(Mr. GRAYSON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. SMITH) is recognized for 5 minutes.

(Mr. SMITH of New Jersey addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

HEALTH CARE AND THE NEW CONGRESS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Texas (Mr. BURGESS) is recognized for 60 minutes as the designee of the minority leader.

Mr. BURGESS. Mr. Speaker, I want to do what I do often, which is come to the floor of the House and talk to my colleagues on both sides about the issues that remain in health care. This Congress, as it winds down in its last days, has certainly seen and done some dramatic work and has seen some dramatic pushback by the American people on some of the work that's been done.

So I thought it might be useful as we wind up this last part of the 111th Congress, the Congress that will forever go down in history as that which has fundamentally changed the way every man, woman, and child in this country receives and will receive health care for the next several generations, I thought it appropriate to talk a little bit about how we got to where we are, and quite frankly what I see over the horizon, what is likely to occur in the next Congress that convenes in the early part of January.

Certainly, when you look at the history that was written by this Congress, starting off with all the bright prospects in early 2009, in January 2009, and even going back a few months before that, I honestly thought that the health care bill that would see the light of day in the House was something that would actually be written by the Senate Finance Committee before this Congress was ever sworn in. I was, frankly, surprised when the Congress was sworn in and in fact inauguration day came and went and there was no introduction of a health care bill.

Then, of course, we all remember that there was a former Senate majority leader who was asked to be the Secretary of Health and Human Services, but that nomination got derailed by some tax difficulties and that post remained vacant for several months. During that hiatus, no health care bill came to the floor of the House. And it really wasn't until Senators Kennedy and BAUCUS in early June of 2009 wrote a letter to the President and said, We will in fact introduce our health care bill through our committees, that the country got a glimpse as to what was in store for this fundamental restructuring of health care that had been promised by the new administration.

The health care bill that came through the Senate Health, Education, Labor and Pensions Committee in June of 2009 was originally scored by the Congressional Budget Office as costing over a trillion dollars and providing insurance for an additional 13 million people. Well, wait a minute. We were told there were 37 million uninsured. Thirteen million is only about a third of that. Is that all we get for our trillion dollars?

And then, after that Congressional Budget Office report, really all of the discussion for almost the rest of that year became all about cost and coverage numbers and no bill was introduced without a CBO, Congressional Budget Office, score to say what the cost and coverage numbers were going to be. So in fact the Senate Finance Committee did not introduce a bill until much later in the year 2009.

Now in the summer of 2009, three House committees—my committee, the Committee on Energy and Commerce, the Committee on Education and Labor, the Committee on Ways and Means, all three simultaneously introduced a health care bill that was large, voluminous, and contained a lot of government control over the lives of every ordinary American. People were concerned when they saw that bill come to the floor of the House in the middle of July of 2009. But every committee reported it out with some amendments by the end of July of 2009, which took us to the August recess.

The August recess of 2009 is something that I suspect no Member who was serving in this body, again, on either side of the aisle, will ever forget, those summer town halls in August of 2009, when people showed up in numbers that were absolutely unprecedented for town halls, at least in my experience, and were concerned about the direction the Congress was taking with this restructuring of the Nation's health care; and in fact of what they had seen, they quite frankly didn't like it and wanted to tell us so.

I had an advantage in my summer town halls in August of 2009 in that having voted against the bill as it left committee, my committee of Energy and Commerce, late in the evening of July 31 before coming home for the August recess, I could honestly say I voted against the bill in committee and would oppose it when it came to the floor because in my opinion it was a terribly flawed product. But during the course of the month of August we heard over and over again from people who were, again, concerned about the direction Congress was taking. And they didn't tell us that some reform was not necessary. What they told us was, You are making us uncomfortable with this approach that changes everything fundamentally about how health care is delivered in the country.

Arguably 60, 65 percent of the country was okay with the way health care was being administered and did not want to see that change. Yes, there were people who had problems. There were problems with preexisting conditions. There were problems with people who lacked the ability to get insurance. But what the country told us during those summer town halls is we'd like you to work on that and not restructure the whole health care system which the rest of us are depending upon to get our health care. But we did precisely the opposite of what we were told.

The other thing we were told is, Could you do something about cost? Is there a way to rein in cost. Is there a way to help us with the cost of health care in the future, because we are legitimately concerned about the rapidly escalating cost of health care and whether that will price us out of the market at some point as well. So those two things: don't disrupt the system as it exists today and help us with cost for the future. Those two things seemed to be absolutely ignored by this United States Congress as it went through the process.

Now, I thought after those very contentious summer town halls that Congress would come back to town in September of 2009 and maybe hit the pause button or the rewind button or at least the stop button for a short period of time and recalibrate this. Clearly, a big, long, thousand-page bill dealing with health care upset a lot of people. Is there a way to come back and do this in a more reasonable fashion. Perhaps just tackling some of those things that the people told us they wanted to see fixed, things like the equal treatment of the Tax Code; things like help for people with preexisting conditions; things like the ability to buy insurance across State lines; things like reform of the medical justice system. Maybe those were the places where we could actually do some good and show some value for the American people.

But, again, it was not to be. In fact, the President of the United States came here to the well of the House and gave us a long discussion about the health care process in the bill and how it was going to go forward. At no time did I hear that maybe we ought to stop for a short period of time and listen to what the August town halls were telling us.

So it was full speed ahead. And later on that fall—actually a year ago, early November of 2009—this House passed the bill that had come through the three committees. Oddly enough, it was a thousand-page bill when it left the committees. It was a 2,000-page bill when it came back to the floor after it emerged from the Speaker's office, presumably with a fair amount of input by the White House and the administration as to the writing of this bill.

□ 1820

It came to the floor of the House. It passed the floor of the House by the

slimmest of margins, and then it was off to the Senate.

Now, a funny thing happened in November and December of last year over in the Senate. The other body did not just take up our health care bill and begin to work on that and then bring it back to a conference committee. The other body started with an entirely new bill. It was a House bill. It had a House bill number, 3590, which had previously passed the House as a housing bill. Yet the Senate did not take up our health care bill. They took up a housing bill, and then amended it to strip out the housing language and insert the health care language so that what passed on Christmas Eve, just ahead of a big snowstorm that was headed to town, was H.R. 3590, which started life as a housing bill and then ended life as a health care bill; but in the process of getting there, it really did upset people, and people were genuinely disquieted by the process that they saw.

What will it take to get to 60 votes? What will it take to get your vote, Senator? We saw various things: the Cornhusker kickback, the Louisiana purchase, Gator-aid, the Yukon up in Connecticut, and all of these special deals that were required to get the 60 votes over in the Senate. The American people looked at that and asked, If this bill is so great, why are they really having to encourage Senators to vote in favor of it?

The bill passed on Christmas Eve. The normal process would have been to convene some type of House-Senate conference to work out the differences between the two. Yet then, in early January of 2010, a special election was held up in the State of Massachusetts to fill the Senate seat that had previously been occupied by Senator Kennedy. A Republican won the seat for the first time since who knows when, and it was such a disruption to the process that many people in the other body said, There's no way we can get to 60 votes on a conference report. We're just going to have to take the bill as it passed here.

It was possible to do that because, remember, the Senate passed a bill that had previously passed the House. It had passed the House as a housing bill. It had gone over to the Senate and had become a health care bill. It could come back to the House. Will the House now concur with the Senate amendment to H.R. 3590? If the House concurs with a simple 218 majority, with a simple majority, then that bill gets on a fast track down to the East Room of the White House for a signing ceremony.

When that subject was first approached, the Speaker of the House at the time said that there weren't 100 votes in the House for the Senate-passed bill, and I think she was right about that, but somehow during the months of January, February and 3 weeks into March enough individuals in this House were convinced to vote for the health care bill so that it, indeed, was passed in the third week of March of this year.

Now, it was a deeply unpopular bill when it passed. It never gained in popularity. In fact, 2 weeks ago, we saw the result of that with the midterm election when so many incumbent Democrats who had voted in favor of the bill—in fact, some who hadn't voted for the bill but had allowed the process to continue which allowed the bill to come to the floor—saw that they were not successful in their reelection efforts. That happens. Wave elections happen. Certainly, Republicans were on the receiving end of a wave election in 2006, but this one did seem to be tied to the health care bill. So you have to ask yourself, Why was this so deeply unpopular?

People around the country said the health care system at times is not functioning as we would like. You would think that they would welcome the appearance of a House and Senate bill, but here is the problem: There were many things in the bill that really were seen as a vast overreach of the Federal Government. Certainly, the individual mandate requiring every man, woman, and child in this country to purchase insurance, whether they want it or not, and to use the Commerce Clause as a justification for doing that really struck a lot of people as going too far. It was really the first time that the United States Government said that we can require you to purchase a product, in this case health insurance, and the reason we can do that is that then we're going to regulate said insurance under the Commerce Clause.

Well, apply it to some other product other than health insurance and you'll really begin to see the danger of that argument. What if it's an automobile? What if it's a certain type of kitchen appliance? How can the Federal Government insert itself into the lives of Americans to that degree?

Remember, we heard previous speakers talk about how great this country is and about how great the United States Congress is. Remember, American exceptionalism comes from the fact that, over 200 years ago, our Founders got together and said there really ought to be a way that the people can see the necessary functions of government occur but only with their consent—government by the consent of the governed. It was kind of a novel approach. The Founders, when they wrote the Declaration of Independence, said our rights come from the Creator, not from our government. They come from the Creator to the individual. They are unalienable. They cannot be taken away from the individual. Then the individual loans the ability to be governed to the government.

Yet now we have the government which is dictating to the individual: You have to buy a certain type of health insurance policy that we are going to designate. We're going to tell you what it has to cover and what it can't cover, and we're going to tell you what the price is going to be. We can do that under the Commerce Clause of the Constitution. Many people said, That's just more than I ever believed my government could do.

Again, government with the consent of the governed—a novel concept in the field of human endeavor. That notion really seemed to be turned on its head with the passage of this health care law, and I really believe that that is one of the fundamental reasons that there has been such an intense, ubiquitous rejection across the country of the concept of the bill that was signed into law by President Obama last March.

Now, almost a year ago, President Obama told Charles Gibson on television, If we don't pass health reform, here is the guarantee: Your premiums will go up. Your employers are going to load up more costs on you, the individual buying health insurance. Potentially, they're going to drop your coverage because they just can't afford these increases.

That was one of the rationales the President used to push health care reform. Well, what is happening now?

I was home in my district during the month of October, which was prior to the election. People were coming to my office, saying, Look, you've got to do something. Since you passed this bill, the cost of insurance has gone up so rapidly—10 percent, 20 percent, in some cases 30 percent or more—that I just simply cannot keep up with the cost, and I'm looking at having to drop coverage for my employees. Then, of course, with the fines that will result in a few years when those kick in, employers are justifiably concerned about where this is all going.

Now, you do hear the discussion that perhaps the cost of insurance is going up just because the insurers are trying to take advantage of the situation before more of these regulations and controls come on line. Maybe that's true. Maybe it's because the insurers are having to meet more of the mandates that were put out under the health care law. Maybe that's true. How would we know the difference?

Well, we could do a hearing. My committee might have been a good place to have had a hearing and to have asked those questions, but we didn't do that. My committee has had no hearings on the implementation of this health care law since it was passed in March of this year. My committee, the Committee on Energy and Commerce, has a rich tradition of providing oversight for the Federal agencies under its jurisdiction. Health and Human Services is one of those agencies. The Centers for Medicare & Medicaid Services is one of those agencies.

Why have we not had a hearing on the implementation of the health care law? I can only speculate that it has certainly not been good for constituents and certainly not even for insurance companies. No one at this point

knows exactly what is expected of them, but what people do know is that they were promised, if this health care bill passed, we would not see our premiums go up and, if we didn't pass the health care law, that premiums would go up. We passed the health care law, and premiums are on the way up, and they're on the way up in a big way.

I've mentioned the process of how we got here and of how, indeed, disjointed and poisonous it was. Remember, during the Presidential campaign—and the President talked about this as a campaign issue—all of these negotiations were going to be open; they were going to be covered on C–SPAN, and he was going to have everyone around a big table. He said we'd get bored watching it but that all of it would be out in the open. Then the process went behind closed doors for months, and the reality is there was no transparency to this process. Again, it was a violation of one of those fundamental things. People thought that they could trust the incoming administration to be transparent in this regard, and they got anything but transparency.

□ 1830

In my committee of Energy and Commerce, I filed a resolution of inquiry—resolution of inquiry to get information from six groups that met down at the White House in May of 2009. Who were these six groups? Well, the doctors were one, hospitals, insurance companies to be sure. Medical device manufacturers also were included. The pharmaceutical companies were included, and the Service Employees International Union was included.

That meeting occurred in May of 2009. Everyone came out of the meeting and said we've saved $2 trillion, we've got $2 trillion in savings in the health care system that will now help pay for this health care reform. So we've done a good job.

I began to ask the White House for some of the information about where this $2 trillion in savings, where it was going to occur, who gave up what, who promised what, who was promised what, and never could get anything more than copies of a press release here or copies of a Web page there, stuff that was generally available through the open source, but never any of the details on these meetings, never any of the e-mails between the participants.

So, in December of last year, I filed a resolution of inquiry, which is one of the few tools you have in the minority to get information when the administration is not forthcoming. This resolution of inquiry must come up for a vote in committee within a certain period of time, a certain number of legislative days, or it comes to the floor of the House as a privileged resolution.

Well, obviously the majority does not want that to happen. So, indeed, in fact, ironically the same day that the State of the Union Address was delivered in January of this year, we had a meeting in the Committee on Energy and Commerce to consider my resolution of inquiry. And, in fact, to his credit Chairman WAXMAN agreed with many of the things for which I was asking and said we should have copies of those documents. He would not agree to report out favorably the resolution of inquiry, but did agree to write a letter with Ranking Member BARTON to ask the White House to provide this information. Well, that was 11 months ago, and I am still waiting for that information. It has yet to be forthcoming.

It's important stuff. I realize that much time has passed since then, but look at one of the things we're going to talk about in just a moment is the problems that America's seniors and America's doctors have because of the pay formula under Medicare, under what's called the sustainable growth rate formula. There is apparently a very large cost associated with fixing that problem. If money was given up in the health care bill, why not have some of it be given up as a down payment on fixing that problem with the sustainable growth rate formula?

And in fact, as the bill progressed and we saw the scoring by the Congressional Budget Office, indeed, at some point, over $400 billion over the 10-year budgetary cycle is removed from Medicare to pay for the new entitlement of subsidies, helping people purchase insurance in the exchanges that are going to be set up in 2014. But the problem is you took all that money out of Medicare and didn't even get a down payment, not even have a down payment on resolving the problem with the sustainable growth rate formula.

So I really would like to see what occurred in those meetings and what the discussion was. Surely the sustainable growth rate formula came up because any time you get two doctors together, that's almost all they can talk about. So around this table, was this not part of the discussion?

The Service Employees International Union, what did they give up, or what did they get? Did they get more than they gave up? Again, we don't know these facts, so we are left to only suppose or wonder what occurred and what transpired in that meeting.

It should never have been necessary to file the resolution of inquiry in the first place because this administration came into office saying that they were going to be the most transparent administration in history, and that all of these health care negotiations would be open and on C–SPAN for all to see, and yet, at the same time, I had to file a resolution.

As would be expected, the committee and Democrats hold a vast majority on the committee right now. That's going to change after the first of the year, but the resolution would never be reported out favorably. The chairman did sign a letter for me to get some information, but unfortunately, that information has not been forthcoming, and then at this point, it's very, very difficult to force the administration to do anything they're not inclined to do when you're still in the minority. But again, that will change within a period of weeks. So I'm very glad about that, and certainly this is an issue that I intend to continue to pursue.

You know, one of the things that's come up in the past couple of days—and we'll talk about it a little bit more—but the issue of waivers, starting about maybe the last week or so in October, where very famously the McDonald's Corporation got a waiver from the health care law for a period of a year, and then in rapid succession many more companies were given waivers, and now I think that number stands at over 100, the last time I checked on healthcare.gov.

Where do these waivers come from? Why are they necessary? Who's giving them? Who's getting them? Who's not getting them? What are the rules? What are the parameters by which these waivers are established? If the health care law was so wisely crafted and carefully put together as we heard over and over again on the floor of this House, why is it now necessary to give companies waivers?

When I have companies call my office back home, they say, you know, I saw where a company got a waiver for that health care law; I sure would like one of those, too. How can I go about getting one? And right now, again, the process is anything but transparent, and no one really knows how to advise companies to do that. I suspect we will see a great many more waivers given as the months go by, as companies have greater awareness about this.

Again, remember, one of the things that the President said that if we don't do what he said we had to do in this health care law, the premium prices were going to go up so much that employers were going to drop coverage, and yet, shortly after the bill was signed, documents received from several large companies who said, you know, we're going to have to restate our earnings now because of the passage of the health care law. The chairman of my committee, HENRY WAXMAN, sent out requests for information to all of these companies and said how dare you try to embarrass the President on the day the bill is signed. We want to see what you're referring to when you say you're going to have to restate earnings. Turns out that's to comply with the Securities and Exchange Commission regulation that if the company's profits are going to substantially change, they are required to let people know about that.

But part of the information that was delivered to the committee showed that large companies across the country were at least considering what the future holds for them; a company, say, that has a couple of hundred thousand employees where they're paying 8- to $10,000 per employee for health insurance, but on the other side if they don't provide that health insurance,

which they must under law, or they're going to get fined $2,000. Well, the insurance policy costs 8- to $10,000, the fine is $2,000. Doing some quick math on that, companies with large numbers of employees were suddenly looking at significant savings that could be available to that company, and now were they obligated to do the correct thing from a fiduciary standpoint and just opt out of providing employer-sponsored insurance and let their employees buy insurance in the State exchanges, which have yet to be set up, and as a consequence only pay that fine, rather than the 8- to $10,000 premium.

Clearly, clearly, some companies had thought about the implications of this. Now, to the best of my knowledge, no company has said yet this is what we are going to do, or this is what's going to happen, but if one company makes that decision, companies with a similar business model are likely going to have to consider the same trajectory because they have to compete in the same marketplace as the first company who has now allowed their employees to go into the exchange.

So it is a big deal, and it is affecting the ability for employers to provide health insurance, and the cost has done anything but go down.

Big concern about what's going to happen in both Medicare and Medicaid, but let's take on Medicare for just a moment because here we are in the very waning hours of the 111th Congress. We're in the so-called lame duck period after the election before the new Congress is sworn in. So as this Congress limps through the remainder of its congressional term, one of the things that we have to do, one of the things that Congress has to take up and deal with is what has perennially been known as the doc fix.

The doc fix is an adjustment to the sustainable growth rate formula that allows doctors to be appropriately reimbursed for seeing Medicare patients and providing medical care to Medicare patients. Why is that important? Because if they're not appropriately reimbursed, they can't afford to keep their doors open, they drop out of the Medicare program, patients can't find doctors and they complain to their Congressman.

So this is something that historically has happened, but as a consequence of multiple times doing this fix, the cost has now gotten so high that it becomes very difficult for Congress to pass that legislation, and maybe I could just take you through a few of the simple steps that occur in this process.

□ 1840

Here is the formula that's printed on the Web site for the Centers for Medicare & Medicaid Services. It's a calculation for the payment formula under the physician fee schedule. Here is the payment formula: (RVUw × GPCIw) + RVUPC × GPCI.

Okay, that is starting to look pretty complicated. But if you look down here at the key for the acronyms, you begin to get an idea of what this is trying to do. RVUw, the relative value unit for work. The payment is going to be based on the relative value unit as determined by a Federal agency—not by the doctor's office, but the relative value unit for work. It is going to be modified by a geographic practice cost index for that value unit of work and then every value unit of work is further going to be modified by another constant for practice expenses as well as some geographic consideration, another based on the subscript for buying liability insurance. And then at the end, it's all times a conversion factor.

So this looks pretty complicated, but I guess you could muddle through that. But unfortunately what we don't really get is, What is the conversion factor? Well, let's take us through that just a little bit as well. So on another page of the Centers for Medicare & Medicaid Services Web site is the calculation of the conversion factor, and you have the conversion factor for the current year. It's equal to the conversion factor for a prior year, plus an update. Well, how do you get the update? Come down here, and this is how you calculate the update. One plus the Medicare economic index increase, over 100, times one, plus—wait a minute, what's UAF? Where did that come from? Wait a minute. Update adjustment factor. Well, how do you calculate the update adjustment factor?

Going to another page on the CMS Web site is how you calculate the update adjustment factor, and a lot of calculations are here. But what becomes significant is that you actually have to go back in time over 10 years and recapture the savings that should have occurred had the formula been allowed to take effect. And that is the problem with repealing what's called the sustainable growth rate formula.

Well, Congress in June passed a temporary patch that took us to November 30 of this year, and we have to do something by November 30 to postpone this update, which is actually a reduction—now almost a 30 percent reduction in physician reimbursement. Patients are clamoring for us to do this. They say it's an access issue to get in to see our doctors, and it has to be fixed.

This has been the worst year for the sustainable growth rate formula that I have ever seen in my brief tenure in Congress. We let it expire in April. We allowed it to expire in June, and now we're 2 weeks away from another expiration date. Now what do I mean when I say ''We let it expire''? Well, Congress was coming up against a congressional recess, the Easter recess, a 2-week recess, and for whatever reason could not get the so-called doc fix or the postponement of the SGR formula, Congress could not get that passed. The Democrats were unable to get that to the floor of the House and get it done. And as a consequence, we went home. Congress adjourned for Easter recess with the doctors having no resolution but the deadline of March 31 passing.

Well, okay, no problem. We'll just ask the Centers for Medicare & Medicaid Services to hold those reimbursement checks until Congress gets back to town in 2 weeks and fixes that problem so that when the checks go out, there will not be a reduction on those checks. Well, I've just got to tell you, if you're in a small physician office—and I would characterize ''small'' as being two, three, four, five, or six doctors—if you are in a small physician office, and even if only 15 percent of your business is Medicare business, you cut 15 percent off the operating capital of a four-, five-, or six-physician office, and that's a big deal. That's going to make it difficult for that office to cash flow for that month. And in a doctor's office, if you don't cash flow, you still have to pay the light bill, you still have to pay the cost of your supplies, you still have to pay your help, you still have to pay your taxes; so you are probably not paying yourself that month. And that, in fact, happened in small- and medium-sized physician offices all over this country.

Well, if that wasn't bad enough, when Congress finally came back and passed the fix, it was only for a couple of months' time. So June 1, the same darn thing happens. And as a consequence, we're up against another adjournment date, another recess, and the same thing repeats itself. The Centers for Medicare & Medicaid Services holds checks for a couple of weeks and, once again, practices all over the country say, Oh, my gosh. Here we go again. We've just barely recovered from this last one, and now we've got another one where they're holding a portion of our cash flow up every month, the people who write the checks for Medicare, for the work we have already done.

Well, in June, there was a 6-month extension passed again that carried us to November 30. So that is where we are today. Well, bear in mind that Congress is very close to adjourning for the end of the year. So are we going to get this problem taken care of this week? It's pretty hard to see how we do. There are leadership elections going on. We've got to elect a new Speaker of the House. Committee chairs have to be selected. So this week is taken up with just a lot of institutional stuff. We're doing some suspension bills on the floor, to be sure; but I haven't seen or heard any language for doing something to at least forestall this cut.

If it doesn't happen by November 30, December, as you can imagine, is a tough month to get things done. What if those checks are held? Well, yeah, it's a bad deal because of the holidays that are coming up, and that's a bad deal. But in addition to the physician offices that are now in a cash crunch, they are also trying to do their tax planning for the end of the year. They're trying to do their purchases for the end of the year. They're trying to do planning into next year. And we're not allowing them the ability to do that because they've been burned

twice already by the United States Congress, burned. Burned twice this year. That's unprecedented. And now they're fixing to be burned yet a third time by the United States Congress.

So physicians' offices all over the country are having to take a really hard look at, Do I even want to continue to participate in the Medicare system if I'm constantly under this kind of threat? And what happens if we don't do this? If we don't do this, the across-the-board cut for physician reimbursement for Medicare patients across the country is some 30 percent. Now, what in the doctor's office has gone down? What purchase does the doctor make to keep his practice going? Has the cost of electricity gone down by 30 percent? Has the cost of rent gone down by 30 percent? Has the cost of paying for labor to help in the doctor's office, has that gone down by 30 percent? I don't think so.

Now if you are in a practice that is fortunate enough to be thinking about expanding and you go down to your friendly banker and say, You know, I would like to perhaps borrow some money for an expansion of my practice. I would like to add some exam rooms. I would like to add some doctors. I would like to add some jobs in my community, in my medical practice. And the banker looks at this and says, You're going to be earning 30 percent less for this book of business after the first of the year? Are you crazy? There's no way in the world in this climate, in this banking environment that I'm going to loan money to a doctor's office for this. So we really put our practicing physicians in a tight, tight place by our inability to deal with this problem.

Now, should a doc fix occur, what will it look like? Earlier this week the administration said they wanted one for 13 months. Okay. I could be for that. Thirteen months, that allows us some time to get into the next Congress and perhaps really come up with a way to replace this formula with something that makes sense, and I would be very much in favor of that.

□ 1850

Realistically, it costs a little over $1 billion for every month in that fix, so that's a $13 billion price tag. It's going to be a little tough to come up with that. Maybe it's doable, I don't know. Perhaps we could take some unspent stimulus funds and reprogram that to this. Perhaps there's other savings where we could do away with parts of the new health care bill that are terribly expensive and offset the cost for this. I don't know. I'd be interested in looking at those proposals.

What's more likely to happen is that we'll bump it right up against the deadline and then some, and then do a 1- or 2-month fix and just dump it into the beginning of the next Congress. And again, that's okay. I expect that to happen.

Ultimately, this formula is unworkable and this formula needs to be replaced. And this formula, with all of its conversion factors and update adjustment factors, really needs to be removed, and a simpler and more straightforward way of reimbursing the Nation's physicians who agree to take care of our Medicare patients, arguably some of our sickest patients, with multiple medical problems, who take the most amount of time in an office practice, we have to find a way to do this better.

I think in the next Congress we will see some serious activity towards getting that done. I've heard the incoming leadership talk about how this is an important part of what the next Congress does, and they want to see it taken care of. A lot of discussion about what it should look like.

In my opinion, a fee-based system makes the most sense, but I understand there are people who are talking about other models that include perhaps a bundle payment model or a pay-for-performance model or an accountable care organization model or a medical home model. Fine, let's have that debate. Let's have that discussion. That's what Congress is here to do, debate and discuss these things, hold hearings, get information and come up with a rational, sustainable policy that will replace this formula.

I, frankly, do not understand why this was not tackled. As bad as the health care bill, the health care law, is—was—it would have been immeasurably better had this problem been fixed in the process. But, again, you take $500 billion out of Medicare, you don't even make a down payment on fixing this problem, and you fund a new entitlement with subsidies in the exchanges for people earning up to 400 percent of the Federal poverty level, in excess of $44,000 for a family of four.

It would have been far better to at least sequester some of that money, and say we're going to fix this fundamental problem that exists today because we know it's interfering with our Medicare patients having access to their doctors in order to get Medicare. But it's a problem that must be tackled. It's a problem that must be resolved.

Now, what about the over-the-horizon stuff? What's likely to occur?

This Congress is going to come to a merciful end in a few weeks' time, and then the next Congress will be sworn in. The 112th Congress will take over with a great deal of promise, many new Members, many more new Members than have been seen in Congress in decades; a Congress that is going to have a vast amount of experience in the outside world, in the real world.

Because of all the activity with the health care law, more doctors ran for Congress, at least on my side, on the Republican side, than I think anyone has ever seen before. Six of them were elected. There are nine physicians on the Republican side who are coming back, six more who are coming in. That's 15 doctors in Congress. I think that number is likely unprecedented in congressional history. I don't know the precise high water mark for physicians in the past, but certainly that represents a significant increase over anything that I've seen in my short tenure here.

What do we do about this health care law? Deeply flawed, vastly unpopular across the country. What is this Congress going to do with this health care law?

Now, if I could rip it out root and branch tomorrow, that's exactly what I'd do. And I think it's very important that this Congress do have a vote on repeal of this law and have that vote fairly early into the next Congress.

There are so many aspects of this new law that are so pernicious on so many levels that I believe it threatens the very fabric of our Republic. And, again, it violates that central covenant between governing by the consent of the governed. That basic premise was discarded during this health care debate and this health care vote.

Remember how the Speaker of the House said, We've got to pass this bill so you'll understand what's in it; and once you understand what's in it, you'll be all for it. That's not the way it's supposed to work.

I think that repeal vote needs to happen. I hope it happens in the first month of the new Congress.

I understand what the arithmetic here is. I understand that the other body is unlikely to go along with that repeal, but I think it would be the embodiment of what people voted for in this last election 2 weeks ago, and they need to see the physical embodiment of that vote carried out here on the floor of this House. Of course it needs to be a rollcall vote. I would even submit that it needs to be a called roll of the House of Representatives and every person have their name called and answer affirmatively or negatively as to whether or not they stand for repeal of this very flawed law.

Now, the Senate's not likely to do the same thing. If the Senate does do the same thing, the other end of Pennsylvania Avenue is likely to feel differently and provide a veto. But we don't know the answer to those questions until it's tried, and I think for that reason the repeal vote is very important. It doesn't mean that the repeal vote is all that happens. And certainly there are ways to look at the funding for the implementation of this law.

Remember that this law requires the creation of well over 150 new Federal agencies to administer various parts of this law. That's all significantly expensive. And there certainly are ways to get at the implementation structure through the funding of the implementation.

Well, I mentioned early on in the hour that my committee, the Committee of Energy and Commerce, has not held a single oversight hearing over the implementation of this new

law since it was signed down at the White House in the third week of March. And why is that important?

Well, I already mentioned a lot of consternation right now. Insurance costs are going up. The President said they'd go down, but they've gone up. Are they going up because the insurance companies are just historically bad actors and they're going to raise their prices every time they think they can get away with it? Or are insurance prices going up because they have to be able to keep up with the new mandates that have been layered upon them with this new health care law?

Wouldn't it be great to have a hearing in the Subcommittee of Oversight and Investigations, have people—we always swear in our witnesses so they'd have to raise their hand and swear to tell the whole truth and nothing but the truth—come to our committee, give truthful testimony on why this is occurring. Bring the Federal agencies in; ask them to delineate the increased number of mandates that the insurance companies are having to deal with, and have the insurance companies come in and tell us why the costs are going up.

Remember, in the course of this law there's also another provision called the medical loss ratio which is set at 85 percent for large insurance companies, 80 percent for small insurance companies. This medical loss ratio means that there is only a 15 percent or 20 percent portion that can be spent on administrative activities, and the rest must be spent on clinical activities. So if the insurance companies have raised their rates just simply to cover future losses, when those calculations are done on the medical loss ratio, when those rules are finally written and those calculations are applied, if there is an overcharge on the part of the insurance companies, they will be required to rebate that money back to the ratepayers. So it really would be only a very short-term gain by the insurance companies to do that.

But still, let's have the hearings. Let's ask the questions. Let's get the information and not just point fingers at either the Federal agency or insurance companies as to who's to blame for these vast premium increases because, quite honestly, our constituents, the American people, don't care. They're just concerned about the amount of premium increase that has occurred during this enrollment period this fall and what is going to happen to them going forward.

□ 1900

So certainly it has had a devastating effect on how people purchase their insurance.

Another thing that I would just like to point out. Remember, every time in that 2,700-page bill where it said in there, ''and the Secretary shall,'' that creates a whole episode of new rulemaking by the Secretary of Health and Human Services.

Now, we have had some experiences with that in the past. Once those rules are written and the final comment periods are closed and the final rule is submitted, it becomes very, very difficult to walk back from that process. Wouldn't it be at least an improvement on that rulemaking process if we were to invite the relevant agencies in and the relevant participants in that rulemaking process to talk to us as these rules were being developed, to talk about whether or not there were any questions about congressional intent, to ask questions about how the implementation is going to occur? What will be the cost? Are there going to be any effects? Are there going to be any effects on employers or employees? Are there going to be any employment effects?

Remember, one of the things that this last election 2 weeks ago was all about was jobs and the lack of job creation. So maybe Congress ought to be focused on that, and maybe that ought to be some of the questions that we would ask during those oversight hearings.

Now, we did have some experience with that in the stimulus bill that was passed in February of 2009, because there was a provision in the bill that provided for funds to help pay for electronic medical records.

Now, a lot of people will say electronic medical records are a good thing and they are going to help cut down on waste, fraud, and abuse, and it is going to make it easier for the doctors to give good care and quality care. Okay. That is something we can all be for.

The law passed in February of 2009, and the Office of the National Coordinator for Health Information Technology got busy about crafting those rules. Sure enough, 11 months later, in January of 2010, they come forward with the rules that govern things like meaningful use, and these are all going to be the parameters on which the possibility of payment or subsidizing the purchase of electronic medical records, that is upon which it is going to be based. The problem was, the rule for meaningful use, when it came out, doctors and hospitals were quick to call our offices and say: This doesn't work in the world in which we live. This is not something that is applicable to the real-world situation. Can you do something about that? And, indeed we tried.

Another Member on the Democratic side, Zack Space from Ohio, and I circulated a letter, got well over 250, 260 signatures on it within a very short period of time; sent it back to the Center for Medicare and Medicaid Services: Can you help us with this rule? Can you help us perhaps make this something that is more manageable in a real-world situation?

And the answer was: Yeah, we can do some things; but, basically, the rule is set at this point, and that is what it is going to be going forward.

So it becomes very difficult to modify the process after the fact. We saw that with the stimulus bill.

Okay. We are into this health care bill, now 7 months into it. We know there is a lot of rulemaking that is going to occur, because every line in there that says ''and the Secretary shall'' invokes that period of rulemaking and period of public comment and a rule proposed and then a final rule coming down. All of that is going to affect the delivery of health care, again, for every man, woman, and child in this country for the next three generations.

Aren't we obligated to try to get it right? Aren't we obligated to at least, from time to time, ask the Secretary into our committee and ask how this process is going, and, again, if they have any question as to congressional intent?

One of the things that disturbs me as we go through this and watch the implementation strategy on this bill is the creation of entirely new Federal agencies that are basically being created not by the United States Congress but by the Federal agency itself.

The United States Congress pushed a lot of the power that we would normally have in the legislative process over to the executive branch in the rulemaking process. We did it in the health care bill. It also occurred in the financial regulatory bill. It is not a good way to govern, and you don't get your best legislative product by doing that, in my opinion.

We would have been far better served to retain this activity within our committees; and, in fact, that is the way the Founders envisioned. Because we are reelected every 2 years, we are immediately accountable to the people. The folks that draw paychecks from the Federal agencies, you may be accountable when you elect a President but maybe not, because you have career people in all of the Federal agencies that are in fact very much insulated from whether or not the people are in agreement with what they are doing or not. So, in my opinion, it was wrong to push so much power over to the executive branch and to the Federal agencies. That power should have been retained within the United States Congress.

But here is an example of one of the new Federal agencies that has been created: The Office of Consumer Information and Insurance Oversight. A fairly benign-sounding name, and probably some functions that would make some sense, but, in fact, the language for the creation of this Office of Consumer Information and Insurance Oversight occurs nowhere in the bill. Nowhere in the legislative language does it call for the creation of this Office of Consumer Information and Insurance Oversight. It is a function that the Secretary deemed was an additional agency that she would need in order to do her work, as she saw it, that was outlined in the bill.

But now we have a brand-new Federal agency, space being rented somewhere in a building for them to occupy, new positions being advertised for and hired. Obviously, this costs some

money. Where has it come from? I don't know.

Remember, the United States Congress has not passed a single appropriations bill this year. We are running on the appropriations bills from last year under a continuing resolution that was passed on September 30, before we went home at the end of September. But the Office of Consumer Information and Insurance Oversight did not exist until June of this year, so where is the money appropriated that is responsible for running this agency?

Well, I am told it is reprogrammed from other places within HHS, and HHS has the money for this implementation. But I beg to differ. Those monies are supposed to be appropriated by the United States Congress. We are, by law, under the Constitution, responsible for the purse strings. We are supposed to be the ones that write the checks to the Federal agencies to allow them to do their work; and it is by that activity that the United States House of Representatives is able to keep a little bit tighter leash, as far as oversight is concerned, on Federal agencies.

But here we have a brand-new Federal agency that, as best as I can determine, was not called for in the law that was signed by the President. You have various offices, all of which will be employing multiple people. So every one of these places on the flowchart are going to have a number of people working there and answering to the director of that part of the Office of Consumer Information and Insurance Oversight.

Wouldn't it be great to have at least one hearing in the Committee on Energy and Commerce and the Subcommittee on Oversight and Investigations, or the Health Subcommittee, to ask the folks who are in charge of this to come in to the committee and tell us what they are doing?

Who has been in charge? Just for an example, who has been in charge of looking at this to see if there was duplication? Surely all of these functions, some of them were probably already being performed by the Department of Health and Human Services. Have we got anybody looking at the duplication of effort that may now be occurring?

Everyone bemoans the growth of Federal Government. Everyone bemoans the rapid rise in Federal debt. But do we have anyone who is looking at where duplication may be occurring, where there may be cost savings?

If there is an Office of Insurance Programs and the Office of Consumer Information and Insurance Oversight, maybe there is another office that can be closed in the Department of Health and Human Services. If there is a Division of Rules Compliance, maybe there is another office at either Health and Human Services or the Office of Personnel Management that is no longer necessary. Why have we not had the oversight hearing to understand where the duplication is occurring and where the additional costs may be being expended that are actually unnecessary?

What is the total employment for this entire flowchart? What is the total employment? What is the total salary information? Is there anyone who is being paid in excess of what would be the normal Federal pay level? We don't know the answer to any of these questions.

What is the background of the individuals who have come here? Are they basically people who have contributed to political campaigns in the past, or are these people who have brought with them particular expertise? And again I would argue, if there is particular expertise that they are providing, is that expertise then not necessary in another office that is currently in existence in the Department of Health and Human Services?

Look, let's be honest. This health care bill that was signed into law last March was not a bipartisan product.

□ 1910

The only thing that was bipartisan about this bill was the opposition. Democrats crossed the aisle and voted with Republicans against this bill. No Republican voted in favor of this bill last March.

What have we seen as a result of this election? A profound, profound change in what the American people saw and did in regard to the United States Congress. There are six new doctors in the freshman class. Absolutely unprecedented, again, in my time in Congress, and I think it says something about the people who actually deliver the health care in this country, what their opinion is of Congress at this point. ''My golly, if this is what they are going to do, maybe I better get up there and take care of it myself.'' After all, that is the way doctors are wired.

This is a flawed process that led to a flawed product. It must be repealed. I look forward to that day in January when that repeal vote is held. In the meantime, and after that, until we can actually get things under control, the oversight process and the funding for the implementation must be under strict scrutiny.

COMMUNICATION FROM THE SPEAKER

The SPEAKER pro tempore laid before the House the following communication from the Speaker of the House:

NOV. 15, 2010.

Hon. LORRAINE C. MILLER,
Clerk, House of Representatives,
The Capitol, Washington, DC.

DEAR MADAME CLERK: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena for deposition testimony and documents issued by the U.S. District Court for the District of Columbia in connection with a civil case now pending before that court.

After consulting with the Office of General Counsel, I will make the determinations required by Rule VIII of the Rules of the House.

Sincerely,

NANCY PELOSI,
Speaker of the House.

REDUCING THE DEFICIT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Texas (Mr. GOHMERT) is recognized for 60 minutes.

Mr. GOHMERT. Mr. Speaker, tonight, since we have heard over and over about how destructive the deficits are from the President, I thought we would discuss some of the ways we can work on that. There are plenty of good solutions.

We discussed yesterday the fact that this administration pushed through a $400 billion land grab bill that would allow them to spend $400 billion to just buy land. I like my friend from Utah Rob Bishop's proposal that before people from States that don't have much, if any, Federal ownership of land keep pushing through bills to buy up land in other States, that they should be required to sell land first to the Federal Government in those States, so that any State that has less than 20 percent ownership by the Federal Government needs to find out what it is like when the Federal Government takes over land in a State, deprives the local government of any tax base from that land, deprives the local area of any economic growth to speak of from that land.

Yes, there are parks in certain ones that are very active and provide money to the area, jobs, things like that. But more often, when the Federal Government comes in and grabs land and puts it off limits, it just starves the local schools, it starves the local government of any assistance.

Now, originally when the Federal Government started grabbing land and taking it away from local areas, yes, they paid something for some of it, but there was an agreement; look, we know we are taking away all of this revenue from local government, from schools, so tell you what: We will provide you with part of the revenue off of the land, whether it was from the trees, which are one of our greatest renewable resources, or whether it was from natural resources like oil, gas and minerals of different kinds.

But that all changed, and so many local governments and schools have been left high and dry, which is often the case. The Federal Government makes you promises, and you rely on those promises to your detriment, and unlike in the law with any individual who makes promises on which you rely to your detriment, raising the legal issue of promissory estoppel, you can't use it against the Federal Government. In fact, all that you get is a look from some people in Federal Government that, well, it is all your fault, because you trusted us. Did you not know you can't trust our Federal Government?