



April 22, 2016

TO: Members. Committee on Energy and Commerce
FROM: Committee Majority Staff
RE: Full Committee Markup

I. INTRODUCTION

The Committee on Energy and Commerce has scheduled a markup for April 26-28, 2016.

On Tuesday, April 26, the Committee will convene at 5:00 p.m. in 2123 Rayburn House Office Building for opening statements only.

The Committee will reconvene on Wednesday, April 27 at 10:00 a.m. in 2123 Rayburn House Office Building. The markup will continue on Thursday, April 28 at 10:00 a.m. in 2123 Rayburn House Office Building.

The Committee will consider the following:

Subcommittee on Health Legislation

- H.R. 4978, Nurturing and Supporting Healthy Babies Act;
- H.R. 4641, To provide for the establishment of an inter-agency task force to review, modify, and update best practices for pain management and prescribing pain medication, and for other purposes, as amended by the Subcommittee on Health;
- H.R. 3680, Co-Prescribing to Reduce Overdoses Act of 2015, as amended by the Subcommittee on Health;
- H.R. 3691, Improving Treatment for Pregnant and Postpartum Women Act;
- H.R. 1818, Veteran Emergency Medical Technician Support Act of 2015;
- H.R. 4981, Opioid Use Disorder Treatment Expansion and Modernization Act, as amended by the Subcommittee on Health;
- H.R. 3250, DXM Abuse Prevention Act of 2015;
- H.R. 4969, John Thomas Decker Act of 2016, as amended by the Subcommittee on Health;
- H.R. 4586, Lali's Law, as amended by the Subcommittee on Health;
- H.R. 4599, Reducing Unused Medications Act of 2016, as amended by the Subcommittee on Health;
- H.R. 4976, Opioid Review Modernization Act of 2016; and
- H.R. 4982, Examining Opioid Treatment Infrastructure Act of 2016.

Subcommittee on Communications and Technology Legislation

- H.R. 4889, the Kelsey Smith Act of 2016, as amended by the Subcommittee on Communications and Technology;

- H.R. 4167, Kari's Law Act of 2015;
- H.R. 4111, Rural Health Care Connectivity Act of 2015;
- H.R. 4190, Spectrum Challenge Prize Act of 2015;
- H.R. 3998, Securing Access to Networks in Disasters (SANDy) Act;
- H.R. 2031, Anti-Swatting Act of 2015;
- H.R. 2589, A bill to amend the Communications Act of 1934 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption;
- H.R. 2592, A bill to amend the Communications Act of 1934 to require the Federal Communications Commission to publish on the website of the Commission documents to be voted on by the Commission; and,
- H.R. 2593, A bill to amend the Communications Act of 1934 to require identification and description on the website of the Federal Communications Commission of items to be decided on authority delegated by the Commission.

Subcommittee on Energy and Power Legislation

- Pipeline Safety Act of 2016.

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. SUBCOMMITTEE ON HEALTH LEGISLATION

a. H.R. 4978, Nurturing and Supporting Healthy Babies Act

H.R. 4978, introduced by Rep. Jenkins and Rep. Bustos, would require the Comptroller General of the United States to issue a report one year after enactment on neonatal abstinence syndrome (NAS). Among other things, the report will include information on the prevalence of NAS among children covered by Medicaid, NAS treatment services covered by Medicaid and the costs associated with that treatment, the settings in which Medicaid covered treatment for infants with NAS are provided, and any Federal barriers for treating infants with NAS.

b. H.R. 4641, To provide for the establishment of an inter-agency task force to review, modify, and update best practices for pain management and prescribing pain medication, and for other purposes

H.R. 4641, introduced by Rep. Brooks and Rep. Kennedy, would authorize the Secretary of Health and Human Services to convene a task force to review, revise if appropriate, and disseminate best practices for chronic and acute pain management. The task force would be comprised of Federal agencies, outside experts, and patients.

c. H.R. 3680, Co-Prescribing to Reduce Overdoses Act of 2015

H.R. 3680, introduced by Rep. Sarbanes, would establish a grant program for co-prescribing of opioid reversal drugs for patients who are at a high risk of overdose. This grant would support the creation of opioid overdose reversal co-prescribing guidelines.

d. H.R. 3691, Improving Treatment for Pregnant and Postpartum Women Act

H.R. 3691, introduced by Rep. Lujan, would reauthorize residential treatment programs for pregnant and postpartum women and establish a pilot grant program for State substance abuse agencies to support family based services with a primary diagnosis of a substance use disorder, which would include opioid addiction.

e. H.R. 1818, Veteran Emergency Medical Technician Support Act of 2015

H.R. 1818, introduced by Rep. Kinzinger, would create a demonstration program to help streamline the licensure requirements for veterans who have already completed military emergency medical technician training to more easily meet civilian emergency medical technician licensure requirements. The House approved this legislation by a voice vote in both the 112th and 113th Congress (H.R. 4124 and H.R. 235 respectively).

f. H.R. 4981, Opioid Use Disorder Treatment Expansion and Modernization Act

H.R. 4981, introduced by Rep. Bucshon and Rep. Tonko, would amend the Controlled Substances Act to expand access to medication-assisted treatment, while ensuring that patients receive the full array of quality evidence-based services and minimizing the potential for drug diversion.

g. H.R. 3250, DXM Abuse Prevention Act of 2015

H.R. 3250, introduced by Rep. Johnson and Rep. Matsui, amends the Federal Food, Drug, and Cosmetic Act to ban the sale of a drug containing dextromethorphan (DXM) to an individual under age 18 unless the individual has a prescription or is actively enrolled in the military. This bill includes civil monetary penalties, which increase upon repeated violations.

h. H.R. 4969, James Thomas Decker Act of 2016

H.R. 4969, introduced by Rep. Meehan, Rep. Kind, and Rep. Veasey amends the Public Health Service Act to direct the Centers for Disease Control and Prevention (CDC) to study what information and resources are available to youth athletes and their families regarding the dangers of opioid use and abuse, non-opioid treatment options, and how to seek addiction treatment. The CDC is then to publicly report its findings and work with stakeholders to disseminate resources to students, parents, and those involved in treating a sports related injury.

i. H.R. 4586, Lali's Law

H.R. 4586, introduced by Rep. Dold and Rep. Clark amends the Public Health Service Act to authorize grants to States for developing standing orders for naloxone prescriptions and educating health care professionals regarding the dispensing of opioid overdose reversal medication without person-specific prescriptions.

j. H.R. 4599, Reducing Unused Medications Act of 2016

H.R. 4599, introduced by Rep. Clark and Rep. Stivers, would amend the Controlled Substances Act (CSA) to clarify when a prescription for a drug listed on Schedule II of the CSA may be partially filled.

k. H.R. 4976, Opioid Review Modernization Act of 2016

H.R. 4976, introduced by Rep. Maloney and Rep. Lance would require the Food and Drug Administration to work closely with expert advisory committees before making critical product approval and labeling decisions, and to make recommendations regarding education programs for prescribers of extended-release and long-acting opioids. Further, it would encourage the development and approval of opioids with abuse-deterrent properties.

l. H.R. 4982, Examining Opioid Treatment Infrastructure Act of 2016

H.R. 4985, introduced by Rep. Foster requires the Comptroller General of the United States to issue a report to Congress on substance abuse treatment availability and infrastructure needs throughout the United States. The report will include an evaluation of various substance abuse treatment settings including inpatient, outpatient, and detoxification programs.

III. SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY LEGISLATION

a. H.R. 4889, Kelsey Smith Act of 2016

When a cell phone connects to or communicates with the network, whether to make a call, download data, or even receive a push notification or background update, the cell provider notes the approximate location using the closest cell tower and the device's proximity to that tower. Current Federal law permits telecommunications carriers to use, disclose, or permit access to call location information for users of their service to emergency personnel in order to respond to a user's call for emergency services.¹ In addition, it permits carriers to provide location to the user's legal guardian or immediate family when there is an emergency situation with risk of death or serious physical harm.² However, Federal law does not compel disclosure of that information to law enforcement, leaving the decision to the discretion of the carrier.

¹ 47 U.S.C. 222(d)(4)(A).

² 47 U.S.C. 222(d)(4)(B).

In 2007, Kelsey Smith was abducted from a parking lot in Kansas. While a search for her began immediately, law enforcement encountered difficulty in obtaining location information from her cell phone provider. After four days of searching, law enforcement located her body within 45 minutes of receiving the device location data.

This legislation would allow law enforcement to access location data more quickly in order to better react to emergencies and locate a potential victim much more quickly. Commercial mobile service providers would be required to provide call location information to law enforcement when the device has been used to call 9-1-1 for emergency assistance, or for a device that is in the possession of a user that law enforcement believes to be in an emergency situation involving the risk of death or serious physical harm. In addition, the legislation limits the liability for carriers that, in good faith, provide location data in compliance with the law. To date, similar legislation has passed in twenty-two States.³

b. H.R. 4167, Kari's Law Act of 2015

Multi-Line Telephone Systems (MLTS) serve multiple telephone users at a single site, often an office building, hotel, university campus, or similar locations. One common feature of MLTS is the configuration requiring a user to dial a digit or prefix to reach a number outside of the system—that is, dial “9” before reaching an outside line. When an emergency call is placed from a MLTS phone, the user may still have to dial the prefix to direct the call outside of the system.

In December 2013, Kari Hunt Dunn was killed by her estranged husband in a motel room in Texas. Her daughter repeatedly attempted to dial 9-1-1 from the motel room, but was unable to reach emergency responders because the motel's MLTS required users to dial “9” to reach an outside line. Kari's Law seeks to ensure that this confusion does not prevent others from accessing essential emergency services from an MLTS phone. While many hotels and office buildings have begun to make this change to their systems, this bill would make it a universal requirement.

H.R. 4167 would require that all MLTS have a default configuration that allows users to directly dial 9-1-1, without the need for any additional digit or prefix, from any phone with dialing facilities. In addition, the system must also be configured to notify a central location at the system's facility when someone initiates a call to 9-1-1 using the system. By notifying a central point of contact within the facility, emergency responders are better able to access, locate, and assist a caller who initiates a 9-1-1 call within the MLTS.

c. H.R. 4111, Rural Health Care Connectivity Act of 2015

³ <http://kelseysarmy.org/#ks-act>.

In 1997, the Federal Communications Commission (FCC) implemented the directives of the Telecommunication Act of 1996 (the Act) by creating the Rural Health Care Program (RHCP) funded by the Universal Service Fund. The program provided subsidies to public and non-profit rural health care providers to offset the costs of telecommunications services and Internet services. Under the Act, eligibility for funding under the RHCP is limited to public or non-profit entities.

The 2010 National Broadband Plan (NBP) observed a health IT broadband connectivity gap particularly in rural areas, notwithstanding the RHCP. Among other things, the NBP recommended various reforms to the RHCP, including that the FCC re-examine the interpretation of “health-care provider” in light of developing trends in the provision of healthcare.⁴

In 2012, the FCC created the Healthcare Connect Fund to reform, expand, and modernize the RHCP.⁵ Although the FCC acknowledged that Skilled Nursing Facilities (SNF) provide some of the “same post-acute services that are traditionally provided at hospitals,” it also determined that it could not conclude whether or under what circumstances a SNF might qualify as a health care provider under the Act.⁶ However, the FCC did establish a pilot program to test how to support broadband connectivity to non-profit skilled nursing facilities.⁷ In 2014, the FCC announced it was deferring the SNF pilot program.⁸

H.R. 4111 expands the statutory definition of “health care provider” under section 254 of the Act to include skilled nursing facilities. As a result, such facilities will be eligible for support under the program.

d. H.R. 4190, Spectrum Challenge Prize of 2015

The growing use of mobile broadband has caused the demand for wireless connectivity to increase at an astounding rate. Consumer expectations for high-speed and seamless Internet connectivity have created a tremendous amount of pressure to increase spectrum efficiency. H.R. 4190, the Spectrum Challenge Prize Act of 2015, was introduced by Rep. Matsui to address this growing demand. The legislation would authorize a competition for technology that improves spectrum efficiency and is capable of cost-effective deployment. The bill authorizes the Department of Commerce to enter into an agreement with a private or nonprofit entity to administer the competition and award a winner up to \$5 million in prize compensation.

⁴ See National Broadband Plan at 216 *available at* <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

⁵ See *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-150A1.doc

⁶ *Id* at pp 138-139 paras 345-356.

⁷ *Id* at 99139-141 paras. 347-350.

⁸ See Wireline Competition Bureau Announces Deferral of the Skilled Nursing Facility Pilot Program Pending Commission Consideration of Rural Healthcare Broadband Proposals, Public Notice, February 19, 2014 *available at* https://apps.fcc.gov/edocs_public/attachmatch/DA-14-223A1.pdf

e. H.R. 3998, Securing Access to Networks in Disasters Act

Hurricane/Superstorm Sandy hit the Caribbean and Northeastern United States in late October 2012. The storm developed into the largest Atlantic Hurricane on record, causing estimated damages of \$74 billion in the U.S. Damage to power and communications infrastructure was particularly severe, leading to disruption and unavailability of communications services, including cellular and landline telephones, television, and broadband services for extended periods. Lack of service threatened the delivery of public safety communications and emergency response services.

The proposed legislation is intended to improve the resiliency of communications systems to avoid a recurrence of the widespread and extended service disruptions experienced in the wake of the storm. Among other things, the bill requires the FCC to begin proceedings on the provision of roaming agreements between mobile service providers to: (1) allow for mobile service at reasonable rates during emergencies when there is a mobile service outage lasting longer than 24 hours, and (2) provide for roaming agreements at no charge for communications during emergencies to or from 911 services—permitting consumers to use their cell phones on other carriers’ networks if their own network goes down. The bill also requires the FCC to create a master point of contact directory for communications between public safety answering points and telecommunications service providers; to submit a study on mobile service providers supplying outage data to public safety answering points and on making Wi-Fi access points available to the public for 911 services during emergencies. The bill requires the Government Accountability Office to report on the resiliency of telecommunications networks power utility during emergencies. The bill also requires the Federal Emergency Management Agency (FEMA) to allow service providers access to relevant locations and resources to restore service.

f. H.R. 2031, Anti-Swatting Act of 2015

“Swatting” – using fake caller ID information when calling emergency services in order to trigger a response from law enforcement – is a growing problem as technology makes it easier to manipulate that information. Typically, in swatting crimes, a caller will falsify the information that is displayed to public safety answering point dispatchers and claim that an emergency is taking place at an address not their own. Law enforcement will respond to the emergency call, catching the residents of that address unaware, and often putting both law enforcement and the residents in danger.

While current law prohibits swatting,⁹ this legislation would create enhanced penalties for those who violate the statute, including fines and imprisonment. H.R. 2031 directs the court to order anyone convicted of the violation to reimburse law enforcement, government agencies, and any private organization that responds to a swatting call with emergency services for any expenses incurred.

⁹ 47 U.S.C. 227(e)

- g. H.R. 2589, A bill to amend the Communications Act of 1934 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption

H.R. 2589 requires the FCC to make available on its website any changes made to its rules, as codified in the Code of Federal Regulations, within 24 hours of adoption. Current law does not set a time by which the Commission must make text publicly available. Under the terms of the draft bill, staff may continue to revise the explanatory text of the item as necessary and permitted by law to accommodate arguments raised by dissenting commissioners. The bill provides the Commission with 30 days after its enactment to implement this new procedure.

- h. H.R. 2592, A bill to amend the Communications Act of 1934 to require the Federal Communications Commission to publish on the website of the Commission documents to be voted on by the Commission:

H.R. 2592 requires the Chairman to publish the draft items circulated to Commissioners for vote within 24 hours of circulation. Current Commission rules require the Chairman to provide draft copies of items the Chairman intends to bring up for a vote at an open Commission meeting 21 days before the meet. The bill mirrors that 21-day period in its provision that prohibits the Commission from voting to adopt an item for 21 days in the event of a failure to post the document within the 24 hours allowed. The bill also permits edits to the draft over the course of the Commission's deliberations between circulation and the open meeting. The provision also draws on Sunshine in Government and FOIA jurisprudence to exempt certain material from publication.

- i. H.R. 2593, A bill to amend the Communications Act of 1934 to require identification and description on the website of the Federal Communications Commission of items to be decided on authority delegated by the Commission

Under the terms of the Communications Act of 1934, the Chairman of the FCC may delegate authority for the routine actions of the Commission to be taken by the staff of the Commission without a Commission vote. H.R. 2593 requires the Chairman to publish a list of items being adopted on delegated authority 48 hours before the items are adopted.

IV. SUBCOMMITTEE ON ENERGY AND POWER LEGISLATION

- a. Pipeline Safety Act of 2016

Section 1. Short title; References; Table of Contents.

Section 1 provides the short title of the "Pipeline Safety Act of 2016".

Section 2. Regulatory Updates.

Section 2 requires the Secretary of Transportation to report to Congress on outstanding regulations for which no interim or final rule has been issued. The contents of the report shall

include, for each outstanding regulation, a description of the work plan, timeline, current staff allocations, resource constraints, and any other details that affect the progress of the rulemaking process.

Section 3. Statutory Preference.

Section 3 requires the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) to complete the rulemaking process for regulations required by the Pipeline Safety Act of 2011 or any other law for which more than two years have passed since the statutory deadline before beginning any new rulemaking process. This section provides an exception to allow the Administrator to begin a new rulemaking if the Secretary of Transportation determines that there is a significant need and notifies Congress.

Section 4. Integrity Management Review.

Section 4 requires the Comptroller General to report to Congress on integrity management programs for natural gas and liquid pipeline facilities. The contents of the report shall include an analysis of the extent to which integrity management programs have improved safety; an analysis and recommendations on ways to enhance pipeline safety; and a description of any challenges affecting regulators in their oversight of and operators in complying with the requirements of the integrity management programs.

Section 5. Technical Safety Standards Committees.

Section 5 requires the Secretary to consult with “utility regulators,” in addition to a national organization representing State commissioners, when choosing participants for technical safety standards committees.

Section 6. Inspection Report Information.

Section 6 requires the Secretary of Transportation, no later than thirty days after the completion of a pipeline inspection, to conduct a post-inspection briefing with the operator outlining any concerns and, to the extent practicable, provide written findings of the inspection. The written findings may include a final report, notice of amendment of plans or procedures, safety order, corrective action order, or any other applicable report, notice, or order.

Section 7. Improving Damage Prevention Technology.

Section 7 requires the Secretary of Transportation to conduct a study and report to Congress on methods to improve damage prevention programs for pipeline facilities.

Section 8. Direct Hire Authority for Pipeline and Hazardous Materials Safety Administration.

Section 8 provides the Administrator of PHMSA with Direct-Hire Authority in order to fill vacancies to meet a critical hiring need. This section also requires a report to Congress on

the use of the authority provided and efforts to hire women, minorities, and veterans as inspectors.

Section 9. Information-Sharing System.

Section 9 requires the Secretary of Transportation to convene a working group to consider the development of a voluntary information-sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing. The working group shall include representatives from PHMSA, industry stakeholders, safety advocates, research institutions, State pipeline safety inspectors, and labor representatives.

Section 10. Nationwide Integrated Pipeline Safety Regulatory Database.

Section 10 requires the Secretary of Transportation to report to Congress on the feasibility of establishing a nationwide integrated pipeline safety regulatory inspection database to improve communication and collaboration between PHMSA and State pipeline regulators.

Section 11. Underground Gas Storage Facilities.

Section 11 requires the Secretary of Transportation to issue minimum safety standards for the operation and integrity management of underground gas storage facilities no later than two years after the date of enactment.

Section 12. Requirements for Certain Hazardous Liquid Pipeline Facilities.

Section 12 requires operators of onshore, underwater pipeline facilities located at depths greater than 150 feet below the surface to conduct internal inspections (also known as “pigging”) annually, and other types of integrity assessments on a risk-based schedule.

Section 13. Response Plans.

Section 13 requires PHMSA and the pipeline operator to ensure that emergency response plans include procedures and a list of resources for responding to a worst case discharge of oil, including when it may impact navigable waters or adjoining shorelines that may be covered in whole or in part by ice.

Section 14. Unusually Sensitive Areas.

Section 14 adds the Great Lakes and coastal beaches to the list of areas that the Secretary is required to consider when describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident.

Section 15. Emergency Operation Controls.

Section 15 provides PHMSA with emergency authority to order emergency restrictions, prohibitions, and safety measures to abate an imminent hazard that presents the substantial likelihood of death, serious illness, severe personal injury; or substantial endangerment to health, property, or the environment. PHMSA is required consider the impact on the economy and pipeline operators. PHMSA is also required to tailor the order to abate the hazard and describe how existing authorities are insufficient to do so. Under this section, PHMSA is required to provide for a review at the request of an entity subject to and adversely affected by the order. If the review is not completed by the end of a 30-day period, the action will cease to be effective. Additionally, this section allows for expedited judicial review in a U.S. District Court. This section contains a savings clause to clarify that an emergency order issued under this section may not be used to amend the Code of Federal Regulations.

Section 16. Pipeline Safety Information Grants to Communities.

Section 16 requires the Inspector General of the Department of Transportation to conduct an audit of the Technical Assistance Grant program to review compliance by PHMSA and grant recipients. This section also amends the statute to clarify the definition of technical assistance.

Section 17. Transparency in Interagency Review.

Section 17 requires PHMSA to make the cost-benefit analyses of their rulemakings public and identify the substantive changes between a draft rulemaking submitted to the Office of Management and Budget (OMB) for review and the final version posted in the Federal Register. This section also requires PHMSA to identify those changes made at the suggestion or recommendation of OMB.

Section 18. Corrosion Control Review.

Section 18 requires the Comptroller General to submit a report to Congress on corrosion control for gas and hazardous liquid pipeline facilities.

Section 19. Authorization of Appropriations.

Section 19 reauthorizes PHMSA's gas and hazardous liquid programs, operational expenses, One-Call notification program, pipeline safety information grants to communities, and pipeline integrity program from fiscal years 2017 through 2021.

V. STAFF CONTACTS

If you have questions regarding the Subcommittee on Health legislation, please contact John Stone, Carly McWilliams, Josh Trent, or Adrianna Simonelli. If you have questions regarding the Subcommittee on Communications and Technology legislation, please contact David Redl or Kelsey Guyselman. If you have questions regarding the Subcommittee on Energy and Power legislation, please contact Tom Hassenboehler or Brandon Mooney. All staff can be contacted at (202) 225-2927.