

House Energy and Commerce Committee
Vote on Opioids Legislation
May 17, 2018

On Thursday, May 17, the House Energy and Commerce Committee held a markup of 32 bills to address the opioid misuse and overdose epidemic.

The markup notice, background memo, webcast, amendments and list of bills that were noticed are available [here](#).

In his [opening statement](#), Committee Chairman Greg Walden (R-OR) reiterated his commitment to completing work ahead of Memorial Day and said Majority Leader Kevin McCarthy (R-CA) announced that he will be reserving time in June for floor consideration.

Ranking Member Frank Pallone (D-NJ) expressed concerns in his [opening remarks](#) that Rep. Gene Green's (D-TX) bill H.R. 5803, to amend the Federal Food, Drug, and Cosmetic Act to authorize the Secretary of Health and Human Services (HHS) to consider the potential for misuse and abuse when determining whether to approve certain drugs, was excluded from the markup, even though it was approved in Subcommittee. Regarding Rep. Green's FDA bill, Walden said they did not consider the bill because after conversations with FDA they believe they already have the authority granted in H.R. 5803. Rep. Green responded that FDA has stated this authority needs to be clarified.

Foreshadowing a debate at the end of the markup, Pallone also stated that he was disappointed that the Chairman was "playing politics with a priority of many members of this Committee," referencing the *The Addiction Treatment Access Improvement Act* (HR 3692). Pallone added, that "Unfortunately, the Chairman has decided to combine that bill with a controversial proposal that would gut the Part 2 patient consent requirement and result, in my opinion, in less people receiving potentially life-saving treatment for opioid use disorder. I cannot support that bill and strongly object to any efforts to play politics with life-saving interventions." Pallone was referencing [H.R. 5807](#), which was noticed, but not considered at the markup.

At the end of the markup, when it was clear the bill was not going to be called up, Rep. Tonko (D-NY) unsuccessfully offered HR 3692 as an amendment to an unrelated bill, HR 5812, which was the last bill of the day to be considered. In debate over the bill, Chairman Walden said that the American Psychiatric Association, Opioid Treatment Consortium and the anesthesiologists had asked the Committee not to expand buprenorphine prescribing authority beyond current law. He also said the Drug Enforcement Administration (DEA) had expressed major concerns with the legislation (excerpts from their email to staff are below). Walden said there are issues with the bill and he said he would work with Rep. Tonko as they prepare bills for the Floor to see if they can be resolved, but Democrats were visibly upset about the bill being having been noticed twice but not considered.

As noted above, House leadership is preparing to bring bills to address the opioid misuse and overdose epidemic to the House floor in June. Thursday's markup follows a markup at the House Ways and Means Committee on Wednesday. We have heard the first week after the Memorial Day recess may be "opioids week."

Bills that were considered at the markup are summarized below (with key debate and amendments noted):

Public Health Service Act Bills

1. [H.R. 5812](#), **Creating Opportunities that Necessitate New and Enhanced Connections That Improve Opioid Navigation Strategies Act (CONNECTIONS) Act - approved by voice vote**
 - As noted above, Mr. Tonko offered HR 3692 as an [amendment](#) to HR 5812; Mr. Barton (R-TX) raised a point of order on the grounds that the amendment was not germane to the

underlying legislation. The point of order was upheld by a vote of 28 - 24 and the amendment was tabled.

- In introducing the amendment, Rep. Tonko said the bill was developed based on feedback from the American Society of Addiction Medicine (ASAM) and American College of Obstetrics and Gynecology. Tonko also noted that all of the Members who were on the Committee in 2016 voted for the original proposal as part of the *Comprehensive Addiction and Recovery Act (CARA)*
- Rep. Lujan (D-NM) spoke in favor of HR 3692 and said he has heard some Members talk about the time limit in CARA on NP/PA prescribing as being intentional to create a demonstration and he said that was false, that the time limit was because of cost concerns
- As previously noted, Chairman Walden said the American Psychiatric Association, Opioid Treatment Consortium and the anesthesiologists have asked the Committee not to expand prescribing authorities beyond current law until more data is available
- Walden also said that DEA expressed major concerns with the bill and that, based on that feedback, there may be a path forward for the bill, but he did not see one at Thursday's markup.

- In a message sent late yesterday from DEA to Congressional staff expressing concerns about the bill, some of the points raised included:

Expanding the number of addicted patients who can be treated at one time by one practitioner and granting mid-level practitioners permanent authority to dispense controlled substances for addiction treatment ("Medication Assisted Treatment"): *This provision would make permanent what is now a temporary allowance under the CSA whereby certain mid-level practitioners (nurse practitioners and physician assistants) can prescribe a schedule III narcotic drug (buprenorphine) for the treatment of addiction. This provision would also allow practitioners to treat up to 275 addicted patients at one time beginning one year after the practitioner begins engaging in addiction treatment with buprenorphine. While this provision appears well intended, it is an example of how to make a terrible problem (the opioid crisis) worse through legislation.*

Addiction treatment only helps if the treatment is effective. Practitioners who provide such treatment must be properly trained and qualified. Buprenorphine is widely diverted by addicts and it cannot be assumed that simply giving out more buprenorphine to addicts will help and not harm. Thus, merely increasing the categories of practitioners who are authorized to prescribe buprenorphine to addicts – to include those who are not physicians – is a risky proposition. The temporary allowance for mid-level practitioners under current law was supposed to be a five-year trial program. Sufficient time has not elapsed to conclude that the program is more beneficial than harmful. The absence of meaningful data is not proof that the program should be made permanent. Along similar lines, expanding the number of patients per practitioner after one year from 100 to 275 could be counterproductive if it allows more rogue practitioners – who are simply pill mills for buprenorphine – to more rapidly expand their customer list.

- Rep. Bucshon (R-IN), a physician by training who was a sponsor of the provision in CARA to expand prescribing, spoke in opposition to HR 3692 and said that, from a medical perspective, the “ends don't justify the means.” He said he does not support putting the expanded 275 prescribing limit into statute because he wants the Secretary to have flexibility to lower the cap and that very little information is available

on the practitioners who expanded under the caps and outcomes for patients treated by NPs/PAs. He said he wants patients to have access to high quality addiction treatment and is concerned the bill would not provide adequate patient protections, which could increase the risk for abuse and diversion.

- Ranking Member Pallone countered that buprenorphine saves lives and that DEA may be saying it is diverted, but if it's diverted to people on the street who then do not overdose and die, then the harm may be minimized.
- Chairman Walden closed the discussion by saying there is obviously disagreement about the bill, that they take the concerns raised by DEA late yesterday seriously and that he is happy to work with Mr Tonko to try to resolve the issues. He said that the bill could potentially be part of a managers amendment or offered the Rules Committee or that the Committee could return to the issue at a later time. But, he ended his remarks by noting that the concerns raised by DEA change the dynamic.

2. [H.R. 5795](#), **Overdose Prevention and Patient Safety Act, the bill passed by a vote of 35 – 17.** Rep. Barton (R-TX) broke with Republicans and voted in opposition; 7 Democrats - Eshoo (D-CA), Green (D-TX), Doyle (D-PA), Welch (D-VT), Schrader (D-OR), Ruiz (D-CA) and Peters (D-CA) - voted for the bill.

While not as contentious as the debate over HR 3692, there was a serious policy debate over HR 5795, which would modify the 42 CFR Part 2 privacy protections for addiction treatment.

Similar to the vote, in debate over the amendments, Democrats were split. For example, Rep. Matsui (D-CA) said she was prepared to vote “no” in the hopes that she could continue to work to improve the bill before it reaches the House floor. She said she agrees that 42 CFR does serve as a barrier, but she is concerned about possible consequences associated with the freer sharing of information. On the other hand, Rep. Ruiz (D-CA), a physician by training, said he was in support of the bill and said allowing the flow of information for clinical treatment would help with patient care.

With the exception of Mr. Barton, Republicans were largely in favor of the bill. Rep. Bucshon said that limited information due to 42 CFR was a barrier to patient care and said he had patients who forced providers to scramble in the ICU because they did not have the patient's full medical history (he also cited examples of undisclosed alcoholism and herbal supplements as causing complications)

- Rep. Barton offered an [amendment](#) to require HHS to update regulations so that individuals receive, in plain language, information regarding privacy protections of patient records; the amendment passed by voice vote
 - In his remarks, Barton said he would vote “no” on the underlying bill because they were unable to reach an agreement despite negotiations with the Committee into late last night
- Chairman Walden offered a [secondary amendment](#) to the Barton amendment to increase the penalties for improper disclosures; the amendment passed by voice vote
- Ranking Member Pallone offered an [amendment](#) to strike the bill and replace it with a requirement that HHS develop model training programs; this provision is included in the bill as reported by the Senate Health, Education, Labor and Pensions (HELP) Committee. The amendment failed by a vote of 23 to 29; Rep. Barton voted with the Democrats in favor and Mr. Doyle (D-PA) voted “no” with Republicans.
 - In debate over the amendment, Rep. Bucshon said there are no breach notification requirements under 42 CFR Part 2 now and HR 4795 would add such a requirement along with penalties for violations

- Rep. Carter (R-GA) said that there is no evidence that people are currently or will avoid treatment because of privacy concerns, but rather that Dr. Clark testified last week that people are not getting treatment because they do not perceive that they need it. Carter said addiction needs to be treated like a medical illness and that maintaining 42 CFR would not accomplish that goal
3. **[H.R. 4684](#), Ensuring Access to Quality Sober Living Act of 2018 – approved by voice vote**
 - Rep. Bilirakis commented on the bad actors in the treatment community and that these fraudulent facilities prey on those with substance use disorders (SUDs). He noted the importance of best practices and technical assistance to states to regulate sober living facilities
 - Ryan Hampton's testimony at a previous E&C hearing was noted as reason to support the legislation
 4. **[H.R. 5329](#), Poison Center Network Enhancement Act of 2018, as [amended](#) – approved by voice vote**
 - Rep. Brooks [amendment](#) (technical changes, more flexibility from HRSA)
 5. **[H.R. 5580](#), STOP Fentanyl Deaths Act of 2018 – approved by voice vote**
 6. **[H.R. 5587](#), Peer Support Communities of Recovery Act, as [amended](#) – approved by voice vote**

Medicaid Bills

7. **[H.R. 1925](#), At-Risk Youth Medicaid Protection Act of 2017 – adopted by voice vote**
8. **[H.R. 3192](#), CHIP Mental Health Parity Act, as [amended](#) – adopted by voice vote**
 - Rep. Kennedy (D-MA) [amendment](#) (re. technical assistance) – adopted by voice vote
9. **[H.R. 4005](#), Medicaid Reentry Act, as [amended](#) (in the nature of a substitute) – adopted by voice vote**
10. **[H.R. 4998](#), Health Insurance for Former Foster Youth Act, as [amended](#) (in the nature of a substitute) – adopted by voice vote**
11. **[H.R. 5477](#), Rural Development of Opioid Capacity Services Act, as [amended](#) (in the nature of a substitute) – adopted by voice vote**
12. **[H.R. 5583](#), Requiring Medicaid Programs to Report on All Core Behavioral Health Measures – adopted by voice vote**
13. **[H.R. 5789](#), To amend title XIX of the Social Security Act to provide for Medicaid coverage protections for pregnant and postpartum women while receiving inpatient treatment for a substance use disorder, as [amended](#) – adopted by voice vote**
 - Rep. Lujan (D-NJ) [amendment](#) re. GAO study and guidance – adopted by voice vote
14. **[H.R. 5797](#), IMD CARE Act, as [amended](#) – adopted by voice vote**
 - Rep. Walters (R-CA) [amendment](#) re. technical changes & definitions – approved by voice vote
 - Rep. Schakowsky (D-IL) said that those who suffer from non-opioid SUDs would not be eligible under this amendment, and limited expansion is short sighted and discriminatory
 - Rep. Walters cited long waiting lists for SUD treatment in several states to underscore the importance of this legislation

- Rep. Pallone, speaking on the underlying bill, said he supports CMS guidance on the IMD exclusion. He said he also supports legislation that improves provider capacity across the continuum of care to help states meet SUD waiver requirements. He referenced ASAM's levels of care necessary to address continuum of care. He also said he could not support the legislation until more initial work is done
- Rep. Rush (D-IL) offered and withdrew an [amendment](#) regarding expanded treatment options to other SUDs

15. [H.R. 5799](#), Medicaid DRUG Improvement Act, as amended – approved by voice vote

- Rep. Collins (R-NY) [amendment](#) – approved by voice vote

16. [H.R. 5800](#), Medicaid IMD ADDITIONAL INFO Act – approved by voice vote

17. [H.R. 5801](#), Medicaid PARTNERSHIP Act, as [amended](#) – approved by voice vote

- Rep. Griffith [amendment](#)

18. [H.R. 5808](#), Medicaid Pharmaceutical Home Act - approved by voice vote

19. [H.R. 5810](#), Medicaid Health HOME Act – approved [as amended](#) by voice vote

- Rep. Green/Lance amendment – adopted by voice vote
 - Rep. Lance (R-NJ) said the amendment provides a 5-year authorization so state Medicaid programs can provide access to all MAT
 - Rep. Green said MAT can help sustain recovery, but there are 14 state Medicaid programs that do not cover methadone. The amendment provides an exception to states that do not have enough providers

Medicare Part B Bills

20. [H.R. 5605](#), Advancing High Quality Treatment for Opioid Use Disorders in Medicare Act, as [amended](#) (in the nature of a substitute) – approved by voice vote

- Rep. Ruiz (D-CA) [amendment](#) – approved by voice vote
 - Rep. Ruiz stressed the importance of this legislation and that coordinated care is the gold standard for addiction treatment - that psycho-social supports in tandem with MAT, ensures the best possible treatment
- Rep. Upton (R-MI) said there is no opposition to this bill, but there needs to be additional conversations with CBO before the bill can go to the House floor

21. [H.R. 5590](#), Opioid Addiction Action Plan Act – approved as [amended](#) by voice vote

- Rep. Kinzinger (R-IL) amendment – approved by voice vote
 - Added a report on price trends of drugs like naloxone per suggestion of Rep. Schakowsky, who had voiced concerns about rising naloxone costs, and cited a letter from the city of Baltimore, MD.

22. [H.R. 5603](#), Access to Telehealth Services for Opioid Use Disorder, as [amended](#) (in the nature of a substitute) – approved by voice vote

- Rep. Matsui (D-CA) [amendment](#) – approved by voice vote

23. [H.R. 5798](#), Opioid Screening and Chronic Pain Management Alternatives for Seniors Act – adopted by voice vote

24. [H.R. 5804](#), Post-Surgical Injections as an Opioid Alternative Act, passed by a vote of 36 - 14

- Some Democrats opposed the bill because of concerns that the increased reimbursement would not decrease opioid prescribing and that the bill could result in picking winners and losers. They also felt that the bill was too specific in setting payment rates for 5 years; Republicans argued that CMS cut reimbursement rates, which necessitated the congressional intervention
- An [amendment](#) offered by Rep. Welch (D-VT) to require CMS to review whether there are financial disincentives for the use non-opioid pain treatments failed by a vote of 23 - 27

25. [H.R. 5809](#), Postoperative Opioid Prevention Act of 2018, passed by a vote of 34 - 17

- An [amendment](#) offered by Rep. Dingell (D-MI) to replace the bill and instead require CMS to review the outpatient prospective system for payments for opioids and non-opioid treatments to ensure there is no incentive to prescribe opioids failed by a vote of 22 - 29

Medicare Part D Bills

26. [H.R. 5715](#), Strengthening Partnerships to Prevent Opioid Abuse Act – approved as [amended](#) by voice vote

- Rep. Guthrie (R-KY) amendment (technical change) – approved by voice vote

27. [H.R. 5716](#), Commit to Opioid Medical Prescriber Accountability and Safety for Seniors (COMPASS) Act – approved by voice vote

28. [H.R. 5796](#), Responsible Education Achieves Care and Healthy Outcomes for Users' Treatment (REACH OUT) Act – approved by voice vote

- Rep. Pallone expressed concerns with the funding provisions as currently drafted and wants a commitment to work together. Chairman Walden said he appreciated that point and agreed to continue to work on the funding provisions and a path forward

Federal Food, Drug, and Cosmetic Act Bills

29. [H.R. 5228](#), Stop Counterfeit Drugs by Regulating and Enhancing Enforcement Now (SCREEN) Act, as [amended](#) (in the nature of a substitute)/[amended](#) - adopted by voice vote

- Rep. Green (D-TX) [amendment](#), to the amendment in the nature of a substitute (clarifying section on FDA authority) - adopted by voice vote

30. [H.R. 5752](#), Stop Illicit Drug Importation Act of 2018, as [amended](#) – adopted by voice vote

31. [H.R. 5806](#), 21st Century Tools for Pain and Addiction Treatments – adopted by vote of 31-23

32. [H.R. 5811](#), To amend the Federal Food, Drug, and Cosmetic Act with respect to post approval study requirements for certain controlled substances, and for other purposes, as [amended](#) – adopted by voice vote

- Rep. Griffith (R-VA) [amendment](#) (technical change) – adopted 31-22