

CHILD MEDICATION SAFETY ACT OF 2003

MAY 21, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

R E P O R T

[To accompany H.R. 1170]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1170) to protect children and their parents from being coerced into administering psychotropic medication in order to attend school, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Child Medication Safety Act of 2003”.

SEC. 2. REQUIRED POLICIES AND PROCEDURES.

(a) **IN GENERAL.**—As a condition of receiving funds under any program or activity administered by the Secretary of Education, not later than 1 year after the date of the enactment of this Act, each State shall develop and implement policies and procedures prohibiting school personnel from requiring a child to obtain a prescription for substances covered by section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school or receiving services.

(b) **RULE OF CONSTRUCTION.**—Nothing in subsection (a) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic performance or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under section 612(a)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(3)).

SEC. 3. DEFINITIONS.

In this Act:

(1) **CHILD.**—The term “child” means any person within the age limits for which the State provides free public education.

(2) **STATE.**—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 4. GAO STUDY AND REVIEW.

(a) REVIEW.—The Comptroller General of the United States shall conduct a review of—

(1) the variation among States in definitions of psychotropic medication as used in regard to State jurisdiction over public education;

(2) the prescription rates of medications used in public schools to treat children diagnosed with attention deficit disorder, attention deficit hyperactivity disorder, and other disorders or illnesses;

(3) which medications used to treat such children in public schools are listed under the Controlled Substances Act; and

(4) which medications used to treat such children in public schools are not listed under the Controlled Substances Act, including the properties and effects of any such medications and whether such medications have been considered for listing under the Controlled Substances Act.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit a report that contains the results of the review under subsection (a).

PURPOSE

H.R. 1170, the Child Medication Safety Act of 2003, addresses the significant concern that parents are being required to obtain a prescription for psychotropic medication for their child in order for the child to attend school or receive services. The bill protects parents from being forced by school personnel into medicating their child's under duress.

COMMITTEE ACTION*Subcommittee hearing*

On Tuesday, May 6, 2003, the Committee on Education and the Workforce, Subcommittee on Education Reform, held a hearing in Washington, D.C. on "Protecting Children: The Use of Medication in Our Nation's Schools and H.R. 1170, the Child Medication Safety Act of 2003". The purpose of this hearing was to gather information exploring the prevalence of children diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Attention Deficit Disorder (ADD), the appropriate role of prescription medication, and the concern that some school officials are coercing parents to place their child on a prescription for psychotropic medication in order to attend school. Testifying before the Subcommittee were the Honorable Katherine Bryson, State Representative in the Utah House of Representatives from Orem, Utah; Dr. William Carey, MD, Director of Behavioral Pediatrics at The Children's Hospital of Philadelphia, Philadelphia, PA; and Dr. Lance Clawson, MD, Private Psychiatrist from Cabin John, Maryland.

Legislative action

On March 11, 2003, Representative Max Burns (R-GA) introduced H.R. 1170, the Child Medication Safety Act. This legislation would require States receiving federal education funds to set up policies and procedures prohibiting school personnel from requiring children to take drugs listed on Schedule II of the Controlled Substances Act in order to attend school or receive services.

On May 15, 2003, the Committee on Education and the Workforce considered H.R. 1170 in legislative session and reported it favorably, as amended, to the House of Representatives, by voice vote. The Committee considered three amendments and adopted the following two amendments.

The Committee adopted by voice vote an amendment in the nature of a substitute offered by Mr. Burns. The substitute expands the list of drugs covered by the bill to include all drugs covered under the Controlled Substances Act. The substitute also added a provision that allows school personnel to consult with parents regarding classroom-based observations about the child's academic performance and behavior in the classroom while confirming that teachers and other school personnel continue to be able to refer children for evaluation as provided under the Individuals with Disabilities Education Act.

The Committee adopted by voice vote an amendment offered by Mrs. Musgrave requiring a GAO study to examine the use of psychotropic medication in schools and to report on whether such medications are listed under the Controlled Substances Act and the effect of non-scheduled medications. The study will provide a current review of all definitions States are using for psychotropic medications, what medications are being used in schools, and the prevalence of their use.

SUMMARY

H.R. 1170, the Child Medication Safety Act, requires States that receive any federal education funds to develop and implement policies and procedures that would prohibit school personnel from requiring a child to obtain a prescription for a controlled substance in order to attend school.

COMMITTEE VIEWS

The Child Medication Safety Act of 2003 requires States, as a condition of receiving Federal education funds, to establish policies and procedures prohibiting school personnel from requiring a child to take medication in order to attend school. Only medical personnel have the ability to determine if a prescription for a psychotropic drug is appropriate for a child.

Testifying before the Subcommittee on Education Reform on May 6, 2003, Dr. William Carey stated that:

In the last two decades the United States has experienced a great increase in the diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and its treatment with stimulants. Not only child health professionals but now also a wide variety of unqualified persons, such as preschool teachers and acquaintances, are freely offering the diagnosis and confidently urging parents to accept their judgment and obtain drug treatment, such as methylphenidate (Ritalin), for the child. . . . This chaotic situation urgently requires intervention at several levels, including the Federal government.

The Committee has been made aware of situations where parents have voiced concern that local educational agency officials have required them to place children on psychotropic medication in order to attend school or receive services. The Committee feels that school officials should not presume to know what medication a child needs, or if the child even needs medication. Representative Katherine Bryson testified to the Subcommittee on Education Reform that:

[S]chool personnel faced with children who often have not been properly taught to read, who may be coming to school on a breakfast of sugar or no breakfast at all, who could be affected by lead, mercury or other toxic substances—a plethora of explainable reasons—are assessing them in the classroom as having a “learning disorder” or Attention Deficit Hyperactivity Disorder (ADHD). From here, parents are being coerced into drugging their child with threats of the child’s expulsion or charges of medical neglect by Child Protective Services against the parents who refuse to give or take their child off a psychiatric drug.

The Committee believes that only medical personnel have the ability to determine if a prescription for a psychotropic drug is appropriate for a child or if medication is appropriate at all.

Accordingly the bill requires States, as a condition of receiving any Federal education funds, to establish policies and procedures prohibiting school personnel from requiring a parent to obtain a prescription for their child for drugs listed under the Controlled Substances Act in order to attend school or receive services. The Controlled Substances Act regulates the manufacture and distribution of narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and chemicals used in the illicit production of controlled substances. The Controlled Substances Act places all regulated substances into one of five schedules. This placement is based upon a substance’s medicinal value, harmfulness, and potential for abuse or addiction. Ritalin is listed on Schedule II of the Controlled Substances Act, and drugs are placed on that Schedule when: (A) The drug or other substance has a high potential for abuse; (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; or (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

Psychotropic drugs, such as Ritalin, can be beneficial to some individuals when properly diagnosed and the medication is properly administered and monitored. In testifying to the Subcommittee on Education Reform, Dr. Lawrence Clawson stated “research clearly demonstrates that medication can be an effective part of treatment for ADHD.” The Committee recognizes the validity of that research, but is concerned that too often the easy answer of medication is utilized as a response for too many children. As Dr. Carey noted, treatment is improved by educational as well as medical interventions.

The Committee also wants to stress the importance of open and effective communication between the parent and school officials (including teachers) regarding the needs of the child as a whole. In no way does the Committee intend for this legislation to stifle appropriate conversation between school officials and parents about the behavior and academic achievement of the child. School personnel spend many hours a day with a child and are able to observe a variety of situations and behaviors. When parents seek to discuss their child with a teacher or school official, school personnel should continue to be free to discuss their observations with the parent to ensure that the parent has sufficient information to make appropriate decisions about their child’s medical needs. However, the Committee cautions that such discussion should be mutual con-

sulting conversations that describe and identify areas of concern, but which are not followed by recommendations of school personnel that would be construed as a medical diagnosis or condition of attending school.

The Committee has heard from many parents, teachers, and national organizations that feel that there must continue to be open lines of communication between school personnel and parents about the academic, behavioral, and health related needs of children. The Committee shares the concern of those organizations, but feels that this legislation walks a clear and carefully crafted line of ensuring that such communication can take place, while protecting parents from being coerced by school officials to place their child on a psychotropic drug in order for the child to attend school or receive services.

The Committee recognizes that there is a need for greater information on this topic, and includes in the bill a requirement that the GAO issue a report examining the use of psychotropic medication in schools and to report on whether such medications are listed under the Controlled Substances Act and the effect of any non-scheduled medications. The study will provide a current review of all definitions States are using for psychotropic medications, what medications are being used in schools, and the prevalence of their use.

This is an important study that will help provide greater information to Congress and State and local educational agencies, as well as medical professionals, to improve the understanding of the types of medications that exist to treat children with attention deficit disorder, attention deficit-hyperactivity disorder, and other disorders or illnesses.

Summary

In recent decades, there has been a growing number of children diagnosed with attention deficit disorder (ADD) or attention deficit-hyperactivity disorder (ADHD) and then treated with medications such as Ritalin or Adderall. In many of these cases, school personnel freely offer diagnoses for these disorders and urge parents to obtain drug treatment for the child. Sometimes officials attempt to force parents into medicating their child in order for the child to continue going to school.

H.R. 1170 aims to remedy this significant problem. The goal of this Act is straightforward. It would require States to establish policies and procedures prohibiting school personnel from requiring a child to take medication in order to attend school. At the same time, this bill carefully preserves the teacher-parent communication that is essential to fostering strong academic achievement for children. The Committee believes that this bill takes important steps to protect children, and their parents, and sets up a good standard for States to follow.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. Establishes the short title of the act to be the "Child Medication Safety Act of 2003."

Section 2. Required Policies and Procedures. Establishes required policies and procedures prohibiting the requirement of a prescrip-

tion, and includes a rule of construction regarding consulting on classroom-based observations.

Section 3. Definitions. Establishes definitions for the terms “child” and “state.”

Section 4. GAO Study and Review. Requires the Comptroller General of the United States to review definitions and usage of psychotropic medications.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 1170, the Child Medication Safety Act, requires States that receive any federal education funds to develop and implement policies and procedures that would prohibit school personnel from requiring a child to obtain a prescription for a controlled substance in order to attend school. The bill does not prevent legislative branch employees coverage under this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 1170 requires States that receive any federal education funds to develop and implement policies and procedures that would prohibit school personnel from requiring a child to obtain a prescription for a controlled substance in order to attend school. As such, the bill does not contain any unfunded mandates.

CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, May 20, 2003.

Hon. W.J. (BILLY) TAUZIN,
*Chairman, Committee on Energy and Commerce,
Rayburn HOB, Washington, DC.*

DEAR CHAIRMAN TAUZIN: I thank you for your May 20, 2003 letter, regarding H.R. 1170, the “Child Medication Safety Act of 2003”, which was referred to the Committee on Education and the Workforce. The Education and the Workforce Committee ordered the bill favorably reported on May 15, 2003. I intend to file the report this week. I thank you for working with me regarding an amendment adopted in Committee, offered by Rep. Musgrave, which creates a new Section 4, GAO Study and Review, and requires the General Accounting Office to study various aspects of students on medication in our nation’s schools. While the Energy and Commerce Committee holds a jurisdictional interest in Section 4, I appreciate your willingness to work with me in moving H.R. 1170 forward without the need for additional legislative consideration by your Committee.

I agree that this procedural route should not be construed to prejudice the jurisdictional interest and prerogatives of the Committee on Energy and Commerce over these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to your Committee in the future.

I thank you for working with me regarding this matter and look forward to continuing our work and cooperation on this bill and similar legislation. This letter and your response will be included in the Committee Report to accompany this bill. If you have questions regarding this matter, please do not hesitate to call me.

Sincerely,

JOHN A. BOEHNER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, May 20, 2003.

Hon. JOHN A. BOEHNER,
*Chairman, Committee on Education and the Workforce,
Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN BOEHNER: On May 15, 2003, the Committee on Education and the Workforce ordered reported H.R. 1170, the Child Medication Safety Act of 2003. As ordered reported by your Committee, the legislation contains a requirement for a General Accounting Office study that falls within the jurisdiction of the Committee on Energy and Commerce.

Recognizing your interest in bringing this legislation before the House expeditiously, the Committee on Energy and Commerce agrees not to seek a sequential referral of the bill. By agreeing not to seek a sequential referral, the Committee on Energy and Commerce does not waive its jurisdiction over these provisions or any other provisions of the bill that may fall within its jurisdiction. In addition, the Committee on Energy and Commerce reserves its right to seek conferees on any provisions within its jurisdiction which are considered in the House-Senate conference, and asks for your support in being accorded such conferees.

I request that you include this letter as part of the report on H.R. 1170 and as part of the Congressional Record during consideration of this bill by the House.

Sincerely,

W.J. "BILLY" TAUZIN,
Chairman.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE
COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1170 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 16, 2003.

Hon. JOHN A. BOEHNER,
*Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1170, the Child Medication Safety Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Donna Wong.

Sincerely,

BARRY B. ANDERSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1170—Child Medication Safety Act of 2003

H.R. 1170 would require states, as a condition of receiving funds, to develop and implement policies and procedures prohibiting school personnel from requiring a child to receive or take controlled substances as a condition of attending school or receiving services.

The bill would result in no significant cost to the federal government and would not affect direct spending or receipts. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Donna Wong. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.R. 1170 is to require States that receive any federal education funds to develop and implement policies and procedures that would prohibit school personnel from requiring a child to obtain a prescription for a controlled substance in order to attend school. The Committee expects the Department of Education to comply with H.R. 1170 and implement the changes to the law in accordance with the changes.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to

enact the law proposed by H.R. 1170. The Committee believes that the amendments made by this bill, which authorize appropriations for education assistance, are within Congress' authority under Article I, section 8, clause 1 of the Constitution.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1170. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.