) Care Act; H.R. 6733, 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; and H.R. 6753, 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 health care waste, fraud, and abuse.

## I. H.R. 6511, THE STRATEGIC PETROLEUM RESERVE REFORM ACT

### A. Background

As of July 2018, the Strategic Petroleum Reserve (SPR) contained 660 million barrels of oil,<sup>1</sup> equal to approximately 252 days of total petroleum net imports.<sup>2</sup> The U.S. continues to hold the world's largest stockpile of emergency crude oil.<sup>3</sup> However, since 2015, five major pieces of legislation have mandated the cumulative sale of more than 250 million barrels of crude oil from the SPR by 2027. Those withdrawals are expected to reduce SPR inventories to approximately 410 million barrels in 2028.<sup>4</sup>

In a [May 2018 report](#), the Government Accountability Office (GAO) found that current and foreseeable shifts in oil markets warrant a re-examination of the SPR's size and structure.<sup>5</sup> The report acknowledged that the Department of Energy (DOE) has "examined a range of sizes for the SPR," however, GAO noted that DOE has still not determined the optimal size of the reserve. GAO recommended that DOE evaluate "all options for handling any excess SPR assets that may be created," including the possibility of leasing unused SPR storage capacity to the private sector. Such leases would serve the dual purposes of utilizing otherwise vacant space and raising revenue to invest in SPR modernization.

### B. Features of the Bill

Reps. Barton (R-TX) and Rush (D-IL) introduced H.R. 6511, the Strategic Petroleum Reserve Reform Act, on July 25, 2018 in response to GAO's recommendation. The bill authorizes the federal government to lease underutilized SPR facilities to third parties. H.R. 6511 was forwarded to the full committee by voice vote on September 6, 2018.

Section 2 of the bill amends EPCA to permit the Secretary of Energy to lease storage and related facilities to the private sector or foreign governments. The Secretary may only lease a facility upon a determination that it would neither conflict with the federal government's ability to utilize the SPR, nor threaten national security. The bill requires lessees to fully compensate

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<sup>1</sup> Department of Energy, *Strategic Petroleum Reserve Inventory* (Jul. 13, 2018) ([www.spr.doe.gov/dir/dir.html](http://www.spr.doe.gov/dir/dir.html)).

<sup>2</sup> Energy Information Administration, *U.S. SPR Stocks as Days of Supply of Total Petroleum Net Import* (Jun. 29, 2018) ([www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=m\\_epc0\\_vsi\\_nus\\_days&f=m](http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=m_epc0_vsi_nus_days&f=m)).

<sup>3</sup> Government Accountability Office, *Strategic Petroleum Reserve: DOE Needs to Strengthen Its Approach to Planning the Future of the Emergency Stockpile* (May 2018) (GAO-18-477).

<sup>4</sup> Energy Information Administration, *Recent legislation mandates additional sales of U.S. Strategic Petroleum Reserve crude oil* (Feb. 21, 2018) ([www.eia.gov/todayinenergy/detail.php?id=35032](http://www.eia.gov/todayinenergy/detail.php?id=35032)).

<sup>5</sup> See note 6.

the government for costs, and to pay fees which would, in turn, help fund facility maintenance and modernization.

Section 3 establishes a pilot program to lease underutilized storage space with up to 200 million barrels of petroleum (or petroleum product) capacity. The section authorizes the Secretary to (a) determine which facilities are best suited for lease; (b) make such facilities available for lease; (c) identify the environmental impacts (both positive and negative) associated with leasing; and (d) implement any physical changes needed to ensure the structural viability of the leased facilities. Finally, the Secretary must submit a report to Congress on the status of the program within one year of the bill's enactment into law.

## **II. H.R. 3325, ADVANCING CARE FOR EXCEPTIONAL KIDS ACT**

### **A. Background**

H.R. 3325, the Advancing Care for Exceptional Kids Act (ACE Kids Act) introduced by Reps. Barton (R-TX) and Castor (D-FL) aims to improve care coordination for children with medically complex conditions in the Medicaid program. The Subcommittee held a hearing on this bill on September 5, 2018.<sup>6</sup>

### **B. Features of the Bill**

The bill would establish a Medicaid health home state option specifically targeted for children with medically complex conditions. A state that takes up this option would receive a 90 percent enhanced Federal Medical Assistance Percentage (FMAP) for care coordination for the first eight fiscal year quarters that the state plan amendment (SPA) takes effect. The bill also requires the Secretary to issue guidance to state Medicaid programs regarding best practices for using out of state providers for children with medically complex conditions, coordinating care with out of state providers, reducing barriers to care from out of state providers, and processes for screening and enrolling out of state providers.

## **III. 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**

H.R. 3891, introduced by Reps. Walberg (R-MI) and Welch (D-VT), would expand the authority of Medicaid Fraud Control Units (MFCUs) to investigate and prosecute Medicaid fraud

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<sup>6</sup> House Committee on Energy and Commerce, *Opportunities to Improve Health Care*, 115th Cong. (Sept. 5, 2018) (<https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-opportunities-to-improve-health-care-subcommittee-on-health>).

and beneficiary abuse and neglect in non-institutional settings or any other setting. The Subcommittee held a hearing on H.R. 3891 on September 5, 2018.<sup>7</sup>

#### **IV. H.R. 5306, ENSURING MEDICAID PROVIDES OPPORTUNITIES FOR WIDESPREAD EQUITY, RESOURCES, AND CARE (EMPOWER CARE) ACT**

##### **A. Background**

H.R. 5306, the Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and Care Act (EMPOWER Care Act) introduced by Reps. Guthrie (R-KY) and Dingell (D-MI), would reauthorize the Money Follows the Person (MFP) Rebalancing Demonstration Grant for 1 year at \$450 million.

##### **B. Features of the Bill**

The legislation would change the institutional residency period from 90 days to 60 days, thereby increasing the number of beneficiaries eligible for the program. The bill would also require the HHS Secretary to submit a report to the President and Congress detailing best practices from state MFP programs. The Subcommittee held a hearing on H.R. 5306 on September 5, 2018.

#### **V. H.R. 6733, 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**

##### **A. Background**

H.R. 6733, prohibits any group health plan or health insurance issuer, as well as any Medicare Part D plan sponsor or Medicare Advantage organization from construing a policy or contract term to prevent pharmacists from informing consumers that their prescription could be purchased for a lower price if paid out-of-pocket instead of through their insurance plan.

##### **B. Features of the Bill**

This bill increases consumer transparency and understanding by informing patients that they can obtain their prescriptions for a lower cost in some cases than under their insurance plan's cost-sharing allocations, and promotes consumer understanding that they may save money by choosing to pay out-of-pocket instead. The bill would be effective for plan years beginning on or after January 1, 2020. The Subcommittee held a hearing on H.R. 6733 on September 5, 2018.<sup>8</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

**VI. H.R. 6753, STRENGTHENING THE HEALTH CARE FRAUD PREVENTION TASK FORCE ACT OF 2018**

H.R. 6753, codifies the Health Fraud Prevention Partnership (HFPP), a public-private partnership between the federal government, law enforcement, state health agencies, private health insurance plans, and health care anti-fraud associations. HFPP exchanges data and information between the partners to combat fraud, waste, and abuse in the health care sector. Eighty-five public, private, and state organizations participated in HFPP in FY2017.

H.R. 6753 authorizes the HFPP and ensures adequate transparency requirements are in place to enable HFPP to fulfill its mission. The Subcommittee held a hearing on H.R. 6753 on September 5, 2018.<sup>9</sup> An AINS is expected to be offered that incorporates feedback from the Administration.

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<sup>9</sup> *Id.*