



November 13, 2015

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Full Committee Markup

I. INTRODUCTION

The Committee on Energy and Commerce will meet in open markup session on November 17 and 18, 2015, in 2123 Rayburn House Office Building.

On Tuesday, November 17, 2015, at 4:00 p.m., the Committee will convene for opening statements only. The Committee will reconvene on Wednesday, November 18, 2015, at 10:00 a.m. to consider the following:

- H.R. 1321, Microbead-Free Waters Act of 2015;
- H.R. 2017, Common Sense Nutrition Disclosure Act of 2015, as amended by the Subcommittee on Health;
- H.R. 3014, Medical Controlled Substances Transportation Act;
- H.R. 3537, Synthetic Drug Control Act of 2015;
- H.R. 3716, Ensuring Terminated Providers Are Removed from Medicaid and CHIP Act, as amended by the Subcommittee on Health;
- H.R. 3821, Medicaid Directory of Caregivers Act, as amended by the Subcommittee on Health;
- H. J. Res. 71, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units”;
- H.J. Res. 72, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”; and
- S. 611, Grassroots Rural and Small Community Water Systems Assistance Act.

In keeping with Chairman Upton’s announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment’s parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. EXPLANATION OF LEGISLATION

A. H.R. 1321, Microbead-Free Waters Act of 2015

H.R. 1321, introduced by Rep. Pallone (D-NJ) and Rep. Upton (R-MI), would prohibit the manufacture, sale, or distribution of personal care products containing synthetic plastic microbeads by July 1, 2019.

B. H.R. 2017, Common Sense Nutrition Disclosure Act of 2015, as amended

H.R. 2017, introduced by Rep. McMorris-Rodgers (R-WA), would amend section 4205 of the Patient Protection and Affordable Care Act, which requires calorie and other nutrition information to be provided to consumers in restaurants and other similar retail food establishments that have twenty or more locations.

The Food and Drug Administration's (FDA) final rule implementing section 4205 was issued on November 25, 2014, three and a half years after FDA published the proposed rule. FDA delayed implementation of the final rule by one year, so the rule will go into effect December 1, 2016. The rule mandates that restaurants and similar retail food establishments provide calorie and other nutrition information to consumers. According to the final rule, similar retail establishments include:

. . . bakeries, cafeterias, coffee shops, convenience stores, delicatessens, food service facilities located within entertainment venues (such as amusement parks, bowling alleys, and movie theaters), food service vendors (e.g., ice cream shops and mall cookie counters), food take out and/or delivery establishments, grocery stores, retail confectionary stores, superstores, quick service restaurants and table service restaurants.¹

The bill would provide flexibility to ensure entities could utilize alternative methods to food labeling that are appropriate for their diverse business models and that are less burdensome, but accomplish the same goal of providing nutrition information to consumers.

An amendment approved by the Subcommittee on Health struck the provision that would exempt certain entities from menu labeling requirements, ensured all states have a consistent standard, and included other technical edits.

C. H.R. 3014, Medical Controlled Substances Transportation Act

H.R. 3014, introduced by Rep. Sessions (R-TX), would amend the Controlled Substances Act to allow registered physicians to transport and administer controlled substances to patients at

¹ <https://www.federalregister.gov/articles/2014/12/01/2014-27833/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food>.

other practice settings and disaster areas if the physician enters into an agreement with the Drug Enforcement Administration.

D. H.R. 3537, Synthetic Drug Control Act of 2015

H.R. 3537, introduced by Rep. Dent (R-PA), Rep. Himes (D-CT), Del. Holmes Norton (D-DC), and Rep. Jolly (R-FL), would add certain synthetic drug compounds to schedule I of the Controlled Substances Act.

E. H.R. 3716, Ensuring Terminated Providers Are Removed from Medicaid and CHIP Act, as amended

H.R. 3716, introduced by Rep. Bucshon (R-IN), Rep. Butterfield (D-NC), and Rep. Welch (D-VT), would implement several targeted recommendations by the Department of Health and Human Services Office of Inspector General to improve the Centers for Medicare and Medicaid Services oversight of terminated providers, also improving states' incentives to better police their programs and screen providers.

F. H.R. 3821, Medicaid Directory of Caregivers Act, as amended

H.R. 3821, introduced by Reps. Collins (R-NY) and Rep. Tonko (D-NY), would improve Medicaid beneficiaries access to care by helping them find a health care provider. Specifically, the bill would require state Medicaid programs that serve enrollees through fee-for-service and/or primary care case management arrangements to publish a list of Medicaid providers on its website.

G. H. J. Res. 71 and H.J. Res. 72, Congressional Review Act Resolutions of Disapproval

On October 26, 2015, Subcommittee on Energy and Power Chairman Whitfield introduced two resolutions pursuant to the Congressional Review Act² disapproving of final rules issued by the Environmental Protection Agency (EPA) to regulate carbon dioxide (CO₂) emissions from new and existing fossil-fuel fired power plants.

H.J. Res. 71 relates to EPA's CO₂ emissions rule for new plants published at 80 Fed. Reg. 64510 (October 23, 2015), and H.J. Res. 72 relates to EPA's CO₂ emissions rule for existing plants published at 80 Fed. Reg. 64662 (October 23, 2015). On October 7, 2015, and on October 22, 2015, the Subcommittee on Energy and Power held hearings relating to the final rules.³

² See 5 U.S.C. §§ 801-808. Under the Congressional Review Act, an agency may not issue the same or a substantially similar rule unless authorized by subsequent legislation. *Id.*; see also CRA Overview (Dec. 2014); "The Congressional Review Act: Frequently Asked Questions" (April 2015).

³ The rules were announced on August 3, 2015. For links to the hearings on October 7, 2015 and October 22, 2015, see "EPA's CO₂ Regulations for New and Existing Power Plants: Legal Perspectives" (Oct. 22, 2015); "EPA's CO₂ Regulations for New and Existing Power Plants" (Oct. 7, 2015). The Subcommittee also held hearings relating to

The legislation would provide for Congressional disapproval of each rule, and that the rule shall have no force and effect. The legislation includes the following specific provisions:

- H.J. Res. 71: The legislation provides that Congress disapproves the rule submitted by the EPA relating to “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units” (published at 80 Fed. Reg. 64510 (October 23, 2015)), and such rule shall have no force or effect.
- H.J. Res. 72: The legislation provides that Congress disapproves the rule submitted by the EPA relating to “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (published at 80 Fed. Reg. 64662 (October 23, 2015)), and such rule shall have no force or effect.

H. S. 611, Grassroots Rural and Small Community Water Systems Assistance Act

S. 611 would amend section 1442(e) of the Safe Drinking Water Act (SDWA) to reauthorize the Environmental Protection Agency’s (EPA) program providing technical assistance to small public water systems. S. 611 maintains the existing statutory authorization of \$15 million annually (including three percent for technical assistance to public water systems owned or operated by Indian Tribes), but changes the law to cover funding from fiscal year 2015 through fiscal year 2020.

S. 611 also would authorize EPA to provide technical assistance programs to small public water systems through grants or cooperative agreements made to non-profit organizations. The bill requires preference in awarding grants to non-profits that are most qualified and experienced and that small water systems find most beneficial and effective.

Finally, S. 611 prohibits these grants and cooperative agreements from being used to bring a citizen suit under SDWA.

III. STAFF CONTACTS

If you have any questions regarding the legislation to be considered, please contact the Committee Majority staff at (202) 225-2927. For questions regarding H.R. 1321, H.R. 3014, or H.R. 3537, please contact Carly McWilliams or John Stone. For questions regarding H.R. 2017,

the proposed versions of the rules, and for links to these hearings see [“EPA’s Proposed 111\(d\) Rule for Existing Power Plants, and H.R. ___, Ratepayer Protection Act”](#) (April 14, 2015); [“EPA’s Proposed 111\(d\) Rule for Existing Power Plants: Legal and Cost Issues”](#) (March 17, 2015); [“State Perspectives: Questions Concerning EPA’s Proposed Clean Power Plan”](#) (Sept. 9, 2014); [“FERC Perspectives: Questions Concerning EPA’s Proposed Clean Power Plan and other Grid Reliability Challenges”](#) (July 29, 2014); [“EPA’s Proposed Carbon Dioxide Regulations for Power Plants”](#) (June 19, 2014); [“EPA’s Proposed GHG Standards for New Power Plants and H.R. ___, Whitfield-Manchin Legislation”](#) (Nov. 14, 2013).

please contact Katie Novaria, Adrianna Simonelli, Carly McWilliams, or John Stone. For questions regarding H.R. 3716 or H.R. 3821, please contact Michelle Rosenberg or Josh Trent. For questions regarding H.J. Res. 71 or H.J. Res. 72, please contact Mary Neumayr or Tom Hassenboehler. For questions regarding S. 611, David McCarthy or Jerry Couri.