AMENDMENT TO H.R. 4978, AS FORWARDED BY
THE SUBCOMMITTEE ON HEALTH
OFFERED BY MR. PITTS OF PENNSYLVANIA AND
MR. YARMUTH OF KENTUCKY

At the end of the bill, add the following:

SEC. 3. EXCLUDING ABUSE-DETERRENT FORMULATIONS
OF PRESCRIPTION DRUGS FROM THE MEDICAID ADDITIONAL REBATE REQUIREMENT
FOR NEW FORMULATIONS OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—The last sentence of section 1927(c)(2)(C) of the Social Security Act (42 U.S.C. 1396r–8(e)(2)(C)) is amended by inserting before the period at the end the following: “, but does not include an abuse-deterrent formulation of the drug (as determined by the Secretary), regardless of whether such abuse-deterrent formulation is an extended release formulation”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs that are paid for by a State in calendar quarters beginning on or after the date of the enactment of this Act.
SEC. 4. LIMITING DISCLOSURE OF PREDICTIVE MODELING AND OTHER ANALYTICS TECHNOLOGIES TO IDENTIFY AND PREVENT WASTE, FRAUD, AND ABUSE.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1128J (42 U.S.C. 1320a–7k) the following new section:

"SEC. 1128K. DISCLOSURE OF PREDICTIVE MODELING AND OTHER ANALYTICS TECHNOLOGIES TO IDENTIFY AND PREVENT WASTE, FRAUD, AND ABUSE.

“(a) Reference to Predictive Modeling Technologies Requirements.—For provisions relating to the use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse with respect to the Medicare program under title XVIII, the Medicaid program under title XIX, and the Children’s Health Insurance Program under title XXI, see section 4241 of the Small Business Jobs Act of 2010 (42 U.S.C. 1320a–7m).

“(b) Limiting Disclosure of Predictive Modeling Technologies.—In implementing such provisions under such section 4241 with respect to covered algorithms (as defined in subsection (c)), the following shall apply:
“(1) NONAPPLICATION OF FOIA.—The covered algorithms used or developed for purposes of such section (including by the Secretary or a State (or an entity operating under a contract with a State)) shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code.

“(2) LIMITATION WITH RESPECT TO USE AND DISCLOSURE OF INFORMATION BY STATE AGENCIES.—

“(A) IN GENERAL.—A State agency may not use or disclose covered algorithms used or developed for purposes of such section except for purposes of administering the State plan (or a waiver of the plan) under the Medicaid program under title XIX or the State child health plan (or a waiver of the plan) under the Children’s Health Insurance Program under title XXI, including by enabling an entity operating under a contract with a State to assist the State to identify or prevent waste, fraud and abuse with respect to such programs.

“(B) INFORMATION SECURITY.—A State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of covered algo-
rithms used or developed for purposes of such
section 4241 and to ensure that access to such
information is restricted to authorized persons
for purposes of authorized uses and disclosures
described in subparagraph (A).

“(C) PROCEDURAL REQUIREMENTS.—
State agencies to which information is disclosed
pursuant to such section 4241 shall adhere to
uniform procedures established by the Sec-
retary.

“(c) COVERED ALGORITHM DEFINED.—In this sec-
tion, the term ‘covered algorithm’—

“(1) means a predictive modeling or other anal-
lytics technology, as used for purposes of section
4241(a) of the Small Business Jobs Act of 2010 (42
U.S.C. 1320a-7m(a)) to identify and prevent waste,
fraud, and abuse with respect to the Medicare pro-
gram under title XVIII, the Medicaid program
under title XIX, and the Children’s Health Insur-
ance Program under title XXI; and

“(2) includes the mathematical expressions uti-
лизed in the application of such technology and the
means by which such technology is developed.”.

(b) CONFORMING AMENDMENTS.—
(1) **MEDICAID STATE PLAN REQUIREMENT.**—

Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (80), by striking “and” at the end;

(B) in paragraph (81), by striking the period at the end and inserting “; and”;

(C) by inserting after paragraph (81) the following new paragraph:

“(82) provide that the State agency responsible for administering the State plan under this title provides assurances to the Secretary that the State agency is in compliance with subparagraphs (A), (B), and (C) of section 1128K(b)(2).”.

(2) **STATE CHILD HEALTH PLAN REQUIREMENT.**—Section 2102(a)(7) of the Social Security Act (42 U.S.C. 1397bb(a)(7)) is amended—

(A) in subparagraph (A), by striking “, and” at the end and inserting a semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following new subparagraph:
“(C) to ensure that the State agency involved is in compliance with subparagraphs (A), (B), and (C) of section 1128K(b)(2).”.

SEC. 5. MEDICAID IMPROVEMENT FUND.

Section 1941(b)(1) of the Social Security Act (42 U.S.C. 1396w–1(b)(1)) is amended to read as follows:

“(1) IN GENERAL.—There shall be available to the Fund, for expenditures from the Fund for fiscal year 2021 and thereafter, $5,000,000.”.

Amend the long title so as to read: “To require the Government Accountability Office to submit to Congress a report on neonatal abstinence syndrome (NAS) in the United States and its treatment under Medicaid, and for other purposes.”.