

Union Calendar No. 594

114TH CONGRESS
2^D SESSION

H. R. 5713

[Report No. 114–761, Part I]

To provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2016

Mr. TIBERI (for himself and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 20, 2016

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 20, 2016

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 11, 2016]

A BILL

To provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Sus-*
 5 *taining Healthcare Integrity and Fair Treatment Act of*
 6 *2016”.*

7 (b) *TABLE OF CONTENTS.*—*This table of contents of*
 8 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE PART A PROVISIONS

Sec. 101. Extension of certain LTCH Medicare payment rules.

Sec. 102. Application of rules on the calculation of hospital length of stay to all LTCHs.

Sec. 103. Change in Medicare classification for certain hospitals.

Sec. 104. Temporary exception to the application of the Medicare LTCH site neutral provisions for certain spinal cord specialty hospitals.

Sec. 105. Temporary extension to the application of the Medicare LTCH site neutral provisions for certain discharges with severe wounds.

TITLE II—OTHER PROVISIONS

Sec. 201. No payment for items and services furnished by newly enrolled providers or suppliers within a temporary moratorium area.

9 **TITLE I—MEDICARE PART A**
 10 **PROVISIONS**

11 **SEC. 101. EXTENSION OF CERTAIN LTCH MEDICARE PAY-**
 12 **MENT RULES.**

13 (a) *25–PERCENT PATIENT THRESHOLD PAYMENT AD-*
 14 *JUSTMENT.*—*Section 114(c)(1)(A) of the Medicare, Med-*
 15 *icaid, and SCHIP Extension Act of 2007 (42 U.S.C.*
 16 *1395ww note), as amended by section 4302(a) of division*
 17 *B of the American Recovery and Reinvestment Act (Public*
 18 *Law 111–5), sections 3106(a) and 10312(a) of Public Law*

1 111–148, and section 1206(b)(1)(B) of the Pathway for
 2 SGR Reform Act of 2013 (division B of Public Law 113–
 3 67), is amended by striking “for a 9-year period” and in-
 4 serting “through June 30, 2016, and for discharges occur-
 5 ring on or after October 1, 2016, and before July 1, 2017”.

6 (b) *PAYMENT FOR HOSPITALS-WITHIN-HOSPITALS.*—
 7 Section 114(c)(2) of the Medicare, Medicaid, and SCHIP
 8 Extension Act of 2007 (42 U.S.C. 1395ww note), as amend-
 9 ed by section 4302(a) of division B of the American Recov-
 10 ery and Reinvestment Act (Public Law 111–5), sections
 11 3106(a) and 10312(a) of Public Law 111–148, and section
 12 1206(b)(1)(A) of the Pathway for SGR Reform Act of 2013
 13 (division B of Public Law 113–67), is amended—

14 (1) in subparagraph (A), by inserting “or any
 15 similar provision,” after “Regulations,”;

16 (2) in subparagraph (B)—

17 (A) in clause (i), by inserting “or any simi-
 18 lar provision,” after “Regulations,”; and

19 (B) in clause (ii), by inserting “, or any
 20 similar provision,” after “Regulations”; and

21 (3) in subparagraph (C), by striking “for a 9-
 22 year period” and inserting “through June 30, 2016,
 23 and for discharges occurring on or after October 1,
 24 2016, and before July 1, 2017”.

1 **SEC. 102. APPLICATION OF RULES ON THE CALCULATION**
 2 **OF HOSPITAL LENGTH OF STAY TO ALL**
 3 **LTCHS.**

4 (a) *IN GENERAL.*—Section 1206(a)(3) of the Pathway
 5 for SGR Reform Act of 2013 (division B of Public Law
 6 113–67; 42 U.S.C. 1395ww note) is amended—

7 (1) by striking subparagraph (B);

8 (2) by striking “SITE NEUTRAL BASIS.—” and
 9 all that follows through “For discharges occurring”
 10 and inserting “SITE NEUTRAL BASIS.—For discharges
 11 occurring”;

12 (3) by striking “subject to subparagraph (B),”;
 13 and

14 (4) by redesignating clauses (i) and (ii) as sub-
 15 paragraphs (A) and (B), respectively, and moving
 16 each of such subparagraphs (as so redesignated) 2 ems
 17 to the left.

18 (b) *EFFECTIVE DATE.*—The amendments made by sub-
 19 section (a) shall be effective as if included in the enactment
 20 of section 1206(a)(3) of the Pathway for SGR Reform Act
 21 of 2013 (division B of Public Law 113–67; 42 U.S.C.
 22 1395ww note).

1 **SEC. 103. CHANGE IN MEDICARE CLASSIFICATION FOR CER-**
 2 **TAIN HOSPITALS.**

3 (a) *IN GENERAL.*—Subsection (d)(1)(B) of section
 4 1886 of the Social Security Act (42 U.S.C. 1395ww) is
 5 amended—

6 (1) *in clause (iv)*—

7 (A) *in subclause (I), by striking “or” at the*
 8 *end;*

9 (B) *in subclause (II)*—

10 (i) *by striking “, or” at the end and*
 11 *inserting a semicolon; and*

12 (ii) *by redesignating such subclause as*
 13 *clause (vi) and by moving it to immediately*
 14 *follow clause (v); and*

15 (iii) *in clause (v), by striking the semi-*
 16 *colon at the end and inserting “, or”; and*
 17 (C) *by striking “(iv)(I) a hospital” and in-*
 18 *serting “(iv) a hospital”.*

19 (b) *CONFORMING PAYMENT REFERENCES.*—The second
 20 sentence of subsection (d)(1)(B) of such section is amend-
 21 ed—

22 (1) *by inserting “(as in effect as of such date)”*
 23 *after “clause (iv)”;* and

24 (2) *by inserting “(or, in the case of a hospital*
 25 *described in clause (iv)(II), as so in effect, shall be*
 26 *classified under clause (vi) on and after the effective*

1 *date of such clause (vi) and for cost reporting periods*
2 *beginning on or after January 1, 2015, shall not be*
3 *subject to subsection (m) as of the date of such classi-*
4 *fication)” after “so classified”.*

5 *(c) APPLICATION.—*

6 *(1) IN GENERAL.—For cost reporting periods be-*
7 *ginning on or after January 1, 2015, in the case of*
8 *an applicable hospital (as defined in paragraph (3)),*
9 *the following shall apply:*

10 *(A) Payment for inpatient operating costs*
11 *shall be made on a reasonable cost basis in the*
12 *manner provided in section 412.526(c)(3) of title*
13 *42, Code of Federal Regulations (as in effect on*
14 *January 1, 2015) and in any subsequent modi-*
15 *fications.*

16 *(B) Payment for capital costs shall be made*
17 *in the manner provided by section 412.526(c)(4)*
18 *of title 42, Code of Federal Regulations (as in ef-*
19 *fect on such date).*

20 *(C) Claims for payment for Medicare bene-*
21 *ficiaries who are discharged on or after January*
22 *1, 2017, shall be processed as claims which are*
23 *paid on a reasonable cost basis as described in*
24 *section 412.526(c) of title 42, Code of Federal*
25 *Regulations (as in effect on such date).*

1 (2) *APPLICABLE HOSPITAL DEFINED.*—*In this*
 2 *subsection, the term “applicable hospital” means a*
 3 *hospital that is classified under clause (iv)(II) of sec-*
 4 *tion 1886(d)(1)(B) of the Social Security Act (42*
 5 *U.S.C. 1395ww(d)(1)(B)) on the day before the date*
 6 *of the enactment of this Act and which is classified*
 7 *under clause (vi) of such section, as redesignated and*
 8 *moved by subsection (a), on or after such date of en-*
 9 *actment.*

10 (d) *CONFORMING TECHNICAL AMENDMENTS.*—

11 (1) *Section 1899B(a)(2)(A)(iv) of the Social Se-*
 12 *curity Act (42 U.S.C. 1395lll(a)(2)(A)(iv)) is amend-*
 13 *ed by striking “1886(d)(1)(B)(iv)(II)” and inserting*
 14 *“1886(d)(1)(B)(vi)”.*

15 (2) *Section 1886(m)(5)(F) of such Act (42*
 16 *U.S.C. 1395ww(m)(5)(F)) is amended in each of*
 17 *clauses (i) and (ii) by striking “(d)(1)(B)(iv)(II)”*
 18 *and inserting “(d)(1)(B)(vi)”.*

19 **SEC. 104. TEMPORARY EXCEPTION TO THE APPLICATION OF**
 20 **THE MEDICARE LTCH SITE NEUTRAL PROVI-**
 21 **SIONS FOR CERTAIN SPINAL CORD SPE-**
 22 **CIALTY HOSPITALS.**

23 (a) *EXCEPTION.*—*Section 1886(m)(6) of the Social Se-*
 24 *curity Act (42 U.S.C. 1395ww(m)(6)) is amended—*

1 (1) in subparagraph (A)(i), by striking “and
2 (E)” and inserting “, (E), and (F)”; and

3 (2) by adding at the end the following new sub-
4 paragraph:

5 “(F) *TEMPORARY EXCEPTION FOR CERTAIN*
6 *SPINAL CORD SPECIALTY HOSPITALS.—For dis-*
7 *charges in cost reporting periods beginning dur-*
8 *ing fiscal years 2018 and 2019, subparagraph*
9 *(A)(i) shall not apply (and payment shall be*
10 *made to a long-term care hospital without regard*
11 *to this paragraph) if such discharge is from a*
12 *long-term care hospital that meets each of the fol-*
13 *lowing requirements:*

14 “(i) *NOT-FOR-PROFIT.—The long-term*
15 *care hospital was a not-for-profit long-term*
16 *care hospital on June 1, 2014, as deter-*
17 *mined by cost report data.*

18 “(ii) *PRIMARYLY PROVIDING TREAT-*
19 *MENT FOR CATASTROPHIC SPINAL CORD OR*
20 *ACQUIRED BRAIN INJURIES OR OTHER*
21 *PARALYZING NEUROMUSCULAR CONDI-*
22 *TIONS.—Of the discharges in calendar year*
23 *2013 from the long-term care hospital for*
24 *which payment was made under this sec-*
25 *tion, at least 50 percent were classified*

1 *under MS–LTCH–DRGs 28, 29, 52, 57,*
2 *551, 573, and 963.*

3 “(iii) *SIGNIFICANT OUT-OF-STATE AD-*
4 *MISSIONS.—*

5 “(I) *IN GENERAL.—The long-term*
6 *care hospital discharged inpatients (in-*
7 *cluding both individuals entitled to, or*
8 *enrolled for, benefits under this title*
9 *and individuals not so entitled or en-*
10 *rolled) during fiscal year 2014 who*
11 *had been admitted from at least 20 of*
12 *the 50 States, determined by the States*
13 *of residency of such inpatients and*
14 *based on such data submitted by the*
15 *hospital to the Secretary as the Sec-*
16 *retary may require.*

17 “(II) *IMPLEMENTATION.—Not-*
18 *withstanding any other provision of*
19 *law, the Secretary may implement sub-*
20 *clause (I) by program instruction or*
21 *otherwise.*

22 “(III) *NON-APPLICATION OF PA-*
23 *PERWORK REDUCTION ACT.—Chapter*
24 *35 of title 44, United States Code, shall*

1 *not apply to data collected under this*
2 *clause.”.*

3 ***(b) STUDY AND REPORT ON THE STATUS AND VIABIL-***
4 ***ITY OF CERTAIN SPINAL CORD SPECIALTY LONG-TERM***
5 ***CARE HOSPITALS.—***

6 ***(1) STUDY.—****The Comptroller General of the*
7 *United States shall conduct a study on long-term care*
8 *hospitals described in section 1886(m)(6)(F) of the*
9 *Social Security Act, as added by subsection (a). Such*
10 *report shall include an analysis of the following:*

11 ***(A)*** *The impact on such hospitals of the*
12 *classification and facility licensure by State*
13 *agencies of such hospitals.*

14 ***(B)*** *The Medicare payment rates for such*
15 *hospitals.*

16 ***(C)*** *Data on the number and health care*
17 *needs of Medicare beneficiaries who have been di-*
18 *agnosed with catastrophic spinal cord or ac-*
19 *quired brain injuries or other paralyzing neuro-*
20 *muscular conditions (as described within the dis-*
21 *charge classifications specified in clause (ii) of*
22 *such section) who are receiving services from*
23 *such hospitals.*

24 ***(2) REPORT.—****Not later than October 1, 2018,*
25 *the Comptroller General shall submit to Congress a*

1 *report on the study conducted under paragraph (1),*
 2 *including recommendations for such legislation and*
 3 *administrative action as the Comptroller General de-*
 4 *termines appropriate.*

5 **SEC. 105. TEMPORARY EXTENSION TO THE APPLICATION OF**
 6 **THE MEDICARE LTCH SITE NEUTRAL PROVI-**
 7 **SIONS FOR CERTAIN DISCHARGES WITH SE-**
 8 **VERE WOUNDS.**

9 *(a) IN GENERAL.—Section 1886(m)(6) of the Social*
 10 *Security Act (42 U.S.C. 1395ww(m)(6)), as amended by*
 11 *section 104, is further amended—*

12 *(1) in subparagraph (A)(i) by striking “and*
 13 *(F)” and inserting “(F), and (G)”;*

14 *(2) in subparagraph (E)(i)(I)(aa), by striking*
 15 *“the amendment made” and all that follows before the*
 16 *semicolon and inserting “the last sentence of sub-*
 17 *section (d)(1)(B)”;* and

18 *(3) by adding at the end the following new sub-*
 19 *paragraph:*

20 *“(G) ADDITIONAL TEMPORARY EXCEPTION*
 21 *FOR CERTAIN SEVERE WOUND DISCHARGES FROM*
 22 *CERTAIN LONG-TERM CARE HOSPITALS.—*

23 *“(i) IN GENERAL.—For a discharge oc-*
 24 *curring in a cost reporting period begin-*
 25 *ning during fiscal year 2018, subparagraph*

1 (A)(i) shall not apply (and payment shall
 2 be made to a long-term care hospital with-
 3 out regard to this paragraph) if such dis-
 4 charge—

5 “(I) is from a long-term care hos-
 6 pital identified by the last sentence of
 7 subsection (d)(1)(B);

8 “(II) is classified under MS-
 9 LTCH-DRG 602, 603, 539, or 540;
 10 and

11 “(III) is with respect to an indi-
 12 vidual treated by a long-term care hos-
 13 pital for a severe wound.

14 “(ii) SEVERE WOUND DEFINED.—In
 15 this subparagraph, the term ‘severe wound’
 16 means a wound which is a stage 3 wound,
 17 stage 4 wound, unstageable wound, non-
 18 healing surgical wound, or fistula as identi-
 19 fied in the claim from the long-term care
 20 hospital.

21 “(iii) WOUND DEFINED.—In this sub-
 22 paragraph, the term ‘wound’ means an in-
 23 jury involving division of tissue or rupture
 24 of the integument or mucous membrane
 25 with exposure to the external environment.”.

1 (c) *STUDY AND REPORT TO CONGRESS.*—

2 (1) *STUDY.*—*The Comptroller General of the*
3 *United States shall, in consultation with relevant*
4 *stakeholders, conduct a study on the treatment needs*
5 *of individuals entitled to benefits under part A of title*
6 *XVIII of the Social Security Act or enrolled under*
7 *part B of such title who require specialized wound*
8 *care, and the cost, for such individuals and the Medi-*
9 *care program under such title, of treating severe*
10 *wounds in rural and urban areas. Such study shall*
11 *include an assessment of—*

12 (A) *access of such individuals to appro-*
13 *priate levels of care for such cases;*

14 (B) *the potential impact that section*
15 *1886(m)(6)(A)(i) of such Act (42 U.S.C.*
16 *1395ww(m)(6)(A)(i)) will have on the access,*
17 *quality, and cost of care for such individuals;*
18 *and*

19 (C) *how to appropriately pay for such care*
20 *under the Medicare program under such title.*

21 (2) *REPORT.*—*Not later than October 1, 2020,*
22 *the Comptroller General shall submit to Congress a*
23 *report on the study conducted under paragraph (1),*
24 *including recommendations for such legislation and*

1 *administrative action as the Comptroller General de-*
 2 *termines appropriate.*

3 ***TITLE II—OTHER PROVISIONS***

4 ***SEC. 201. NO PAYMENT FOR ITEMS AND SERVICES FUR-***
 5 ***NISHED BY NEWLY ENROLLED PROVIDERS OR***
 6 ***SUPPLIERS WITHIN A TEMPORARY MORATO-***
 7 ***RIUM AREA.***

8 *(a) MEDICARE.—Section 1866(j)(7) of the Social Secu-*
 9 *rity Act (42 U.S.C. 1395cc(j)(7)) is amended—*

10 *(1) in the paragraph heading, by inserting “;*
 11 *NONPAYMENT” before the period; and*

12 *(2) by adding at the end the following new sub-*
 13 *paragraph:*

14 *“(C) NONPAYMENT.—*

15 *“(i) IN GENERAL.—No payment may*
 16 *be made under this title or under a pro-*
 17 *gram described in subparagraph (A) with*
 18 *respect to an item or service described in*
 19 *clause (ii) furnished on or after October 1,*
 20 *2017.*

21 *“(ii) ITEM OR SERVICE DESCRIBED.—*
 22 *An item or service described in this clause*
 23 *is an item or service furnished—*

24 *“(I) within a geographic area*
 25 *with respect to which a temporary*

1 *moratorium imposed under subpara-*
2 *graph (A) is in effect; and*

3 *“(II) by a provider of services or*
4 *supplier that meets the requirements of*
5 *clause (iii).*

6 *“(iii) REQUIREMENTS.—For purposes*
7 *of clause (ii), the requirements of this clause*
8 *are that a provider of services or supplier—*

9 *“(I) enrolls under this title on or*
10 *after the effective date of such tem-*
11 *porary moratorium; and*

12 *“(II) is within a category of pro-*
13 *viders of services and suppliers (as de-*
14 *scribed in subparagraph (A)) subject to*
15 *such temporary moratorium.*

16 *“(iv) PROHIBITION ON CHARGES FOR*
17 *SPECIFIED ITEMS OR SERVICES.—In no case*
18 *shall a provider of services or supplier de-*
19 *scribed in clause (ii)(II) charge an indi-*
20 *vidual or other person for an item or service*
21 *described in clause (ii) furnished on or after*
22 *October 1, 2017, to an individual entitled to*
23 *benefits under part A or enrolled under part*
24 *B or an individual under a program speci-*
25 *fied in subparagraph (A).”.*

1 (b) *CONFORMING AMENDMENTS.*—

2 (1) *MEDICAID.*—

3 (A) *IN GENERAL.*—Section 1903(i)(2) of the
4 *Social Security Act (42 U.S.C. 1396b(i)(2))* is
5 amended—

6 (i) in subparagraph (A), by striking
7 the comma at the end and inserting a semi-
8 colon;

9 (ii) in subparagraph (B), by striking
10 “or” at the end; and

11 (iii)

12 “(D) with respect to any amount expended
13 for such an item or service furnished during cal-
14 endar quarters beginning on or after October 1,
15 2017, subject to section 1902(kk)(4)(A)(ii)(II),
16 within a geographic area that is subject to a
17 moratorium imposed under section 1866(j)(7) by
18 a provider or supplier that meets the require-
19 ments specified in subparagraph (C)(iii) of such
20 section, during the period of such moratorium;
21 or”.

22 (B) *EXCEPTION WITH RESPECT TO AC-*
23 *CESS.*—Section 1902(kk)(4)(A)(ii) of the *Social*
24 *Security Act (42 U.S.C. 1396a(kk)(4)(A)(ii))* is
25 amended to read as follows:

1 “(ii) *EXCEPTIONS.*—

2 “(I) *COMPLIANCE WITH MORATO-*
 3 *RIUM.*—*A State shall not be required*
 4 *to comply with a temporary morato-*
 5 *rium described in clause (i) if the*
 6 *State determines that the imposition of*
 7 *such temporary moratorium would ad-*
 8 *versely impact beneficiaries’ access to*
 9 *medical assistance.*

10 “(II) *FFP AVAILABLE.*—*Notwith-*
 11 *standing section 1903(i)(2)(D), pay-*
 12 *ment may be made to a State under*
 13 *this title with respect to amounts ex-*
 14 *pended for items and services described*
 15 *in such section if the Secretary, in con-*
 16 *sultation with the State agency admin-*
 17 *istering the State plan under this title*
 18 *(or a waiver of the plan), determines*
 19 *that denying payment to the State*
 20 *pursuant to such section would ad-*
 21 *versely impact beneficiaries’ access to*
 22 *medical assistance. ”.*

23 (C) *STATE PLAN REQUIREMENT WITH RE-*
 24 *SPECT TO LIMITATION ON CHARGES TO BENE-*
 25 *FICIARIES.*—*Section 1902(kk)(4)(A) of the Social*

1 *Security Act (42 U.S.C. 1396a(kk)(4)(A)) is*
 2 *amended by adding at the end the following new*
 3 *clause:*

4 “(iii) *LIMITATION ON CHARGES TO*
 5 *BENEFICIARIES.—With respect to any*
 6 *amount expended for items or services fur-*
 7 *nished during calendar quarters beginning*
 8 *on or after October 1, 2017, the State pro-*
 9 *hibits, during the period of a temporary*
 10 *moratorium described in clause (i), a pro-*
 11 *vider meeting the requirements specified in*
 12 *subparagraph (C)(iii) of section 1866(j)(7)*
 13 *from charging an individual or other per-*
 14 *son eligible to receive medical assistance*
 15 *under the State plan under this title (or a*
 16 *waiver of the plan) for an item or service*
 17 *described in section 1903(i)(2)(D) furnished*
 18 *to such an individual.”.*

19 (2) *CORRECTING AMENDMENTS TO RELATED*
 20 *PROVISIONS.—*

21 (A) *SECTION 1866(J).—Section 1866(j) of the*
 22 *Social Security Act (42 U.S.C. 1395cc(j)) is*
 23 *amended—*

24 *(i) in paragraph (1)(A)—*

1 (I) by striking “paragraph (4)”
2 and inserting “paragraph (5)”;

3 (II) by striking “moratoria in ac-
4 cordance with paragraph (5)” and in-
5 serting “moratoria in accordance with
6 paragraph (7)”; and

7 (III) by striking “paragraph (6)”
8 and inserting “paragraph (9)”; and

9 (ii) by redesignating the second para-
10 graph (8) (added by section 1304(1) of Pub-
11 lic Law 111–152) as paragraph (9).

12 (B) SECTION 1902(KK).—Section 1902(kk) of
13 such Act (42 U.S.C. 1396a(kk)) is amended—

14 (i) in paragraph (1), by striking “sec-
15 tion 1886(j)(2)” and inserting “section
16 1866(j)(2)”;

17 (ii) in paragraph (2), by striking “sec-
18 tion 1886(j)(3)” and inserting “section
19 1866(j)(3)”;

20 (iii) in paragraph (3), by striking
21 “section 1886(j)(4)” and inserting “section
22 1866(j)(5)”;

23 (iv) in paragraph (4)(A), by striking
24 “section 1886(j)(6)” and inserting “section
25 1866(j)(7)”.

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2^D Session

H. R. 5713

[Report No. 114-761, Part I]

A BILL

To provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes.

SEPTEMBER 20, 2016

Reported from the Committee on Ways and Means with
an amendment

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The Committee on Energy and Commerce discharged,
committed to the Committee of the Whole House on
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