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3 HIF060.140

4 MARKUP ON H.R. 452, THE MEDICARE DECISIONS ACCOUNTABILITY ACT  
5 OF 2011

6 WEDNESDAY, FEBRUARY 29, 2012

7 House of Representatives,

8 Subcommittee on Health

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:05 a.m.,  
12 in Room 2123 of the Rayburn House Office Building, Hon. Joe  
13 Pitts [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Pitts, Burgess,  
15 Whitfield, Shimkus, Rogers, Murphy, Blackburn, Gingrey,  
16 Latta, McMorris Rodgers, Lance, Cassidy, Guthrie, Barton,  
17 Upton (ex officio), Pallone, Dingell, Towns, Capps,  
18 Schakowsky, Gonzalez and Waxman (ex officio).

19 Staff present: Gary Andres, Staff Director; Mike  
20 Bloomquist, General Counsel; Anita Bradley, Senior Policy  
21 Advisor to Chairman Emeritus; Allison Busbee, Legislative  
22 Clerk; Howard Cohen, Chief Health Counsel; Nancy Dunlap,  
23 Health Fellow; Paul Edattel, Professional Staff Member,  
24 Health; Debbie Keller, Press Secretary; Peter Kielty,  
25 Associate Counsel; Ryan Long, Chief Counsel, Health; Carly  
26 McWilliams, Legislative Clerk; Katie Novaria, Legislative  
27 Clerk; John O'Shea, Professional Staff Member, Health; Monica  
28 Popp, Professional Staff Member, Health; Chris Sarley, Policy  
29 Coordinator, Environment and Economy; Heidi Stirrup, Health  
30 Policy Coordinator; Tom Wilbur, Staff Assistant; Phil  
31 Barnett, Democratic Staff Director; Jen Berenholz, Democratic  
32 Chief Clerk; Alli Corr, Democratic Policy Analyst; Amy Hall,  
33 Democratic Senior Professional Staff Member; Purvee Kempf,  
34 Democratic Senior Counsel; Elizabeth Letter, Democratic  
35 Assistant Press Secretary; Karen Nelson, Democratic Deputy  
36 Committee Staff Director for Health; and Roger Sherman,  
37 Democratic Chief Counsel.

|  
38 Mr. {Pitts.} This Subcommittee will come to order.

39 The Chair recognizes himself for an opening statement.

40 The bill we are marking up today, H.R. 452, repeals the  
41 Independent Payment Advisory Board, or IPAB, created by  
42 Sections 3403 and 10320 of the President's health care law.

43 The purpose of IPAB is to reduce Medicare's per capita  
44 growth rate. The board will be composed of 15 individuals,  
45 nominated by the President with the advice and consent of the  
46 Senate, who will be paid \$165,300 a year and serve 6-year  
47 terms. If Medicare's annual per capita spending is  
48 determined to exceed an arbitrary target growth rate, the  
49 board is charged with submitting to Congress a proposal to  
50 reduce Medicare spending growth. These recommendations will  
51 automatically go into effect unless Congress passes  
52 legislation that would achieve the same amount of savings.

53 Supporters of IPAB tell us that there is nothing wrong  
54 with having 15 unelected bureaucrats making binding decisions  
55 about Medicare policy. They are not troubled by the fact  
56 that there is no requirement for public comment prior to IPAB  
57 issuing its recommendations. That IPAB's actions are not  
58 subject to judicial review does not alarm them.

59 Supporters point to the fact that IPAB is not permitted  
60 to ration care. A definition of rationing, however, does not

61 appear in any federal law, including PPACA, to my knowledge.  
62 For example, is it rationing if IPAB slashes provider  
63 reimbursements to the point that doctors decide they can no  
64 longer see Medicare patients? That is already happening in  
65 many parts of the country. Further provider cuts will only  
66 exacerbate the trend.

67       And if you are young and healthy and believe that this  
68 debate doesn't impact you or won't for decades, you may be  
69 interested to know that IPAB is also charged with submitting  
70 to Congress annual detailed reports on health care costs,  
71 access, quality and utilization, and recommendations  
72 regarding ways of slowing the growth in private national  
73 health care expenditures.

74       IPAB is the exact opposite of transparency and  
75 accountability. It is merely another example of valuing  
76 centralized decision-making by government-appointed experts  
77 over judgments that should be made between a doctor and  
78 patient.

79       That Medicare is on an unsustainable growth path is  
80 undeniable. That IPAB is not the way to fix the problem  
81 would, I hope, be self-evident.

82       I am pleased that H.R. 452 has a bipartisan group of  
83 cosponsors, including members of the full committee from both  
84 sides. I urge support of the bill.

85 [The prepared statement of Mr. Pitts follows:]

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

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87           Mr. {Pitts.} I will yield the remainder of my time and  
88 now recognize my friend from New Jersey, Mr. Pallone, for his  
89 opening statement.

90           Mr. {Pallone.} Thank you, Chairman Pitts.

91           I wish I could say I was happy about today's markup to  
92 reveal the Independent Payment Advisory Board, better known  
93 as IPAB, but I am certainly not. I have made it clear from  
94 the infancy of the idea that I was opposed to IPAB, but the  
95 reasons for my position are not the same as my Republican  
96 colleagues.

97           I don't think this markup is real, Mr. Chairman. This  
98 is an effort by the other side to continue its political game  
99 of defacing the Affordable Care Act. All the Republicans  
100 want to do is repeal the ACA piece by piece, and today is  
101 simply another attempt of those efforts.

102           My opposition to IPAB focuses on my belief that Congress  
103 must stop ceding legislative power to the executive branch.  
104 For me, this is about Congressional prerogatives being  
105 limited. IPAB, like other independent commissions,  
106 encroaches upon legislative authority. I am opposed to an  
107 independent commission playing a legislative role other than  
108 on a recommendatory basis. It is not the job of an  
109 independent commission to make decisions on health care

110 policy for Medicare beneficiaries.

111 Now, I simply can't stay quiet about the rhetoric,  
112 however, from the other side. How can the Republicans  
113 lecture anyone about IPAB and its consequences for Medicare  
114 and seniors? You purport to want to protect Medicare and  
115 seniors, yet last year every single one of you voted to end  
116 Medicare as we know it. Your budget destroys Medicare. You  
117 turn the program and millions of seniors over to the private  
118 insurers with no accountability. In fact, the Republicans'  
119 Medicare plan would more than double the typical senior's  
120 out-of-pocket health care spending in 2022, compared to what  
121 their costs would be under traditional Medicare, increasing  
122 their out-of-pocket costs by more than \$6,000.

123 So, let me be very clear. My vote today in support of  
124 abolishing IPAB is not related to my support for the ACA. In  
125 fact, I do not see IPAB as a significant factor in the  
126 Affordable Care Act. The ACA has finally set our health care  
127 system on a path to reform, and I wish the Republicans would  
128 simply embrace the ACA and not use the IPAB as a reason for  
129 its repeal.

130 My hope is that we can work together to build on the  
131 success of the Affordable Care Act's reforms.

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

133 [The prepared statement of Mr. Pallone follows:]

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

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135           Mr. {Pitts.} The Chair thanks the gentleman and now  
136 recognizes the Chairman of the full Committee for three  
137 minutes for an opening statement.

138           The {Chairman.} Thank you, Mr. Chairman. I am just  
139 going to submit my statement for the record to speed things  
140 along, so with that, I will yield back.

141           [The prepared statement of Mr. Upton follows:]

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

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143           Mr. {Pitts.} The Chair now recognizes the Ranking  
144 Member of the Full Committee, Mr. Waxman, for 3 minutes for  
145 an opening statement.

146           Mr. {Waxman.} Thank you, Mr. Chairman.

147           Today the Republicans are mounting another political  
148 attack on the Affordable Care Act. For the last year, House  
149 Republicans have been claiming erroneously that we cannot  
150 afford to maintain Medicare's promise to seniors. Yet today,  
151 they will vote to repeal provisions in the Affordable Care  
152 Act that will save Medicare over \$2 billion, and they have  
153 identified no way to pay for the costs they are adding to  
154 Medicare.

155           Their logic makes no sense. They say we can't afford  
156 Medicare, yet they want to eliminate one of the innovations  
157 in the Affordable Care Act that keeps Medicare costs under  
158 control. It is this kind of political opportunism that is  
159 alienating so many Americans from Congress.

160           The fact is, the Affordable Care Act is working. It is  
161 not quite 2 years since the enactment of this historic  
162 legislation and already it is driving down health care costs  
163 and increasing health care benefits. Last year alone, nearly  
164 4 million seniors and people with disabilities in Medicare  
165 saved over \$2 billion on prescription drugs as a result of

166 the Affordable Care Act. Over 30 million seniors received  
167 free preventative services. At the same time, actuaries now  
168 estimate that Medicare costs will be over \$100 billion lower  
169 in 2020 due in part to the reforms Congress enacted.

170       It is not only seniors in Medicare who are benefiting  
171 from health reform. In the private marketplace, over 2  
172 million young adults now have health insurance coverage  
173 thanks to the new law. Over 50 million Americans received  
174 expanded coverage of preventive services, and 50,000  
175 Americans now have health coverage through the Preexisting  
176 Condition Insurance Plan, a lifeline for those with cancer,  
177 AIDS and other conditions that make them ineligible for  
178 coverage in a marketplace where insurers are allowed to  
179 discriminate based on preexisting conditions. And now, as a  
180 result of the Affordable Care Act, insurers who want to hike  
181 their rates by 10 percent or more have to justify it. The  
182 law shines a spotlight on unreasonable rate increases and  
183 many have been denied, saving consumers money.

184       The facts are in, and they show the Affordable Care Act  
185 is working. But my Republican colleagues want to deny  
186 reality. They seem to have an obsession with undermining a  
187 program they call Obamacare, even if it would leave millions  
188 of Americans, including seniors in Medicare, at the mercy of  
189 insurance companies.

190 Today's target is the Independent Payment Advisory  
191 Board, IPAB. IPAB was created to be a backstop, and let us  
192 be clear, that is what it is, in the event that the other  
193 delivery system reforms don't fully achieve the expected  
194 results.

195 We all hope the IPAB will be irrelevant. If the act  
196 works as expected, it will be. But in either case,  
197 beneficiary benefits and access to care will be protected.

198 That is not the case under the Republican plan. Their  
199 idea is to shift costs to beneficiaries, end the Medicare  
200 program, and replace it with a voucher. Costs to seniors  
201 would skyrocket by \$6,000 in just 10 years.

202 There are aspects of IPAB that could be improved. Some  
203 on our side of the aisle have legitimate questions about its  
204 intrusion into the prerogatives of Congress. But it sure  
205 beats the Republican alternative. That is why we should give  
206 the positive changes in the Affordable Care Act time to work,  
207 and that is why the discipline of having a backstop like IPAB  
208 makes sense.

209 Let us recognize today's mark up for what it is: an  
210 attempt to discredit the Affordable Care Act and to embarrass  
211 the President.

212 This bill may pass today, and it may pass the House, but  
213 it is not going to pass the Senate and it is not going to be

214 enacted into law.

215           The American people are getting frustrated with  
216 Congress. They want us to stop posturing and start  
217 addressing their needs. Regrettably, today's markup is  
218 another demonstration of how out of touch this committee has  
219 become.

220           Mr. Chairman, that completes my statement and I yield  
221 back the balance of my time.

222           [The prepared statement of Mr. Waxman follows:]

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

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224           Mr. {Pitts.} The Chair thanks the gentleman. The Chair  
225 reminds members that pursuant to Committee rules, all  
226 members' opening statements will be made part of the record.

227           Are there further opening statements? The gentleman,  
228 Mr. Rogers, is recognized for 1 minute.

229           Mr. {Rogers.} Thank you, Mr. Chairman.

230           I am a bit shocked at the lack of concern of what this  
231 bill is doing to average Americans. I heard from two of my  
232 colleagues on the other side that they were worried that we  
233 are ceding authority from Congress to the Administration.  
234 How terrible that is, that we were worried about the  
235 prerogative of Congress versus the prerogative of the  
236 executive branch. About a half a trillion dollars in cuts to  
237 Medicare happened today. Thirty percent of doctors have  
238 already restricted new Medicare patients from getting  
239 treatment. That is today. I don't really care about  
240 Congress or the President or the executive branch; I care  
241 about my seniors in my district who are being punished by the  
242 passage of this bill, and to make matters worse, we are going  
243 to have an unelected board that gets to ration health care  
244 for the future by cutting costs arbitrarily to doctors. They  
245 have already said they are changing the way they practice  
246 medicine for the worse because of the passage of this bill.

247           So we can spend a lot of time for my colleagues on the  
248 other side worried about Congress's authority or the  
249 President's feelings, I feel bad about his feelings, I do,  
250 other than the fact that I have senior citizens who are  
251 scared to death because they can't find a doctor to take them  
252 under Medicare. That is the atrocity of this bill, and I  
253 look forward to its passage and reforming this bill by  
254 eliminating it from the books.

255           [The prepared statement of Mr. Rogers follows:]

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

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257           Mr. {Pitts.} The Chair thanks the gentleman and  
258 recognizes the Chair Emeritus, Mr. Dingell, for 1 minute for  
259 opening statement.

260           Mr. {Dingell.} I am very distressed this morning. It  
261 seems that the Congress can't leave any decisions made by us  
262 earlier alone and to allow us to then build upon things which  
263 should be settled. Frankly, the Congress is held in slightly  
264 higher esteem than child molesters, and I am hopeful that  
265 when we have concluded this session, we will still be a  
266 little better off than that.

267           The Chinese just recently had something to say about the  
268 United States. They said America is at the terminal phase of  
269 historic decline because the political system is unable to  
270 make difficult and important decisions timely and carry them  
271 out in a tough-minded way. That should be a warning to  
272 everyone here about that we are not able to do our job.

273           I don't know why this committee is spending its time  
274 constantly trying to repeal in whole or in part all of the  
275 Affordable Care Act and a lot of other legislation that has  
276 already passed, but one thing is very clear: while we are  
277 moiling and toiling around on these things, we are incapable  
278 of doing the things that we are supposed to. Where is the  
279 budget? Where are all of the other proposals? And the

280 interesting thing, the one thing that is perhaps going to cut  
281 back on costs is attempted on the part of my Republican  
282 colleagues to be repealed.

283 I think we ought not waste the time of this committee on  
284 this piece of legislation. We ought to get together and  
285 start legislating the way we should and to stop some of this  
286 nonsensical behavior that quite frankly is diminishing the  
287 Congress's respect in the minds and the eyes of the public.

288 [The prepared statement of Mr. Dingell follows:]

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

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290           Mr. {Pitts.} The Chair thanks the gentleman and  
291 recognizes the gentleman from Pennsylvania, Dr. Murphy, for 1  
292 minute for opening statement.

293           Mr. {Murphy.} Thank you, Mr. Chairman.

294           Let us get down to the basics. The Independent Payment  
295 Advisory Board raises the fundamental question about who you  
296 trust to make decisions about your health care. Is it an  
297 enlightened and unelectable panel of bureaucrats appointed  
298 politically and tasked with calculating the correct  
299 reimbursement amounts for your doctor, what can be paid and  
300 how much will be paid, or do you believe that decisions on  
301 price and valuing care are better off left to doctors and  
302 also the colleges and academies of medicine in terms of what  
303 are the proper protocols to follow for health care?

304           In this past month, we have already witnessed a  
305 remarkable assault on religious liberty through government  
306 action on the Patient Protection and Affordable Care Act. If  
307 we ignore the assaults on liberty and faith by a similar  
308 panel of Washington experts, what can we expect to happen to  
309 seniors if we allow them to make decisions on health care?  
310 All State and local government administrators should all be  
311 concerned about this and should make decisions based upon  
312 medical proper care rather than have management make those

313 decisions.

314 I yield back.

315 [The prepared statement of Mr. Murphy follows:]

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

|  
317           Mr. {Pitts.} The Chair thanks the gentleman and  
318 recognizes the gentlelady from California, Ms. Capps, for 1  
319 minute for opening statement.

320           Mrs. {Capps.} Mr. Chairman, over the past year and a  
321 half, I have spoken with many people on all sides of this  
322 issues, patients, providers and many other stakeholders. I  
323 understand the concerns about IPAB, particularly from those  
324 in the privacy community. Indeed, I share many of them but I  
325 am troubled by two aspects of this bill and the debate.

326           First, we have all agreed that we have to get health  
327 care costs under control. This bill doesn't address that  
328 issue at all. It simply repeals a good-faith effort to bring  
329 health care costs under control in a manner that tries to  
330 protect seniors and ensure that they still get quality care.  
331 I am interested in finding a way to address the very  
332 legitimate concerns that many in the provider community have  
333 with IPAB but simply repealing IPAB while making no attempt  
334 to come up with an alternative is really not an answer.

335           Second, I am concerned that the bill's authors do not  
336 identify exactly how we will pay for the estimated \$2.4  
337 billion CBO says repealing IPAB will save. The size of our  
338 debt has consumed debate here in Washington and across the  
339 country. This bill only adds to our deficit problem.

340           It is those two reasons that will reluctantly lead me to  
341 vote against the bill as it is currently drafted, and I yield  
342 back.

343           [The prepared statement of Mrs. Capps follows:]

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

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345           Mr. {Pitts.} The Chair thanks the gentlelady and  
346 recognized the Vice Chair of the Committee, Dr. Burgess, for  
347 1 minute for an opening statement.

348           Dr. {Burgess.} Thank you, Mr. Chairman. Thank you for  
349 holding this markup.

350           IPAB does represent the worst of all possible worlds,  
351 and I am glad we are taking the first steps to get rid of it.  
352 As a physician and Member of Congress, I am deeply offended  
353 by what is known as the Independent Payment Advisory Board.  
354 It is not accountable to any constituency. It cuts provider  
355 payments to mathematically fit a target. Given that private  
356 insurers use Medicare as a benchmark for their own payment  
357 changes, this Independent Payment Advisory Board will have  
358 far-reaching implications far beyond Medicare.

359           This is not a solution in search of a problem, however.  
360 Medicare's unfunded liabilities total over \$24 billion under  
361 the current baseline. The long-range financial imbalance of  
362 just Part A would require an immediate increase in the  
363 payroll tax or 24 percent. That is why Republicans have  
364 advanced plans to keep Medicare solvent so it will be there  
365 for future generations by lowering the cost to the federal  
366 government while providing better access to care for seniors.  
367 IPAB is absolutely the wrong approach and we will do patients

368 a service by moving this legislation today.

369 I yield back my time.

370 [The prepared statement of Dr. Burgess follows:]

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

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372           Mr. {Pitts.} The Chair thanks the gentleman and  
373 recognizes the gentlelady from Illinois, Ms. Schakowsky, for  
374 1 minute for opening statement.

375           Ms. {Schakowsky.} Thank you, Mr. Chairman.

376           This markup represents another in a long line of  
377 partisan political attacks on the Affordable Care Act. The  
378 ACA explicitly states that the Independent Payment Advisory  
379 Board can only make recommendations to Congress regarding  
380 Medicare and cannot make recommendations that would ration  
381 care, raise premiums, increase cost sharing, restrict  
382 benefits or modify eligibility.

383           Let us contrast with what my colleagues on the other  
384 side of aisle mean when they talk about lowering Medicare  
385 costs and ensuring sustainability. What is their plan? We  
386 saw it in last year's Republican budget. Their proposal ends  
387 the Medicare guarantee and dramatically increases costs for  
388 seniors and the Nation. The choice is real. The Republican  
389 plan is to eliminate Medicare as we know it and replace it  
390 with an inadequate voucher payment plan to private insurance  
391 companies.

392           The choice is real: oppose H.R. 452 and protect  
393 Medicare.

394           I yield back the balance of my time.

395 [The prepared statement of Ms. Schakowsky follows:]

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

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397           Mr. {Pitts.} The Chair thanks the gentlelady and  
398 recognizes the gentlelady from Tennessee, Ms. Blackburn, for  
399 1 minute.

400           Mrs. {Blackburn.} Thank you, Mr. Chairman, and I thank  
401 you for calling this hearing so that we continue to look at  
402 how we dismantle the harmful provisions that we have found in  
403 the Obamacare bill, and I have to tell you that over the past  
404 couple of years IPAB is one that I have heard a lot about  
405 from my constituents. People all across my district, they  
406 know that IPAB's only option to curb Medicare spending would  
407 be to effectively refuse treatments to patients by severely  
408 cutting provider fees. That concerns them and rightfully so.  
409 It concerns me too.

410           We have to realize that seniors have given the federal  
411 government first right of refusal on their paycheck all their  
412 working life in order to receive health care when they turn  
413 65 years old, and physicians are already restricting how many  
414 Medicare patients they are going to treat. With IPAB, it  
415 only gets worse. With Obamacare having pulled \$575 billion  
416 out of Medicare, it makes the situation even worse.

417           So I am pleased we are taking this up and I look forward  
418 to removing this bill and getting it off the books. Yield  
419 back.

420 [The prepared statement of Mrs. Blackburn follows:]

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

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422           Mr. {Pitts.} The Chair thanks the gentlelady and  
423 recognizes the gentleman, Mr. Gonzalez, for 1 minute for an  
424 opening statement.

425           Mr. {Gonzalez.} Thank you, Mr. Chairman.

426           In my 1 minute, another example specifically with this  
427 piece of legislation of my colleagues on the other side of  
428 the aisle opposing but not proposing, repealing but not  
429 replacing.

430           We used to try to engage in a good-faith debate about  
431 bending the health care cost curve. We don't even talk about  
432 that anymore. We used to talk about performance-based  
433 medicine, common sense, some standards out there uniformly  
434 adopted and recognized by practitioners, not by individuals  
435 that are far removed from the profession because we cannot  
436 afford, and this is where we all agree. With the escalating  
437 costs of health care in America, this is not an exercise in  
438 finding answers, this is an exercise that simply avoids a  
439 good-faith debate that will move this forward and serve the  
440 bests interests of the American public.

441           Thank you, Mr. Chairman.

442           [The prepared statement of Mr. Gonzalez follows:]

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

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444 Mr. {Pitts.} The Chair thanks the gentleman and  
445 recognizes the gentleman from Georgia, Dr. Gingrey, for 1  
446 minute for opening statement.

447 Dr. {Gingrey.} Mr. Chairman, I thank you very much.

448 It was 7 or 8 months ago that Secretary Sebelius was  
449 before this committee and was asked specifically if any  
450 person wishing to challenge an IPAB decision would be able to  
451 do so through the courts, and she stated, and I quote, ``Our  
452 general counsel feels very strongly on this matter that they  
453 would be able to.'' But when you look at Section 3403 of the  
454 Affordable Care Act, it stipulates, and I quote from that  
455 section, ``There shall be no administrative or judicial  
456 review.''

457 Now, of course, the American people had the opportunity  
458 last November to go to the ballot box and make a decision,  
459 and that is why many of my colleagues on the other side of  
460 the aisle were turned out of office because of that, but  
461 leaving that IPAB in there really gives seniors who are  
462 denied care because it is too costly or they are too old,  
463 they have absolutely no recourse in regard to IPAB.

464 So when my colleagues say oh, it is just another attack  
465 on Obamacare, it reminds me of the debate on the partial-  
466 birth abortion bill which they were opposed to because of a

467 fear of a domino effect on Roe v. Wade, even though that  
468 provision in the law was an abomination. I am not saying  
469 Obamanation, abomination. So that logic clearly will not  
470 hold water here.

471 Let us repeal this abomination of IPAB, and I yield  
472 back.

473 [The prepared statement of Dr. Gingrey follows:]

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

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475           Mr. {Pitts.} The Chair thanks the gentleman and  
476 recognizes the gentleman from Ohio, Mr. Latta, for 1 minute  
477 for an opening statement.

478           Mr. {Latta.} Thank you, Mr. Chairman, and thank for you  
479 holding the markup today on H.R. 452, the Medicare Decisions  
480 Accountability Act of 2011, of which I am a cosponsor.

481           This subcommittee held a hearing on the IPAB in July of  
482 last year, and the hearing demonstrated the negative  
483 consequences this board will have on American families.  
484 IPAB, as stated by Chairman Pitts, will be controlled by an  
485 unelected board which will be making decisions for Medicare  
486 patients. Doctors and families will be told by this board  
487 which tests are permitted and what medical care is needed to  
488 meet standards set by the board.

489           As with many items in the PPACA, the Administration has  
490 conveniently given Congress very little oversight of IPAB. I  
491 strongly believe that physicians and patients are in the best  
492 position to decide their own health care, and IPAB must be  
493 repealed.

494           I look forward to the markup today and supporting H.R.  
495 452, which fully repeals IPAB, and I thank the Chairman and I  
496 yield back.

497           [The prepared statement of Mr. Latta follows:]

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

|  
499 Mr. {Pitts.} The Chair thanks the gentleman and  
500 recognizes Mr. Lance from New Jersey 1 minute.

501 Mr. {Lance.} Thank you, Mr. Chairman.

502 Today the committee will be considering H.R. 452, the  
503 Medicare Decisions Accountability Act of 2011, a bill that  
504 would repeal the Independent Payment Advisory Board. The  
505 board was established by the Patient Protection and  
506 Affordable Care Act in order to reduce the per capita growth  
507 in Medicare spending.

508 While controlling the growth of Medicare spending is an  
509 endeavor we all share, I have strong concern that IPAB puts  
510 important health care payment and policy decisions in the  
511 hands of unelected officials with far too little  
512 accountability. Because IPAB has limited options for  
513 lowering spending, providers will likely bear the brunt of  
514 the cuts, resulting in less access to treatments and services  
515 for senior citizens. Medicare is in need of real reforms to  
516 ensure its sustainability, and IPAB undermines those efforts.

517 I urge my colleagues to support this bill so we can work  
518 together to strengthen Medicare. I yield back the balance of  
519 my time.

520 [The prepared statement of Mr. Lance follows:]

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

|  
522           Mr. {Pitts.} The Chair thanks the gentleman and  
523 recognizes the gentleman from Louisiana, Dr. Cassidy, for 1  
524 minute for opening statement.

525           Dr. {Cassidy.} Pass.

526           Mr. {Pitts.} He passes.

527           Are there any other opening statements?

|

528 H.R. 452

529 Mr. {Pitts.} The Chair calls up at this time H.R. 452

530 and asks the clerk to report.

531 The {Clerk.} H.R. 452, to repeal the provisions of the

532 Patient Protection and Affordable Care Act--

533 [H.R. 452 follows:]

534 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
535 Mr. {Pitts.} Without objection, the first reading of  
536 the bill is dispensed with and the bill will be open for  
537 amendment at any point. So ordered.

538 Are there any bipartisan amendments to the bill? Are  
539 there any other amendments to the bill? The Chair recognizes  
540 the ranking member.

541 Mr. {Waxman.} I move to strike the last word.

542 Mr. {Pitts.} The Chair recognizes the gentleman.

543 Mr. {Waxman.} Thank you very much. I just want to  
544 correct the record on a couple of points.

545 One of the arguments we heard over and over again is we  
546 shouldn't let unelected officials make important decisions.  
547 Well, I don't think we are getting much from the elected  
548 officials these days. People may well welcome decisions,  
549 especially when it means that the Medicare program can  
550 continue to be there to pay for the costs of health care to  
551 which people paid in and which we promised them that they  
552 would be protected in their retirement years.

553 Secondly, one of the members on the other side of the  
554 aisle made comment that doctors are turning patients away or  
555 they are refusing to take Medicare cases. Well, I can assure  
556 you it is not because of IPAB. It is because they worry, the  
557 doctors do, whether they are going to get a steep cut in

558 their reimbursement rates under the SGR. Well, we could have  
559 solved that problem but it was Speaker Boehner who refused to  
560 go along with a permanent fix of the SGR and kick this can  
561 down the road again. Now, that issue has been kicked down  
562 the road by Democrats and Republicans, and it is long past  
563 time we addressed it and had a permanent solution to the  
564 ridiculous SGR, which I opposed when it was offered in the  
565 1990s. It was not very smart then, and we have seen what a  
566 disaster it is now. But that is what driving doctors to  
567 question whether they can take Medicare patients as part of  
568 their clientele.

569         So I think the American people ought to understand that  
570 when they hear these kinds of comments, they are not really  
571 speaking about the Affordable Care Act. They are referring  
572 to the doctors who are responding to the so-called balanced  
573 budget law of the 1990s, which balanced the budget on the  
574 expectation of paying doctors less money, and when that  
575 expectation wasn't met, doctors were supposed to have their  
576 fees dropped, and such a result would have been untenable.  
577 So Democrats and Republicans have kept the SGR from going  
578 into effect but leaving everybody in doubt whether the end of  
579 the year or every period of time elected officials will step  
580 up to the bat and solve the problem or at least allow the  
581 doctors to continue to get their reimbursements.

582 I think it is important to understand this, and I find  
583 it ironic that rather than fix the SGR problem permanently,  
584 we are debating in this committee a repeal of one of the  
585 efforts of the Affordable Care Act to hold down costs in  
586 Medicare. When costs in Medicare go up, Republicans say we  
587 have to cut these entitlements, and how do they propose to  
588 cut it? Not holding down the costs but shifting those costs  
589 onto the elderly by making them pay more for their Medicare.  
590 They would do this by saying that Medicare won't be there as  
591 they have known it, so they would get a voucher, and that  
592 voucher would allow them to select different insurance plans,  
593 but the voucher is kept to such a lack of increase to meet  
594 the additional costs of Medicare that people would be facing  
595 more of the burden for Medicare on themselves, and if they  
596 couldn't afford it, well, maybe they will be lucky enough to  
597 get a poor people's HMO but they are not going to be able to  
598 get a plan that would be equivalent for them to what Medicare  
599 now provides.

600 So I want to bring this out, and I think that members  
601 ought to have this clarification.

602 Dr. {Cassidy.} Will the gentleman yield?

603 Mr. {Waxman.} Who is asking me to yield?

604 Dr. {Cassidy.} I am.

605 Mr. {Waxman.} Yes, I would be happy to yield to you.

606 Dr. {Cassidy.} If it was only the SGR cliff that was  
607 causing people to fall off, then the rate of non-  
608 participation would be the same between primary care  
609 physicians and specialists. As it turns out, the problem is  
610 that Medicare effectively pays below the cost of doing  
611 business for many primary care physicians. They are  
612 disproportionately the ones who are signing out of Medicare.  
613 So I am not sure the logic holds up.

614 And I am also finding it interesting that SGR, which is  
615 kind of the ABRI of centrally planning applied to health  
616 care, supposedly doesn't work and is not good but the ABRI of  
617 IPAB, which is centrally planning applying to Medicare in a  
618 newer version somehow does work.

619 Mr. {Waxman.} Yielding the time back to myself, I  
620 appreciate the gentleman's statement. He is right about the  
621 preventive care and that we ought to pay the doctors who  
622 spend time with their patients more money, but what solution  
623 do you have? We don't see any proposal to deal with that.  
624 All we see is a proposal to cut the IPAB. That is no  
625 solution at all. We repeal and replace but we never get a  
626 replacement.

627 Mr. {Pitts.} The Chair thanks the gentleman.

628 Any other discussion on the bill? Dr. Burgess is  
629 recognized for 5 minutes.

630 Dr. {Burgess.} I thank the Chairman. I do also feel  
631 compelled to respond to some of the statements that we just  
632 heard.

633 The Independent Payment Advisory Board is unelected  
634 individuals who are going to be supplanting themselves for  
635 what is our responsibility under Article 1 of the  
636 Constitution. This is not something that should be done by  
637 statute. It should be something that is done by  
638 constitutional amendment if the gentleman feels strongly that  
639 this is necessary to do this.

640 Yes, doctors are turning away patients under the  
641 Sustainable Growth Rate formula for reasons that Dr. Cassidy  
642 just articulated. The steep cuts in the Sustainable Growth  
643 Rate formula are a result of creating targets, so the debate  
644 has been over targets that were created under the Sustainable  
645 Growth Rate formula. Oh, my God, you are creating new  
646 targets under the Independent Payment Advisory Board. As I  
647 pointed out in my opening statement, there is not a private  
648 insurance company out there in the market in the United  
649 States of America today that does not base their fee schedule  
650 on what Medicare reimburses physicians.

651 So in effect, the Independent Payment Advisory Board is  
652 now going to give a break to insurance companies all across  
653 the country. Well, that is a good idea, but it escapes me

654 as to how it will be. The logic involved in the creation of  
655 the Independent Payment Advisory Board was deeply flawed.  
656 Many of the parts of the aforementioned Patient Protection  
657 and Affordable Care Act were deeply flawed and the process  
658 was deeply flawed.

659         The Ranking Member remembers well when he was Chairman  
660 and sat in this Committee and we spent days marking up H.R.  
661 3200. Where is H.R. 3200 today? It was relegated to the  
662 dustbin of history. Interestingly, H.R. 3200 had a  
663 severability clause contained deep within its pages because  
664 the Chairman at the time accurately recognized that the  
665 Congress would occasionally do things that were extra-  
666 constitutional, and if the Supreme Court called us on it, he  
667 wanted the rest of the bill to be able to stand if the  
668 individual mandate was ruled unconstitutional, and now we are  
669 in the conundrum over the Supreme Court where the whole  
670 severability issue was left up to someone's guess because the  
671 Senate either in haste or by deliberate omission left the  
672 severability clause out of H.R. 3590, and as a consequence,  
673 we have now an actual conundrum that the Supreme Court is  
674 going to have to work through. Do they strike down just the  
675 individual mandate if they so desire or do they strike down  
676 the entire law? And it makes a great deal of difference to  
677 the patients and doctors and nurses of America what that

678 decision is.

679           We could have solved that problem for them had we gone  
680 through regular order, gone to a conference committee between  
681 the House and Senate, rectified some of the problems that  
682 were in the Senate language, the Independent Payment Advisory  
683 Board being case in point because that would never have  
684 survived a conference committee. I feel absolutely certain  
685 that the Ranking Member when he was Chairman of this  
686 Committee would never have allowed the Independent Payment  
687 Advisory Board to continue. To be sure, he would have had  
688 other pieces of bad policy that he would have put in place  
689 and I still wouldn't have been able to support it, but he  
690 would have struck down the Independent Payment Advisory Board  
691 had it been within his scope and ability to do that.

692           Now, the Sustainable Growth Rate formula, contrary to  
693 the statements just made, did not begin in the mid-1990s.  
694 The Sustainable Growth Rate, the foundations were laid in  
695 1988 when the RVRBS was created. I don't know whether it was  
696 by this committee or some other committee. But that is  
697 actually where the interference and the administrative  
698 pricing that began in Medicare, that is where you can trace  
699 its origins. So the problem may have been exacerbated by the  
700 Balanced Budget Act in the 1990s but it was actually created  
701 in one of the Omnibus Budget Reconciliation Acts in 1988. So

702 if we want to have our history, we ought to at least be  
703 accurate.

704         And the RVRBS was done to address the question of  
705 volume. Well, think about it for a moment. Volume is not a  
706 legislative problem. The volume of patients coming into  
707 Medicare is not a legislative problem, it is a demographic  
708 problem. Does anyone here honestly believe that the volume  
709 of patients dependent upon Medicare is actually going to get  
710 lower over the next 10 years' time? That is pure fantasy.  
711 Of course it is not. But RVRBS was created as a way for CMS  
712 and perhaps the Congress to control the doctor's activity in  
713 the doctor's office by attempting to control volume. By  
714 cutting the price down and keeping the volume pressures the  
715 same, all they did was guarantee that we were going to have  
716 these problems as they occur today. The Independent Payment  
717 Advisory Board takes all of those bad ideas and doubles down  
718 on them. That is why it is so important that we get rid of  
719 it this morning.

720         Thank you, Mr. Chairman, for your indulgence and I will  
721 yield back.

722         Mr. {Pitts.} The Chair thanks the gentleman.

723         Is there any other discussion on the bill? For what  
724 purpose does the gentlelady seek recognition?

725         Ms. {Schakowsky.} To strike the last word.

726 Mr. {Pitts.} The gentlelady is recognized for 5  
727 minutes.

728 Ms. {Schakowsky.} I think it is worthwhile being very  
729 clear about what the process is of IPAB and how it actually  
730 works. The Affordable Care Act, first of all, explicitly  
731 states that the Independent Payment Advisory Board can only  
732 make recommendations to Congress--and I will talk more about  
733 that--regarding Medicare and cannot make recommendations that  
734 would ration care, raise premiums, increase cost sharing,  
735 restrict benefits or modify eligibility. It is also supposed  
736 to consider the effect of its recommendations on Medicare  
737 solvency, quality and access to care, the effect on changes  
738 in payments to providers, and the impact on those dually  
739 eligible for Medicare and Medicaid. Then what they do is  
740 make the recommendation and it goes to Congress, and Congress  
741 has the opportunity to--let me read it. It says IPAB makes  
742 recommendations to Congress and Congress can affirmatively  
743 act to amend or block them. Now, it is under fast-track  
744 procedures, and if Congress does that, then those are changed  
745 or amended. If not, then the recommendations do go into  
746 force automatically. So we actually do something in the  
747 government that deals with what the Republicans have been  
748 talking about for a long time and that is controlling the  
749 cost of health care.

750           And then who are these panel members? Panel members, it  
751 says, are expected to have diverse backgrounds as physicians  
752 and other health professionals, employers, third-party  
753 payers, representatives of consumers and the elderly. They  
754 are expected to have recognized expertise in areas such as  
755 health finance, economics and biomedical health services.  
756 They are prohibited from any other business or employment  
757 during the time of their service. A majority of panel  
758 members cannot have been directly involved in providing or  
759 managing Medicare-related services prior to their appointment  
760 to the board, and they have to be approved by the United  
761 States Senate. So it seems to me that all of the realistic  
762 concerns are embodied in the IPAB regulations.

763           But again, as many of my colleagues have said, what is  
764 the alternative? We know what the alternative is that we  
765 have seen so far. The Republican budget would shift costs to  
766 seniors and empowers insurance companies, and so if that is  
767 the choice, then it sure is clear to me that I would choose  
768 IPAB and I think most consumers would do that as well.

769           Under the Republican plan, it is an inadequate voucher  
770 system that makes payments to private insurance companies.  
771 Seniors are forced to make up the difference in the amount of  
772 money that is between what the voucher is and the premiums  
773 really are. The Republican budget asks seniors and people

774 with disabilities, half of whom have less than \$19,000 a year  
775 income, to pay more and get less. That is the alternative  
776 that has been laid before us.

777         Here we have a systematic way of looking at how to  
778 control the costs. Congress does have a say in that and can  
779 make the changes if there is a majority agreement. So I find  
780 it ironic that my colleagues on the other side argue that we  
781 should not turn decisions over to a 15-person board that  
782 operates transparently and whose recommendations can be  
783 rejected by Congress while they support turning Medicare over  
784 to private insurance companies that operate behind closed  
785 doors and whose decisions would not even be reviewable by the  
786 Congress.

787         So we have got IPAB to force spending discipline, you  
788 know, great efficiencies in the delivery system without  
789 harming beneficiaries, and yes, IPAB is far from perfect. We  
790 would agree if we wanted to right now on fixes that are  
791 needed but repeal seems to be the only answer that the  
792 Republicans ever offer.

793         So unfortunately, a political decision has been made to  
794 continue with the assault on the Affordable Care Act, and  
795 IPAB is yet another target. I think that is a real pity, and  
796 I yield back my time.

797         Mr. {Pitts.} The Chair thanks the gentlelady.

798           Is there nay other discussion on the bill? The Chair  
799 recognizes Ms. McMorris Rodgers for 5 minutes.

800           Mrs. {McMorris Rodgers.} Thank you, Mr. Chairman, and I  
801 appreciate the chance to speak on this legislation.

802           If anything, this is Congress reclaiming its proper role  
803 in determining the appropriate reforms that we will pass for  
804 Medicare. I don't think we have to look any further than 2  
805 years ago when the United States Preventative Health Services  
806 Board and their recommendations on mammograms to see what  
807 government decisions do to our health care system.

808           Moreover, IPAB is just a band-aid for the true reforms  
809 that Congress needs to make to save Medicare for future  
810 retirees. We have to stop making doctors the victims of an  
811 unsustainable program. The only result will be even fewer  
812 doctors, decreased access and a lower quality of care.

813           I urge my colleagues to support this bill and yield  
814 back--I will yield to the great gentleman from Georgia, Mr.  
815 Gingrey.

816           Dr. {Gingrey.} Mr. Chairman, I thank the gentlewoman  
817 for yielding.

818           Let me get this straight now. I hear from the other  
819 side how much they are opposed to the repeal of IPAB. They  
820 are opposed to that. And yet they are for modifying,  
821 repealing, changing SGR, and to me, that just really doesn't

822 make a whole lot of sense because IPAB is SGR on steroids.

823         The ranking member in his remarks just a few minutes ago  
824 criticized Speaker Boehner in regard to the recent  
825 legislation trying to give the providers, the physicians a 2-  
826 year mitigation from almost a 30 percent cut based on that  
827 flawed SGR formula. Well, of course, the Speaker was opposed  
828 to it because the Democrats would only pay for it, they would  
829 only pay for it by raising taxes on the job creators of this  
830 country and further raise unemployment and deepen the  
831 recession. So I commend the Speaker for having the wisdom  
832 and the judgment, the good judgment not to go along with a  
833 pay for that was so burdensome.

834         Now, look, in regard to Medicare, if the Democrats truly  
835 wanted to save Medicare, and indeed, if they wanted to solve  
836 the SGR problem once and for all and pay for the cliff that  
837 my colleague from Louisiana, Dr. Cassidy, is referring to,  
838 they could have taken some of that \$575 billion that they  
839 robbed the Medicare system of and maybe spent \$250 billion to  
840 solve this cliff, but no, what they did, the entire \$575  
841 billion including a 14 percent cut to Medicare Advantage, I  
842 think it totaled about \$120 billion, cuts to skilled nursing  
843 homes, cuts to hospice, a tax on providers for durable  
844 medical equipment at a rate that is probably about half of  
845 their profit margin, to create an entirely new entitlement

846 program for young people. I mean, it makes no sense. Their  
847 argument absolutely holds no water whatsoever.

848 We need to repeal IPAB, because as I said earlier, this  
849 is an abomination. They know it. They know, but they have  
850 this fear that if we eliminate this one section, that golly,  
851 you know, this is going to be a domino effect and then that  
852 might possibly chink away at their armor and eventually lead  
853 to the repeal of the whole unaffordable care act.

854 I yield back to the gentlewoman from Washington. Thank  
855 you for yielding time.

856 Mrs. {McMorris Rodgers.} I yield back.

857 Mr. {Pitts.} The gentlelady yields back and the vote  
858 now occurs on H.R. 452.

859 The {Clerk.} Mr. Burgess?

860 Dr. {Burgess.} Aye.

861 The {Clerk.} Mr. Burgess votes aye.

862 Mr. Whitfield?

863 [No response.]

864 The {Clerk.} Mr. Shimkus?

865 Mr. {Shimkus.} Aye.

866 The {Clerk.} Mr. Shimkus votes aye.

867 Mr. Rogers?

868 Mr. {Rogers.} Aye.

869 The {Clerk.} Mr. Rogers votes aye.

870 Mrs. Myrick?  
871 [No response.]  
872 The {Clerk.} Mr. Murphy?  
873 Mr. {Murphy.} Aye.  
874 The {Clerk.} Mr. Murphy votes aye.  
875 Mrs. Blackburn?  
876 Mrs. {Blackburn.} Aye.  
877 The {Clerk.} Mrs. Blackburn votes aye.  
878 Mr. Gingrey?  
879 Dr. {Gingrey.} Aye.  
880 The {Clerk.} Mr. Gingrey votes aye.  
881 Mr. Latta?  
882 Mr. {Latta.} Aye.  
883 The {Clerk.} Mr. Latta votes aye.  
884 Mrs. McMorris Rodgers?  
885 Mrs. {McMorris Rodgers.} Aye.  
886 The {Clerk.} Mrs. McMorris Rodgers votes aye.  
887 Mr. Lance?  
888 Mr. {Lance.} Aye.  
889 The {Clerk.} Mr. Lance votes aye.  
890 Mr. Cassidy?  
891 Dr. {Cassidy.} Aye.  
892 The {Clerk.} Mr. Cassidy votes aye.  
893 Mr. Guthrie?

894 Mr. {Guthrie.} Aye.

895 The {Clerk.} Mr. Guthrie votes aye.

896 Mr. Barton?

897 Mr. {Barton.} Aye.

898 The {Clerk.} Mr. Barton votes aye.

899 Mr. Upton?

900 The {Chairman.} Aye.

901 The {Clerk.} Mr. Upton votes aye.

902 Mr. Pallone?

903 Mr. {Pallone.} Aye.

904 The {Clerk.} Mr. Pallone votes aye.

905 Mr. Dingell?

906 Mr. {Dingell.} No.

907 The {Clerk.} Mr. Dingell votes no.

908 Mr. Towns?

909 Mr. {Towns.} Aye.

910 The {Clerk.} Mr. Towns votes aye.

911 Mr. Engel?

912 [No response.]

913 The {Clerk.} Mrs. Capps?

914 Mrs. {Capps.} Votes no.

915 The {Clerk.} Mrs. Capps votes no.

916 Ms. Schakowsky?

917 Ms. {Schakowsky.} No.

918 The {Clerk.} Ms. Schakowsky votes no.  
919 Mr. Gonzalez?  
920 Mr. {Gonzalez.} No.  
921 The {Clerk.} Mr. Gonzalez votes no.  
922 Ms. Baldwin?  
923 [No response.]  
924 The {Clerk.} Mr. Ross?  
925 [No response.]  
926 The {Clerk.} Mr. Matheson?  
927 [No response.]  
928 The {Clerk.} Mr. Waxman?  
929 Mr. {Waxman.} No.  
930 The {Clerk.} Mr. Waxman votes no.  
931 Chairman Pitts?  
932 Mr. {Pitts.} Aye.  
933 The {Clerk.} Chairman Pitts votes aye.  
934 Mr. {Whitfield.} Votes aye.  
935 The {Clerk.} Mr. Whitfield votes aye.  
936 Mr. Chairman, on that vote, there were 17 ayes, 5 nays.  
937 Mr. {Pitts.} The ayes have it and the bill is favorably  
938 reported.  
939 Without objection, staff is authorized to make technical  
940 and conforming changes to the bill approved by the  
941 Subcommittee today. So ordered.

942           Without objection, the Subcommittee stands adjourned.

943           [Whereupon, at 10:53 a.m., the Subcommittee was

944 adjourned.]