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RPTS HUMISTON

DCMN CRYSTAL

CONTINUED MARKUP OF:

H.R. \_\_\_\_\_, TO AMEND TITLE XVIII OF THE SOCIAL SECURITY ACT TO REFORM THE SUSTAINABLE GROWTH RATE AND MEDICARE PAYMENT FOR PHYSICIANS' SERVICES, AND FOR OTHER PURPOSES

TUESDAY, JULY 23, 2013

House of Representatives,

Subcommittee on Health,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 1:41 p.m. , in Room 2123, Rayburn House Office Building, Hon. Joseph R. Pitts [chairman of the subcommittee] presiding.

Present: Representatives Pitts, Burgess, Shimkus, Rogers, Murphy, Blackburn, Gingrey, Lance, Cassidy, Bilirakis, Barton, Upton

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(ex officio), Pallone, Capps, Christensen, and Waxman (ex officio).

Staff Present: Nick Abraham, Legislative Clerk; Clay Alspach, Chief Counsel, Health; Mike Bloomquist, General Counsel; Matt Bravo, Professional Staff Member; Noelle Clemente, Press Secretary; Steve Ferrara, Health Fellow; Julie Goon, Health Policy Advisor; Brad Grantz, Policy Coordinator, O&I; Sydne Harwick, Legislative Clerk; Brittany Havens, Legislative Clerk; Robert Horne, Professional Staff Member, Health; Kirby Howard, Legislative Clerk; Peter Kielty, Deputy General Counsel; Katie Novaria, Professional Staff Member, Health; Andrew Powaleny, Deputy Press Secretary; Chris Sarley, Policy Coordinator, Environment & Economy; Charlotte Savercool, Legislative Coordinator; Heidi Stirrup, Health Policy Coordinator; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Alli Corr, Minority Policy Analyst; Amy Hall, Minority Senior Professional Staff Member; Ruth Katz, Minority Chief Public Health Counsel; Karen Nelson, Minority Deputy Committee Staff Director for Health; and Roger Sherman, Minority Chief Counsel.

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Mr. Pitts. The subcommittee will come to order, the time of 1:30 having arrived. We will reconvene the subcommittee.

At the conclusion of the opening statements yesterday, the chair called up the committee print and the bill was open for amendment at any point.

At this point the chair recognize Mr. Pallone for the purposes of colloquy.

Mr. Pallone. Mr. Chairman, I would like to request unanimous consent that I address the subcommittee for just a minute.

Mr. Pitts. Without objection, so ordered.

Mr. Pallone. Thank you, Mr. Chairman.

I am sorry that I wasn't able to get back down to D.C. in time for the subcommittee's start yesterday at 5:00 p.m. for opening statements. I did think it was important to say that I am proud of the work that our subcommittee has accomplished thus far, and I believe that the product is a better one because of our bipartisanship. And I want to thank both you and Chairman Upton --

Mr. Pitts. The subcommittee will please come to order. If you can close the doors, we will be able to hear a little bit better.

The gentleman may proceed.

Mr. Pallone. And I wanted to thank both you and Chairman Upton for your hard work during this effort, and of course to our ranking member, Mr. Waxman, and the staffs on both sides of the aisle.

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I was pleased to cosponsor this bill, which is long overdue, and I would like to point out, which I am sure most of you did yesterday, that this is the first true bipartisan effort in any committee of jurisdiction to finally address how to actually replace the SGR, not just a temporary repeal. We have been talking for over a decade about how to fix the broken Medicare physician payment system, and today we are marking up a bill that does what stakeholders on both sides of the aisle have argued many years for.

First, it permanently repeals the flawed SGR formula. Second, it strengthens incentives, rewarding quality under Medicare's fee schedule. And third, it continues support for an expansion of alternative payment models. This is a great step in the right direction to reforming how we pay doctors in our healthcare system, ensuring that seniors have access to the doctors they need, and I am glad to be a part of it.

Mr. Chairman, if I could just enter into a colloquy, I would like to address an issue for the record that I think members on both sides of the aisle have expressed concern with, and that is the growing list of extraneous Medicare and Medicaid extender provisions, none of which have made it in today's committee draft.

I am pleased we are moving forward with permanent SGR legislation and I understand why these provisions haven't been included, but it is important that we not forget about these other programs that we

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typically extend at the end of each year alongside SGR. We have consistently put this committee's weight behind these additional extensions in the past, but I can understand why some stakeholders would worry that if an SGR extender is no longer necessary, there may not be the added pressure to address these other issues at the end of the year.

So I just wanted to confirm that there is no reason for alarm. Just because we are moving forward with SGR only, this should not be an indication that we do not view the other extenders as important as well. And I will press to make sure that we take up the remaining extenders at the appropriate time and ask that I have your support, Mr. Chairman, in this goal. So if you could comment or commit to working with me on this issue as we move forward.

Mr. Pitts. Thank you, Mr. Pallone. Thank you for raising this important issue with me and the other members of this subcommittee.

The policies known as extenders represent needed access to services for millions of Americans. While our need today is to focus on removing the looming threat that SGR holds over our seniors, I pledge to work with you on the extenders in the same spirit and the same bipartisan collaboration which has been demonstrated here today. Thank you.

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

Mr. Pitts. Thank you.

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At this time the chair recognizes vice chair of the subcommittee, Dr. Burgess, for the purpose of offering an amendment, which is sponsored by both Dr. Burgess and Mr. Pallone.

Dr. Burgess. Thank you, Mr. Chairman. I have an amendment at the desk labeled Manager 01.

Mr. Pitts. The clerk will report the amendment.

The Clerk. Amendment offered by Mr. Burgess of Texas and Mr. Pallone of New Jersey.

Mr. Pitts. The reading of the amendment is dispensed with, and Dr. Burgess is recognized for 5 minutes in support of the amendment.

[The amendment follows:]

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Dr. Burgess. Mr. Chairman, this is an amendment drafted with Ranking Member Pallone. It makes technical aligning and conforming changes to the underlying draft that have been identified by staff since the circulator release last Thursday based on feedback from the Center for Medicare and Medicaid Services.

This amendment, where language is added, does so simply to clarify intent. It makes no substantive changes and does not change any intent or scope of the underlying policy from the circulated draft. So for that reason, I urge my colleagues to support the amendment. And I will be happy to yield the remaining time to the ranking member of the subcommittee, Mr. Pallone.

Mr. Pitts. The chair recognize Mr. Pallone for 5 minutes on the amendment.

Mr. Pallone. Thank you, Mr. Chairman.

Let me quickly thank Dr. Burgess for his leadership and partnership in these discussions. As was mentioned, this amendment is completely technical in nature, and I urge my colleagues to support it.

Mr. Pitts. The chair thanks the gentleman.

And the chair recognizes the gentleman from Georgia, Dr. Gingery, for 5 minutes.

Dr. Gingery. Mr. Chairman, I move to strike the last word. And I am pleased that we have a piece of legislation before us today that

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ultimately replaces the SGR and places the Medicare physician payment model on a more straightforward path. I am encouraged that this undertaking has been done in a bipartisan fashion that recognizes that the SGR payment formula was flawed when it was created by Congress.

With the passage of this legislation, doctors will no longer be held hostage every year until Congress acts. Doctors will be able to prepare for the future and use improved reimbursement certainty to invest in new models of care that will ultimately lead to savings and better patient outcomes. By using specialty societies and other professional groups to create quality measures that will be used to promote best practices, we will see medicine, as opposed to government bureaucrats, lead the way toward better health practices.

The possibility that doctors will now be empowered to create their own alternative payment models and that the process for approval will be transparent and orderly is another win for medicine and for seniors. Allowing the doctors who directly provide care to recognize inefficiencies and then to work to correct them will be a good practice for both the patient and for our taxpayers.

I am also encouraged to see that this subcommittee has taken steps to clarify the standard of care owed by a healthcare provider. It is important for Congress to state unequivocally that Federal healthcare provisions do not affect the practice of medicine when arguing a medical malpractice case. This clarification will not only benefit doctors,

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but also patients, in allowing personalized care within a standard outside that of a unified national policy.

The clarifying language beginning on page 68 is similar to that in my bill, H.R. 1473, the Standard of Care Protection Act. This bipartisan legislation, which I introduced with Congressman Henry Cuellar of Texas, has been supported by numerous doctors groups for providing simple legislative language that articulates that payment rules should not be construed as liability rules. It does not change the rules of evidence or any other aspect of the processes used in the various States to resolve liability cases. It simply preserves the status quo with respect to medical professional liability adjudication process.

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[1:46 p.m.]

Dr. Gingrey. This particular section highlights a unifying bipartisanism that we must continue as we push for the bill to be signed into law. There is an agreement that the intent of our Federal healthcare laws is to promote quality, not to create new avenues for medical malpractice claims. Ranking Member Waxman has recognized this in the past. I am grateful to him. I am grateful that this policy has been recognized by the subcommittee as a whole.

Mr. Chairman, my office received numerous letters from medical, insurance, and senior advocate groups supporting the Standard of Care Protection Act, and I ask unanimous consent now to place these letters in the record. There are nine total. I could read them if you would like.

Mr. Pitts. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Dr. Gingrey. Mr. Chairman, I am encouraged that the days of Congress scrambling to avert another SGR crisis may soon be finished. The negotiations that this committee has had over the past month have yielded a product that is as close as we have ever been to seeing the SGR permanently repealed. We know that this process is not complete. Any fiscal responsible bill must include a way to pay for it. But as we continue on, I look forward to working toward finding an acceptable offset and replacing the current SGR model with a proposal that encourages innovation, savings, and a better patient outcome.

Thank you, Mr. Chairman. Yield back.

Mr. Pitts. The chair thanks the gentleman. We are voting on the floor. We have 8 minutes and 45 seconds left.

The chair recognizes the gentlelady from California, Mrs. Capps, 5 minutes for a statement.

Mrs. Capps. Thank you Chairman Pitts and Ranking Member Pallone for holding this markup. And I want to thank you both, along with Chairman Upton, Ranking Member Waxman, Chairman Emeritus Dingell, and Mr. Burgess for all the work that has been done to bring this product to the subcommittee today. I want to thank the staff on both sides of the aisle, too, for their work on this draft.

Throughout my years in Congress, it has been very clear that the Sustainable Growth Rate formula is flawed. It harmed access to care for Medicare beneficiaries and created uncertainty for providers. And

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it highlighted the inefficiencies of kicking the can down the road with piecemeal delays or fixes here in Congress.

Unfortunately while we all knew it needed to be fixed for good, there was little agreement about what the future of Medicare provider payment should look like. And these disagreements let the issue linger, causing more instability in our communities while the cost of a fix continued to rise.

So I am proud that we took an important step repealing the SGR in the House version of Obamacare, and I am glad we are here today to continue that momentum for a permanent fix. The bill before us is an important first step, a bipartisan vision with support from the provider community towards a stronger Medicare payment system. I will support it today.

That said, I think there are some important improvements that can be and should be made to ensure best outcomes for patients and use of taxpayer dollars. Throughout our hearings on SGR, I have consistently highlighted the need for nonphysician providers to have a strong role in a post-SGR world. While much of the language before us achieves this goal, I would like to highlight one concern. Namely, section 4's medical home language would exclude already certified nonphysician providers from participating in these new care coordination models.

I support the requirement under section 4 that recognition should

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be based primarily upon one's ability to reach an accreditation status of level 3 by the National Committee for Quality Assurance or similar entity. As written, some nonphysician providers who have already reached this level of certification, such as advanced practice nurses, would be categorically ineligible based on their profession. This is a step back, and I urge my colleagues to come together to fix this so that any Medicare provider able to successfully meet the standard would be eligible to participate under this bill.

I would also like to highlight a few other concerns as we go forward. First, SGR fixes have typically been the vehicle that have also dealt with the extenders package that addressed ongoing issues in both Medicare and Medicaid policy, like the therapy cap. While I understand the committee's interest in keeping this bill as streamlined as possible, I want to make sure we don't forget about these other issues that we must act upon this year.

In addition, we must address the unfair GPCI that hurts so many providers in my and other districts. And finally, I hope that the goodwill and cooperation we are seeing at today's markup can continue going forward. This will be critical as we continue on this process in finding an agreeable pay-for and as the committee addresses other important healthcare needs beyond SGR. We all need to work together to get things done. I look forward to doing just that. And I yield back the balance of my time.

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Mr. Pitts. The chair thanks the gentlelady.

If there is no further discussion, the vote occurs on the amendment.

All those in favor shall signify by saying aye.

All those opposed, no.

The ayes have it, and the amendment is agreed to.

The question now occurs on forwarding the committee print to the full committee, as amended.

All those in favor shall say aye.

Aye.

Those opposed, no.

The ayes appear to have it. The ayes have it and the bill is agreed to.

Without objection, staff is authorized to make technical and conforming changes to the committee print. So ordered.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 1:53 p.m., the subcommittee was adjourned.]