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

6 H.R. 3309, THE FEDERAL COMMUNICATION COMMISSION PROCESS
7 REFORM ACT; AND

8 H.R. 3310, THE FEDERAL COMMUNICATIONS COMMISSION CONSOLIDATED
9 REPORTING ACT

10 MONDAY, MARCH 5, 2012

11 House of Representatives,

12 Committee on Energy and Commerce

13 Washington, D.C.

14 The Committee met, pursuant to call, at 4:02 p.m., in
15 Room 2123 of the Rayburn House Office Building, Hon. Fred
16 Upton [Chairman of the Committee] presiding.

17 Members present: Representatives Upton, Barton,
18 Stearns, Pitts, Terry, Burgess, Gingrey, Scalise, Harper,

19 Cassidy, Pompeo, Waxman, Dingell, Pallone, Matsui and
20 Christensen.

21 Staff present: Ray Baum, Senior Policy Advisor/Director
22 of Coalitions; Mike Bloomquist, General Counsel; Howard
23 Cohen, Chief Health Counsel; Nicholas Degani, FCC Detailee;
24 Paul Edattel, Professional Staff Member, Health; Neil Fried,
25 Chief Counsel, Communications and Technology; Julie Goon,
26 Health Policy Advisor; Debbie Keller, Press Secretary; Peter
27 Kielty, Associate Counsel; Ryan Long, Chief Counsel, Health;
28 Carly McWilliams, Legislative Clerk; Katie Novaria,
29 Legislative Clerk; John O'Shea, Professional Staff Member,
30 Health; David Redl, Counsel, Telecom; Heidi Stirrup, Health
31 Policy Coordinator; Jen Berenholz, Democratic Chief Clerk;
32 Alli Corr, Democratic Policy Analyst; Amy Hall, Democratic
33 Senior Professional Staff Member; Elizabeth Letter,
34 Democratic Assistant Press Secretary; Karen Lightfoot,
35 Democratic Communications Director and Senior Policy Advisor;
36 Karen Nelson, Democratic Deputy Committee Staff Director for
37 Health; Roger Sherman, Democratic Chief Counsel; and Kara van
38 Stralen, Democratic Special Assistant.

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39 The {Chairman.} The Committee will come to order, and I
40 would remind all of our members and guests that we are doing
41 today only opening statements. So good afternoon, and
42 welcome. Today we are going to work through the opening
43 statements. Tomorrow we will start and consider and finish
44 the following legislation: H.R. 452, the Medicare Decisions
45 Accountability Act; H.R. 3309, the Federal Communications
46 Commission Process Reform Act; and H.R. 3310, the Federal
47 Communications Commission Consolidated Reporting Act.

48 I firmly believe there are common themes that unite the
49 work of our six Subcommittees and the broad range of issues
50 that they encompass. All six Subcommittees are focused on
51 solutions to support economic growth and job creation. They
52 are all working to reduce the size and scope of government,
53 eliminating wasteful spending and standing up for the
54 taxpayers, and they are all working to protect individuals,
55 families and communities.

56 One way that we can achieve all of those goals is
57 through sound process. You see, what matters is not just
58 what government does, but how we do it, and that is the
59 common thread among the bills that we are considering this
60 week. Whether it is decisions about how to protect Medicare
61 patients while reducing the cost of the program or whether it

62 is how the FCC administers telecommunications policy, these
63 practices should be open and accountable, and that is
64 precisely what this legislation is designed to accomplish.

65 Last week, the Health Subcommittee approved H.R. 452,
66 the Medicare Decisions Accountability Act, with bipartisan
67 support. This bill repeals one of the more ominous parts of
68 the President's massive health reform legislation, the IPAB,
69 which was established in Section 3403 of PPACA, a clear-cut
70 example of the contrast between two fundamentally different
71 views of how to reform the Medicare program and preserve it
72 for future generations.

73 The President's health care law says that cutting \$575
74 billion from Medicare to fund new health entitlements and
75 then allowing a 15-member panel of unelected bureaucrats to
76 decide what health care goods and services are valuable is
77 the way to reform the program. We strongly disagree.

78 We believe that health care decisions belong in the
79 hands of patients and doctors rather than an unaccountable
80 panel of government-appointed experts. The goal is to reform
81 Medicare and preserve it for future generations, and as I
82 said at the beginning, how you do does matter. IPAB is not
83 the way to protect Medicare, and I am pleased to see us
84 working in a bipartisan fashion to repeal it. Repealing IPAB
85 is one way to restore accountability and openness. FCC

86 process reform is another.

87 When we took over the majority in the House of
88 Representatives, the GOP transition team, led by our own
89 Chairman Walden, took a fresh look at how the House was run,
90 and I am proud to say that our Committee--with more than 100
91 hearings so far--has led by example in showing that a
92 deliberative, accountable process leads to quality results.

93 Given the FCC's role as the federal regulator of the
94 communications and technology sector, one of the largest
95 economic drivers even in this sluggish national economy, it
96 is imperative that the FCC operate in a transparent and
97 accountable manner that encourages job creation, investment
98 and innovation. Mr. Walden's FCC Process Reform Act does
99 that by taking the best ideas from both sides of the aisle.

100 President Obama and his Jobs Council recommended that
101 independent agencies conduct cost-benefit analyses, and
102 former Commissioner Copps recommended improving deliberations
103 among Commissioners. State commissions recommended more
104 transparency in the FCC's rulemaking process. And small
105 businesses requested shot clocks so they know when their
106 petitions will be acted on. The FCC Process Reform Act
107 accomplishes all these recommendations and more, building on
108 the work of Chairman Genachowski to make the FCC home to good
109 government process.

110 And just as we should be using good process to adopt new
111 rules, we also need to ensure that legacy regulations and
112 reports are not hampering investment and innovation. Mr.
113 Scalise's FCC Consolidated Reporting Act is a step in the
114 right direction there, consolidating eight separate reports
115 on the communications marketplace into a single report. By
116 looking at the marketplace as a whole rather than in
117 traditional silos, the FCC and the American public will be
118 better informed about existing competition and any barriers
119 that may be preventing small businesses from investing and
120 creating jobs.

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

122 ***** COMMITTEE INSERT *****

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123 The {Chairman.} So that concludes my opening statement,
124 and I will yield to the ranking member of the full Committee,
125 the gentleman from California, Mr. Waxman, for an opening
126 statement for 5 minutes.

127 Mr. {Waxman.} Thank you very much, Mr. Chairman.

128 Today the Committee begins its markup of three bills.
129 Two of these are terrible bills that are destined to die in
130 the Senate. We should be considering legislation that will
131 create jobs and strengthen our economy, not wasting our time
132 with these one-house bills.

133 The first bill is H.R. 452. It is part of the
134 Republican political attack on Medicare and the Affordable
135 Care Act.

136 The Affordable Care Act is working. This historic law
137 is driving down health care costs and increasing health care
138 benefits for all Americans. As a result of health reform, 4
139 million seniors now have significantly lower prescription
140 drug costs. More than 80 million Americans are now receiving
141 expanded preventive care. More than 2 million young adults
142 now have health insurance coverage on their parents'
143 policies, and children who previously were denied insurance
144 due to preexisting medical conditions are enrolled in
145 coverage.

146 And health care costs are coming down. Medicare will
147 cost \$100 billion less in 2020 than previously estimated due
148 in part to the reforms Congress enacted. Health insurance
149 premiums are being held in check by new rate review and
150 medical loss ratio requirements.

151 Yet despite this record of success, House Republicans
152 want to repeal health reform, end Medicare's guarantee of
153 coverage for seniors, and eliminate consumer protections for
154 people who are uninsured or ill served by our insurance
155 market.

156 For the last year, House Republicans have been claiming
157 erroneously that we cannot afford to maintain Medicare's
158 promise to seniors. Yet today, they will take a vote that
159 will cost Medicare over \$2 billion, and they have identified
160 no way to pay for the costs they are adding to Medicare.

161 This is the height of hypocrisy. House Republicans say
162 we can't afford Medicare, yet they want to eliminate one of
163 the innovations in the Affordable Care Act that keeps
164 Medicare costs under control.

165 The Republican master plan for Medicare is to end the
166 guarantee of coverage and shift more costs on to seniors and
167 people with disabilities. H.R. 452 is part of this
168 Republican assault on Medicare. It would repeal the Medicare
169 Independent Payment Advisory Board, which serves as a

170 backstop to help keep Medicare affordable for seniors.

171 The second bill, H.R. 3309, is called the Federal
172 Communications Process Reform Act, but it would disable the
173 FCC, not reform it. Independent experts have told us this
174 legislation would tie the agency in knots and subject it to
175 endless legal challenges. One expert said industry lawyers
176 would have a ``field day'' if this bill became law. Others
177 said it could take 15 years of litigation for the courts to
178 clarify the meaning of the new requirements in the bill.

179 There are a few provisions in H.R. 3309 that make sense.
180 One is a bipartisan proposal by Representatives Shimkus and
181 Eshoo that would allow Commissioners to talk privately with
182 each other about FCC policies. I suggested to Chairman Upton
183 and Chairman Walden that we should divide H.R. 3309 into two
184 bills, one that could get bipartisan support and be enacted
185 into law and one with partisan provisions that would die in
186 the Senate. They rejected this suggestion, which dooms the
187 entire package and raises serious questions about why we are
188 doing this bill at all.

189 The American people are getting frustrated with
190 Congress. They want us to stop posturing and start
191 addressing their needs. But this markup is yet another
192 squandered opportunity, I very much regret to say.

193 I yield back the balance of my time.

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

195 ***** COMMITTEE INSERT *****

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196 The {Chairman.} The gentleman yields back his time, and
197 the Chair would recognize the gentleman from Florida for 3
198 minutes for an opening statement.

199 Mr. {Stearns.} Thank you, Mr. Chairman. I thank Mr.
200 Barton for the opportunity to do so.

201 My colleagues, as Chairman of the Oversight and
202 Investigation Subcommittee, I have pushed agencies to
203 eliminate regulatory uncertainty that stifles innovation and
204 hampers small businesses. I believe the reforms embodied in
205 H.R. 3309 and H.R. 3310 will simply promote this goal by
206 bring more transparency and accountability into the Federal
207 Communications Commission's process. These bills are an
208 important first step towards updating the 1996
209 Telecommunications Act.

210 Since June, Chairman Walden and I have looked into the
211 number of backlogs pending at the FCC. As of July, my
212 colleagues, the FCC had 5,328 petitions, more than a million
213 consumer complaints and 4,185 license applications that have
214 been gathering dust for more than 2 years. While FCC data we
215 received in January indicates that the agency is making
216 headway in closing some of these dockets and addressing
217 industry application petitions, much more work remains to be
218 done.

219 I would also like to point out that not all regulations
220 are created equal. When the FCC eliminates rules that have
221 had no effect of law such as the Fairness Doctrine, but then
222 implements new regulations such as net neutrality, it appears
223 that the agency is taking one step forward and 10 steps back.

224 The problems at the FCC today are not the result of one
225 chairman at the Commission. I understand that. Instead,
226 this problem has persisted for many years. Thus, while the
227 FCC chairman is working to clear some regulatory backlog,
228 only Congress can permanently fix the process at the FCC.
229 Today, Congress is doing just that with H.R. 3309 and H.R.
230 3310, and I fully support passage of both bills.

231 The last bill today is the Medicare Decisions
232 Accountability Act, H.R. 452. It would repeal the
233 Independent Payment Advisory Board, IPAB, which was created
234 in the President's failed health care bill. IPAB is like SGR
235 on steroids. Rather than fixing the SGR problem in the
236 health care law, Democrats were happy to allow continued cuts
237 to physician payments and then double down on further cuts
238 through IPAB. IPAB is a group of 15 unelected bureaucrats
239 who would save Medicare by making draconian cuts to provider
240 payments. Democrats wanted to control the future cost of
241 Medicare by giving unelected bureaucrats the power to cut
242 payments to hospitals and to doctors.

243 If Democrats were serious about controlling costs within
244 Medicare, they would have looked at reforming and modernizing
245 the Medicare program. Instead, they punish doctors and
246 hospitals and ultimately endanger our seniors who depend on
247 these doctors and hospitals. We need to repeal IPAB just as
248 we need to repeal this failed health care law. If IPAB is
249 similar to CLASS, it is another sham savings in the failed
250 health care law.

251 So I am a proud cosponsor of repealing IPAB, and I look
252 forward to its quick passage, and with that, I yield back.
253 Thank you, Mr. Chairman.

254 [The prepared statement of Mr. Stearns follows:]

255 ***** COMMITTEE INSERT *****

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256 The {Chairman.} The gentleman yields back his time.

257 The Chair would recognize a Chairman Emeritus, the
258 gentleman from the great State of Michigan, Mr. Dingell, for
259 5 minutes for an opening statement.

260 Mr. {Dingell.} Mr. Chairman, good afternoon. Thank you
261 for the recognition. I always appreciate your courtesy and
262 kindness.

263 With all respect, Mr. Chairman, the Committee finds
264 itself wasting time again. The bills we will consider won't
265 create new jobs or reduce the deficit. It goes without
266 saying that the Senate won't take them up and that the
267 President would probably veto them if they ever get down
268 there to the White House.

269 Concerning H.R. 452, it is clear to me that my good
270 Republican colleagues won't let earlier decisions stand.
271 Instead, they are trying to repeal in whole or in part a law
272 that can significantly improve the quality of health care in
273 this country while reducing spending. This strikes me as
274 particularly curious, given all the talk of late about the
275 importance of cutting spending.

276 H.R. 3309 provenance is similarly dubious. While I
277 appreciate the efforts of my good friends on the Republican
278 side in reaching out to me on the bill, too little has been

279 done to satisfy me that it won't create more problems than it
280 will solve. In the final analysis, crippling an agency like
281 the FCC is no way to reform it even though I agree with most
282 in this room that that agency very much needs reform.

283 Mr. Chairman, we would be wise indeed to spend our time
284 on matters that really help our constituents and address the
285 significant problems the Nation confronts. We need to pass
286 legislation that creates jobs, improves Americans' quality of
287 life, encourages new, innovative businesses to grow. Sadly,
288 none of the bills before us today comes close to doing
289 anything with those concerns.

290 Mr. Chairman, I thank you for your courtesy. You are
291 always most gracious, and I look forward to working with you
292 and all of my colleagues in the future, and as always, I will
293 be hoping that the chance presents itself. I yield back the
294 balance of my time.

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

296 ***** COMMITTEE INSERT *****

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297 The {Chairman.} The gentleman yields back his time and
298 would recognize another Chairman Emeritus of the Committee,
299 the gentleman from the good State of Texas, Mr. Barton.

300 Mr. {Barton.} I don't think there is a bad State of
301 Texas.

302 Mr. {Chairman.} Well, it is either the great State or a
303 good State, but you are from--

304 Mr. {Barton.} A great State.

305 Mr. {Chairman.} --a very good State.

306 Mr. {Barton.} Thank you.

307 Thank you, Mr. Chairman, for beginning the opening
308 statements on the markup of these three bills. As you know,
309 November a year ago, the American people spoke very clearly
310 when they showed their dissatisfaction with the Federal
311 Government and gave the Republican Party that you and I are a
312 member of the majority back in the House of Representatives.

313 Today, we are going to consider H.R. 452, the Medicare
314 Decisions Accountability Act, which would repeal the
315 Independent Payment Advisory Board, or IPAB. In 1997,
316 Congress created the Medicare Payment Advisory Commission,
317 MedPAC, to provide recommendations to Congress on issues
318 relating to Medicare. MedPAC issues two years a year to
319 Congress on the suggested changes to Medicare. Congress has

320 the responsibility of acting or not acting on these changes.

321 I guess this wasn't enough, because the Patient
322 Protection and Affordable Care Act created yet another
323 bureaucracy, this IPAB, to take on a strikingly similar role.
324 There are differences, though. IPAB is supposed to consist
325 of 15 unelected, unaccountable, so-called experts who are
326 asked with reducing Medicare spending. IPAB board members,
327 though, do receive \$165,300 a year as a salary. Today, 2
328 years after the enactment of the law that created IPAB, the
329 President has yet to nominate anyone to serve on the board.
330 If no nominations are named or if no nominations are
331 approved, January of 2014, IPAB will be constituted with the
332 Secretary of Health and Human Services making the decisions
333 of the board.

334 No one here will dispute that Medicare needs to be
335 reformed. However, creating another federal board doesn't
336 appear to me to be the answer. Because of limitations on
337 spending cuts, most IPAB cuts would likely be to Medicare
338 Part B and Part D, which cover medical procedures and drugs.
339 Surveys indicate that many doctors already limit the number
340 of Medicare patients they see because the payment rates are
341 too low. If IPAB makes more cuts and more doctors refuse to
342 see Medicare patients, the more seniors will have less
343 options with regard to their own medical care. And unlike

344 MedPAC, which is in place to make recommendations to the
345 Congress, IPAB's recommendations are binding unless Congress
346 acts to overturn them. This is simply not the way to go and
347 it is exercising the legislative authority of the Congress at
348 the executive level, in my opinion.

349 We do need to have serious Medicare reforms. There is
350 no question about that. But IPAB is not the way to do it,
351 and so I am very happy that the Subcommittee decided to axe
352 IPAB, and I hope the full Committee does too.

353 In terms of the other two bills, we are going to
354 consider H.R. 3309, the FCC Process Reform Act, and H.R.
355 3310, the FCC Consolidated Reporting Act. Both bills seek to
356 reform the outdated policies of the FCC, and I strongly
357 support both of these initiatives.

358 I have been a proponent for many years of reforming the
359 FCC. In the last Congress, I introduced legislation with
360 Cliff Stearns to reform the FCC. The two bills before us
361 today incorporate many of the reforms that Congressman
362 Stearns and I recommended last year. I have reviewed these
363 bills. Many of the recommendations that I put in my earlier
364 bills are in them, and some that I recommended in terms of
365 reforms to these bills have also been incorporated.

366 When the chairman of the FCC, Mr. Genachowski, himself
367 admits that we need to reform the FCC, I think it is time to

368 act, and hopefully we will do it in a bipartisan fashion.

369 With that, Mr. Chairman, I appreciate your leadership on
370 these three issues. I look forward to working tomorrow to
371 mark the bills up, and I do yield back.

372 [The prepared statement of Mr. Barton follows:]

373 ***** COMMITTEE INSERT *****

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374 The {Chairman.} The Chair would recognize the Ranking
375 Member of the Health Subcommittee, the gentleman from New
376 Jersey, Mr. Pallone, for 5 minutes.

377 Mr. {Pallone.} Thank you, Mr. Chairman.

378 Today, we will continue moving forward to repeal the
379 Independent Payment Advisory Board, better known as IPAB.
380 Last week during the Subcommittee on Health's markup, I voted
381 in favor of its repeal, but I was not happy with the messages
382 coming from the other side of the aisle. Unfortunately, my
383 Republican colleagues are using the upcoming second
384 anniversary of the Affordable Care Act to deface it and to
385 continue their game of repealing the law piece by piece.

386 My opposition to IPAB stems from my strong belief that
387 Congress must stop ceding legislative power to the executive
388 branch. Like other independent commissions, IPAB encroaches
389 upon legislative authority and should not play a legislative
390 role other than on a recommendatory basis. It is not the job
391 of an unelected or unaccountable commission to make decisions
392 on health care policy for Medicare beneficiaries.

393 But let me tell you what IPAB is not. It is not an
394 attack on the fundamental foundations of Medicare, which is
395 exactly what is being proposed by Republicans. Republicans
396 want to turn Medicare into a voucher program, an attempt to

397 control spending by shifting health care costs onto seniors
398 and people with disabilities. Under the Republican plan,
399 health care costs would continue to rise and seniors would
400 pay at least \$6,400 more per year for their Medicare,
401 according to the CBO. Under the Republican plan, Medicare is
402 turned over to private insurance companies who can ration
403 care. The distinction is clear: the Republican plan for
404 Medicare eliminates Medicare's guaranteed benefits and limits
405 on cost-sharing of premiums, turning these decisions over to
406 insurance companies.

407 I would ask my Republican colleagues, do you seriously
408 expect me to believe that you want to protect Medicare and
409 seniors when every one of you voted to end Medicare as we
410 know it? Your budget turns the program and millions of
411 seniors over to the private insurers with no accountability,
412 and I am beginning to see a pattern here because it is clear
413 whose side the Republicans are on. It is that of the
414 insurance companies and the special interests, not the
415 seniors and the disabled.

416 I wanted to take a minute to explain very clearly what
417 repealing the ACA would mean for patients. It would mean
418 that seniors and people with disabilities who are receiving
419 significant out-of-pocket relief for high drug costs would
420 see those savings evaporate. It would mean that the

421 approximately 86 million Americans who have received expanded
422 coverage of some preventive services with no cost sharing due
423 to the ACA would once again face financial hurdles for these
424 services, a disincentive to get needed care.

425 It is no secret that for years, insurance companies have
426 squeezed consumers, raising premiums to pay for increasingly
427 exorbitant CEO salaries and profits. The ACA is putting a
428 stop to that practice, requiring insurers to justify premium
429 hikes and thereby protecting consumers. Already we have seen
430 States denying unreasonable and unjustifiable premium
431 increases.

432 There are 2.5 million more young adults who have health
433 insurance coverage thanks to a provision in the health law
434 allowing young adults to remain on their parents' health
435 insurance until age 26.

436 The law has given us strong tools to fight fraud. In
437 2011 alone, the Department of Justice recovered more than
438 \$5.6 billion in fraud government-wide. So if my Republican
439 colleagues want to continue to debate the Affordable Care
440 Act's benefits, then I say bring it on.

441 I don't think really IPAB is a significant part of the
442 ACA. The ACA stands on its own without IPAB, and I don't
443 want to see IPAB used as a reason for ACA's repeal.

444 Mr. Chairman, I say that this is likely to come up on

445 the second anniversary because I am assuming that this week
446 we are going to vote in full committee and then we have a
447 break, and when we come back, it will probably be on the
448 Floor, which is the very week of the second anniversary of
449 the Affordable Care Act, and I just want to say that I think
450 the Affordable Care Act is working and my opposition to IPAB
451 in no way indicates where we are going with the ACA. The ACA
452 is doing a good job, and as it kicks in, we will see more and
453 more people that will have health insurance. I think we will
454 get close to universal coverage as the exchanges come on, the
455 tax benefits are available for those who need it, and we see
456 an increased expansion of Medicare.

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

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

459 ***** COMMITTEE INSERT *****

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460 The {Chairman.} Thank you.

461 The Chair would recognize the Chairman of the Health
462 Subcommittee, Mr. Pitts.

463 Mr. {Pitts.} Thank you, Mr. Chairman. I will limit my
464 remarks to H.R. 452, the Medicare Decisions Accountability
465 Act of 2011, which repeals the Independent Payment Advisory
466 Board from the President's health care law.

467 The purpose of IPAB is to reduce Medicare's per capita
468 growth rate. Clearly, Medicare growth is on an out-of-
469 control trajectory that endangers the solvency and continued
470 existence of the program. IPAB, however, is not the
471 solution.

472 Fifteen unelected bureaucrats, nominated by the
473 President and confirmed by the Senate, will be paid \$165,300
474 a year to serve 6-year terms on the Board. If Medicare
475 growth goes over an arbitrary target, the Board is required
476 to submit a proposal to Congress that would reduce Medicare's
477 growth rate. These recommendations will automatically go
478 into effect unless Congress passes legislation that would
479 achieve the same amount of savings.

480 The board has the power to make binding decisions about
481 Medicare policy, with no requirement for public comment prior
482 to issuing their recommendations, and individuals and

483 providers will have no recourse against the board, as its
484 decisions are not subject to appeal or judicial review. This
485 is hardly a model of transparency and accountability.

486 To be perfectly clear, the Affordable Care Act prohibits
487 IPAB from changing Medicare eligibility requirements, from
488 cutting Medicare benefits, and from increasing premiums or
489 copayments on beneficiaries. They are also prohibited from
490 rationing care, and rationing is a term not defined in
491 federal law.

492 So, what is the problem? If IPAB can't make cuts in any
493 of the areas I just mentioned, one of the only places left to
494 cut from are provider reimbursements. Medicare already
495 reimburses below the cost of providing services, and we are
496 already seeing doctors refusing to take new Medicare
497 patients, or Medicare patients at all, because they cannot
498 afford to absorb the losses. According to an American
499 Medical Association survey, current reimbursement rates have
500 already led 17 percent of all doctors, including 31 percent
501 of primary care physicians, to restrict the number of
502 Medicare patients in their practices. Any additional
503 provider cuts will lead to fewer Medicare providers, and that
504 means that beneficiary access will suffer. Seniors will be
505 forced to wait in longer and longer lines to be seen by an
506 ever-shrinking pool of providers, or have to travel longer

507 and longer distances to find a provider willing to see them.

508 Even HHS Secretary Sebelius admitted that IPAB cuts
509 could hurt seniors. Asked in a 2011 House hearing if IPAB-
510 ordered payment reductions could mean longer waits for
511 dialysis services, Secretary Sebelius replied: ``As you
512 know, any cut in services could mean huge reductions in care
513 that seniors would have the opportunity to receive.''

514 IPAB may not be able to directly ration care, but
515 cutting provider reimbursements to the point that doctors can
516 no longer see Medicare patients will result in de facto
517 rationing.

518 I am proud that this bill has bipartisan cosponsors and
519 was reported favorably out of the Health Subcommittee with
520 support from both sides of the aisle.

521 We need to put Medicare on a firm financial footing;
522 IPAB is not the way to do it. I urge my colleagues to
523 support the bill.

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

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

526 ***** COMMITTEE INSERT *****

|
527 The {Chairman.} Thank you.

528 The Chair would recognize the gentlelady from the Virgin
529 Islands, Ms. Christensen, for an opening.

530 Dr. {Christensen.} Thank you, Chairman Upton and
531 Ranking Member Waxman for the opportunity to comment on the
532 two bills before the committee today.

533 I do support H.R. 452, the repeal of the Independent
534 Payment Advisory Board, and as a physician, one of the very
535 few groups that could be adversely affected by it, I cannot
536 support IPAB because it not only is cutting reimbursements to
537 providers and health care facilities, not the best solution,
538 but doing so will disproportionately and detrimentally affect
539 the most vulnerable patients. Further, as crafted in the
540 law, IPAB would not be effective in tackling real solutions
541 for Medicare solvency and it contributes proportionately
542 little to the projected cost savings in Medicare.

543 The Affordable Care Act even without the IPAB is the
544 largest deficit-reducing bill passed in decades. It has
545 significantly strengthened the Medicare program and is
546 projected to cut its increases in per capita spending by more
547 than half, and that is without counting the savings that will
548 be realized from prevention, which I believe will be
549 significant.

550 Further, the Tri-Caucus worked with the White House and
551 Congressional leadership to ensure that health equity was a
552 core goal of the Affordable Care Act with estimates of the
553 direct and indirect costs of health disparities in just over
554 a 4-year period being \$1.24 trillion. The deficit reduction
555 projections in ACA would even be greater.

556 So in addition to the fact that the Independent Payment
557 Advisory Board usurps Congressional authority, it is an idea
558 looking for a reason to exist, and there is none, and even
559 the IPAB supporters say that it is a flawed entity.

560 On H.R. 3309, all this bill would do is hamstring the
561 FCC for years to come and thwart their ability to protect the
562 public interest and transactions and other issues under their
563 authority. Chairman Genachowski has been moving the FCC in
564 the right direction regarding process. Under his leadership,
565 the Commission has taken significant steps to remedy many of
566 the problems identified in 3309 and to comply with Executive
567 Order 13579. I see no reason to apply this unique regulatory
568 straitjacket to the FCC, and every reason, especially the
569 protection of consumers, not to, and so I oppose 3309, and I
570 yield back the balance of my time.

571 [The prepared statement of Dr. Christensen follows:]

572 ***** COMMITTEE INSERT *****

|
573 The {Chairman.} Thank you.

574 The Chair would recognize the gentleman from Nebraska,
575 Mr. Terry, for an opening statement.

576 Mr. {Terry.} Thank you, Mr. Chairman.

577 I support all three of the bills before us today and I
578 urge my colleagues to support quick passage.

579 H.R. 452, the Medicare Decisions Accountability Act of
580 2011, will repeal the Independent Payment Advisory Board
581 created in the President's health care bill, which I believe
582 is a concern that it limits health care options and access to
583 treatments and services for seniors and sharing Mr. Pallone's
584 view that we are ceding too much power to regulatory
585 agencies.

586 It was extremely unfortunate that rather than
587 strengthening Medicare, we put our Medicare seniors in
588 trouble. Rather than address the future financial issues
589 surrounding Medicare, the President's plan rationed care
590 through an unelected, unaccountable board of bureaucrats.

591 H.R. 3309, the Federal Communications Commission Process
592 Reform Act, is absolutely necessary. The Federal
593 Communications Commission Consolidated Report Act is about
594 three things: transparency, modernization and regulatory
595 certainty. Almost everything in this bill was actually

596 stated as necessary by the chairman.

597 I would also like to acknowledge the work that Chairman
598 Genachowski has done in improving some of the process issues
599 that have plagued the Commission sua sponte on his own.
600 However, it is more important than ever that we make these
601 statutory changes now. Doing so will ensure openness and
602 transparency for the public while making sure that only the
603 best practices will continue from one Administration to the
604 next, and I thank the chair and yield back.

605 [The prepared statement of Mr. Terry follows:]

606 ***** COMMITTEE INSERT *****

|
607 The {Chairman.} Thank you.

608 The Chair would recognize the gentlelady from
609 California, Ms. Matsui, for an opening statement.

610 Ms. {Matsui.} Thank you, Mr. Chairman.

611 Mr. Chairman, I have shared some of my concerns over the
612 Independent Payment Advisory Board, IPAB, since its inclusion
613 in the Affordable Care Act. I understand the views of those
614 who believe that IPAB undermines Congressional authority to
615 determine critical matters of health policy, and at this time
616 I am not convinced that IPAB is the right way to achieve
617 Medicare savings. But Mr. Chairman, H.R. 452 is nothing more
618 than a partisan messaging tool designed to exploit legitimate
619 concerns about IPAB as part of the majority's broader
620 indictment of the entire Affordable Care Act.

621 Instead of working in a bipartisan manner to try to
622 address IPAB's problems in a serious way, this bill offers a
623 diagnosis with no cure. I am especially concerned that this
624 repeal effort offers no alternatives to account for the cost-
625 control measures that IPAB, while not perfect, was designed
626 to implement, nor does it specify the necessary offsets for
627 the \$2.4 billion increase in Medicare spending this bill
628 would create. This bill exemplifies the majority's
629 continuous drumbeat to repeal the ACA in a piecemeal fashion,

630 fearful that Americans may have a chance to fully realize its
631 tremendous benefits.

632 I have seen firsthand the very real benefits Americans,
633 particularly our Nation's seniors, are already experiencing
634 thanks to the ACA. Medicare Advantage premiums declined
635 roughly 7 percent over 2011, while enrollment increased by 10
636 percent. Furthermore, thanks to the Medicare prescription
637 drug discounts in the ACA, 3.6 million seniors saved a total
638 of \$2.1 billion last year. These are but a few examples that
639 clearly point to the fact that health care reform is working,
640 and while I remain concerned about IPAB, I urge my colleagues
641 to oppose this legislation.

642 Lastly, I believe there are some real reforms that the
643 FCC must undertake, but I am concerned that H.R. 3309 is a
644 blatant overreach that will severely tie the hands of the FCC
645 for years and limit its ability to properly conduct any
646 meaningful review, oversight and action on our Nation's
647 telecom policy.

648 Thank you, Mr. Chairman, and I yield back the balance of
649 my time.

650 [The prepared statement of Ms. Matsui follows:]

651 ***** COMMITTEE INSERT *****

|
652 The {Chairman.} Thank you.

653 The Chair would recognize the gentleman from Texas, Dr.
654 Burgess.

655 Dr. {Burgess.} Thank you, Mr. Chairman, and I will
656 confine my remarks simply to H.R. 452 because the Independent
657 Payment Advisory Board really encompasses all that is wrong
658 with the Patient Protection and Affordable Care Act. We have
659 heard reference made to the fact that power devolves from the
660 legislative to the executive branch, but really, let us call
661 this what it is. It is a direct assault on the Constitution
662 of the United States. Article 1, section 1 says all
663 legislative powers herein granted shall be vested in the
664 Congress of the United States which shall consist of a House
665 and a Senate. But nowhere in there is there any mention of
666 this board that will by its very nature restrict access to
667 care for seniors, not just this year, not just next year, but
668 literally for every decade yet to come.

669 Now, it is one of the many components of this very bad
670 law that throws the government right into the middle of the
671 doctor-patient relationship. In the Independent Payment
672 Advisory Board, we find this panel that is not elected, is
673 selected by the President, it is not accountable and will
674 have power to influence prices, reimbursement and access, and

675 I may say, it will influence prices without having to regard
676 cost in any way. Not only are they influencing Medicare, but
677 given that private insurance use Medicare as a benchmark for
678 their own payment changes, this board will have far-reaching
679 implications beyond Medicare for all of our Nation's doctors.

680 You know, 2 years ago, this entire law was sold to the
681 people of the United States of America as a way to hold down
682 costs. Two years later, does anybody still believe that
683 fantasy? And certainly the Independent Payment Advisory
684 Board will be unable to lower costs. A recent Kaiser Family
685 Foundation issue brief stated that the Independent Payment
686 Advisory Board is unlikely to generate savings through long--
687 term delivery system reforms. In addition, because of
688 limitations on what the board can cut, the majority of the
689 spending reduction is going to come from Part D and Part B
690 provider fees, fees that doctors are becoming increasingly
691 unable to provide their services and now the board is going
692 to decide they are of even less value. So the answer
693 presented is to squeeze doctors out of providing services.
694 You know what this sounds like? It sounds like rationing.

695 The future of American health care should not left up to
696 this panel of experts or, more worrisome, to the Secretary of
697 Health and Human Services, and that is why I support the full
698 repeal of the Independent Payment Advisory Board, and I thank

699 the Chairman for bringing this legislation to the Committee
700 and I yield back.

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

702 ***** COMMITTEE INSERT *****

|
703 The {Chairman.} The gentleman yields back.

704 The Chair would recognize the gentleman from Georgia,
705 Dr. Gingrey, for an opening statement.

706 Dr. {Gingrey.} Mr. Chairman, thank you.

707 Ranking Member Waxman was quoted recently in the Hill
708 newspaper as saying IPAB is nothing more than a useful
709 backstop to impose some discipline on Congress to stop out-
710 of-control Medicare spending. Well, I agree with Waxman that
711 Congress needs to stop out-of-control Medicare spending, and
712 Congress needs to be honest with the American people about
713 the Medicare program. It will be bankrupt as early as 2016,
714 and at the latest, 2024. The longer we wait to save the
715 Medicare program, the more at risk our seniors will be.

716 Making it harder for our seniors to find a doctor or the
717 best treatments available is not, and I repeat, not
718 meaningful reform. It is IPAB. Therefore, I urge my
719 colleagues to support its repeal and join me in pushing
720 Congress to truly save the Medicare program. Our seniors
721 cannot wait for reform any longer, and in addition, Mr.
722 Chairman, I also urge support for H.R. 3309 as well as H.R.
723 3310, and I yield back the balance of my time.

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

725 ***** COMMITTEE INSERT *****

|
726 The {Chairman.} Thank you.

727 The gentleman from Louisiana, Mr. Scalise, is recognized
728 for an opening statement.

729 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
730 you bringing up this legislation that we are going to be
731 taking up for votes tomorrow. The three bills are bills that
732 I all strongly support.

733 I want to start by talking about the bill to repeal the
734 IPAB. The Independent Payment Advisory Board is a group of
735 15 unelected bureaucrats in Washington, D.C., that will have
736 the ability to ration health care under the President's
737 health care law. I think as most Americans hear more details
738 of the entire law, there are things that they don't know what
739 it is going to do, but of all the things that they hear it is
740 going to do, they don't like it. Every small business I talk
741 to talks about the problems they are having hiring workers
742 directly related to the problems being caused by the
743 President's health care law, and IPAB is one of those
744 components of this law that needs to be repealed. The whole
745 law needs to be repealed, but at least as we are going
746 through highlighting these individual components and trying
747 to repeal individual components, this is one that stands out
748 as a very offensive board that people feel not only violates

749 many of the tenets that President Obama promised when he said
750 if you like what you have, you can keep it, he said there
751 would be no rationing, but yet you look at what this board of
752 15 unelected bureaucrats would be able to do, they literally
753 would be able to get in the middle of decisions between
754 doctors and patients, and that goes to the heart of health
755 care. Health care should be the decisions that are made by a
756 doctor in consultation with the patient where the patient
757 works with the doctor to decide what is best for them, not
758 having some unelected bureaucrat in Washington, D.C., making
759 those decisions for the doctor and the patient, so I am glad
760 that we are going to be bringing this bill up. As a
761 cosponsor, it is one that we need to pass.

762 I also encourage my colleagues to support my bill, H.R.
763 3310, the FCC Consolidated Reporting Act, as well as Chairman
764 Walden's bill, H.R. 3309, the FCC Process Reform bill which I
765 am proud to be a cosponsor of. These bills actually go to
766 the heart of making reforms to the FCC that are very
767 important. If you look at the stacks of reports well over
768 this high that the FCC and individual companies are required
769 to file every year, so many of these reports are obsolete
770 before they are even filed. Many of the report dates are
771 missed because so many of the reports aren't even valid
772 anymore. There is still a report dealing with

773 telecommunications methods like the telegraph. Well, we
774 don't need a report on telegraph competitiveness anymore. We
775 need to look at all of these reports and repeal the existing
776 reports and go to a consolidated report format so that we can
777 truly look at the marketplace in the way that it is operating
778 today.

779 H.R. 3310 also acknowledges that we have a fiscal crisis
780 in this country. That means we must find ways to do more
781 with less, and by asking the FCC to report every other year
782 rather than a year, this committee can promote more
783 efficient, less costly and less intrusive government, because
784 the reality is, as these reports come out, the compilation of
785 these reports takes countless hours of time that can be
786 better spent creating jobs in the private sector. Reshaping
787 the Commission's mission and the mission of other agencies we
788 oversee is a critical part of dealing with that reality.

789 Ultimately, the practical effect of the bill that we
790 filed is going to be on job creators in this country so that
791 they can use their resources to do what they do best, and
792 that is putting people to work. I look forward to working
793 with my colleagues on both sides of the aisle to pass these
794 important commonsense bills.

795 Thank you, Mr. Chairman, and I yield back the balance of
796 my time.

797 [The prepared statement of Mr. Scalise follows:]

798 ***** COMMITTEE INSERT *****

|
799 The {Chairman.} The gentleman yields back.

800 The Chair would recognize the gentleman from
801 Mississippi, Mr. Harper, for 3 minutes.

802 Mr. {Harper.} Thank you, Mr. Chairman.

803 Medicare is a crucial program for our Nation's seniors
804 and its viability must be maintained. There is no question,
805 Medicare must be modernized in order to avoid the program's
806 projected financial shortfalls. House Republicans have
807 advanced a budget blueprint to place this program as well as
808 other efficient supports that guard our Nation's
809 underprivileged on sound financial footing for both today's
810 and future retirees.

811 Contrast that with what happened with Obamacare when
812 this White House cut Medicare benefits \$523 billion and
813 robbed Congress of its governing authority through the
814 creation of a 15-member panel to be handpicked by the
815 Administration. The unconstitutional Independent Payment
816 Advisory Board is further proof of the so-called Affordable
817 Care Act's unprecedented power grab and adds weight to my
818 belief that this law is nothing short of politics above
819 economics. This is why I not only support the full repeal of
820 this burdensome act, but I am a cosponsor of H.R. 452, which
821 I will support in today's markup.

822 Before I close, I would like to note that the success of
823 America's communications industry is reliant on a fluid
824 process at the Federal Communications Commission. I believe
825 that H.R. 3309 and H.R. 3310 will help streamline the FCC and
826 ensure a bright future for our communications marketplace.

827 Thank you, Mr. Chairman, and I yield back the balance of
828 my time.

829 [The prepared statement of Mr. Harper follows:]

830 ***** COMMITTEE INSERT *****

|
831 The {Chairman.} Thank you.

832 The Chair now would recognize the very patient gentleman
833 from the good State of Louisiana, Mr. Cassidy, for an opening
834 statement.

835 Dr. {Cassidy.} Thank you, Mr. Chairman. I will also
836 restrict my remarks to H.R. 452.

837 There is common ground between Republicans and Democrats
838 that Medicare is unsustainable in its current form, and I am
839 a doctor so I am particularly passionate about this because I
840 realize the importance of this program to patients. If you
841 pay physicians less than their cost to see a patient, then
842 inevitably that is going to hurt access.

843 Now, we know that Medicare is going bankrupt. It is
844 going to cost about \$570 billion this year growing annually
845 at about 5.6 percent through 2021, and so this is an
846 important issue, and since almost half of Medicare's funding
847 comes from general appropriations, its growth directly
848 contributes to the deficit. Indeed, as we all know, if
849 nothing is done to address this, the entitlement to Medicaid,
850 Medicare, Social Security and interest on our debt will
851 consume every tax dollar by 2025, which is in 14 years.
852 Inevitably, if this occurs, Medicare will fail. Patients
853 will suffer. We can't allow this to happen.

854 Now, we can all acknowledge the problem but we may
855 differ on the solutions. President Obama's health care plan
856 created something called the Independent Payment Advisory
857 Board, or IPAB, which is, as people have said, an unelected
858 board of bureaucrats who will have the ability to set rates
859 paid to Medicare providers. Now, it is interesting. In this
860 sense, it is an updated version of the Sustained Growth Rate,
861 another centrally planned economy mechanism by which to
862 restrict cost. Now, in IPAB, it sets a budget, then cuts
863 provider reimbursements until the budget target is achieved.
864 SGR did something similar and SGR has not restrained health
865 care costs but is faulted for decreasing seniors' access to
866 primary care physicians.

867 Now, the faith that the IPAB will be different than SGR
868 brings to mind Sandra Johnson's quote regarding second
869 marriages: they are the triumph of hope over experience.
870 Indeed, with a clearer eye than the Administration, the Chief
871 Actuary for the CBO says that the savings from IPAB will be
872 zero.

873 Now, with that said, apologists for the President's
874 health care law see nonetheless that restricting payments by
875 fiat will actually reduce waste. Well, in reality, IPAB is
876 severely restricted in areas where it can address waste. It
877 can't recommend rationing. It can't raise revenues. It

878 can't increase premiums. It can't increase cost sharing.
879 Inevitably, it will cut payments to physicians and we have
880 learned that if you do so, again, you hurt the patient's
881 access to the physician whom she is seeing.

882 Indeed, if the current reductions in physician
883 reimbursements and other things affecting Medicare physicians
884 continue, then Medicare reimbursement to physicians will be
885 cut nearly in half by 2019. A recently released report from
886 CMS shows these cuts unrealistic, virtually certain to be
887 overridden by Congress and yet on the basis of cuts like
888 this, President Obama's health care law is touted to save
889 money.

890 Now, there are other mechanisms, and that is
891 competition. Medicare Part D drug coverage did this because
892 it included competition and cost consciousness, and because
893 of this, the program is 40 percent below initial cost
894 estimates. There are things better than a centrally planned
895 economy. It is called competition. There are models where
896 it works. We should put our faith in this and not this redux
897 of the SGR. I will support the repeal of both President
898 Obama's health care law and of this provision, IPAB, as well.

899 Thank you. I yield back.

900 [The prepared statement of Dr. Cassidy follows:]

901 ***** COMMITTEE INSERT *****

|
902 The {Chairman.} The gentleman yields back.

903 The gentleman from Kansas, Mr. Pompeo, is recognized for
904 an opening statement.

905 Mr. {Pompeo.} Great. Thank you, Mr. Chairman.

906 You know, it is not enough to have good intentions. We
907 know that President Obama's health care will have results
908 that are very negative for seniors and for patients and for
909 doctors and our entire health care system. Indeed, the
910 Affordable Care Act will bankrupt our health care system, our
911 Medicare system in particular, within the next 10 to 15
912 years. The math is pretty straightforward.

913 Today we are going to deal with a piece of legislation
914 that will get rid of one part of that bill. We are going to
915 try and eliminate the Independent Payment Advisory Board, a
916 group of 15 folks selected unaccountably that will set
917 prices. We have seen in America time and time again when the
918 government sets prices, three things happen: quality
919 deteriorates, access goes away and prices inevitably bust
920 through these arbitrary price controls set by a centralized
921 government.

922 I have been here now 14 months in Congress. I have
923 watched as we have tried to undo this incredible harm to our
924 health care system, and there has not been very much

925 cooperation from the other side of the aisle. I was very
926 pleased today to learn that we have got a number of folks on
927 this Committee from the other side of the aisle who agree
928 with us that the Independent Payment Advisory Board simply
929 doesn't work in spite of what may well have been good
930 intentions.

931 You know, we know how to make sure that seniors have an
932 affordable, sound, reliable health care system. We have to
933 create competition, competition at every place in the health
934 care system, whether that is physicians or drug manufacturers
935 or specialty providers, and insurance companies as well. If
936 we provide competition, we will get what competition always
937 leads to. We will get more quantity, much better value,
938 effectiveness and productivity gains through innovation that
939 comes with companies competing. That is the direction our
940 health care system goes and it is what IPAB prevents.

941 You know, we had lots of problems in our health care
942 system well before Obamacare was passed but we can see how
943 they are fixed. This House of Representatives passed a piece
944 of legislation last year to do just that with respect to
945 Medicare, and now a slightly modified version that is also
946 bipartisan with Mr. Ryan and Senator Wyden agreeing that
947 there is a direction that will get our health care system
948 back on the right track.

949 Mr. Chairman, I thank you for taking up this bill. I
950 hope that we will pass H.R. 452 and eliminate IPAB, which
951 would eliminate so many physicians that access to health care
952 in America would be diminished for our seniors.

953 With that, I yield back.

954 [The prepared statement of Mr. Pompeo follows:]

955 ***** COMMITTEE INSERT *****

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956 The {Chairman.} The gentleman's time is expired.

|

957 H.R. 452

958 The {Chairman.} I would note now that opening
959 statements are completed and I would note for tomorrow we
960 will call up H.R. 452 and ask the clerk to report the title.

961 The {Clerk.} H.R. 452, to repeal the provisions of the
962 Patient Protection and Affordable Care Act providing for the
963 Independent Payment Advisory Board.

964 [H.R. 452 follows:]

965 ***** INSERT 1 *****

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966 The {Chairman.} Without objection, the first reading of
967 the bill is dispensed with. The bill will be open for
968 amendment at any point. So ordered.

969 So for the information of members, we are now on this
970 bill. The Committee will reconvene at 10 o'clock tomorrow.
971 I remind members that the Chair will give priority
972 recognition to amendments offered on a bipartisan basis. I
973 look forward to seeing all of you tomorrow, and would again
974 note that opening statements for these three bills by
975 unanimous consent can be entered into the record tomorrow as
976 well but we are done now with the oral statements. We will
977 see you tomorrow at 10:00.

978 Thank you. We stand adjourned.

979 [Whereupon, at 4:55 p.m., the Committee recessed, to
980 reconvene at 10:00 a.m., Tuesday, March 6, 2012.]