

We have many aspects to this challenge that arises from this terrible epidemic, but let me focus in on one aspect of this, the overprescription and the diversion of prescription narcotics.

The Government Accountability Office estimated that in 1 year alone, there were 170,000 Medicare beneficiary enrollees engaged in doctor shopping. Doctor shopping is the process whereby a person goes to multiple doctors, gets multiple prescriptions for perhaps the same opioid—maybe oxycodone or some other kind of painkiller—then goes to multiple pharmacies to get them all filled and ends up walking out of the pharmacy with a huge quantity of these very powerful, very addictive opioids, which they then sell on the black market. It is a very valuable commodity on the black market. The GAO found that there was one beneficiary who visited 89 different doctors in a single year, all for the same kind of prescriptions. There is another beneficiary who received prescriptions for 1,289 hydrocodone pills. That is a 490-day supply. You are not supposed to get more than a 30-day supply.

The inspector general found that a midwestern pharmacy billed Medicare for reimbursement of over 1,000 prescriptions for each of just 2 beneficiaries—1,000 prescriptions per beneficiary—and one physician ordered all the prescriptions for one of those beneficiaries.

Last April, the DEA indicted two doctors in Mobile, AL, who were writing prescriptions for massive amounts of pain pills that were then filled at the pharmacy next door to the pain clinic they also owned.

The examples go on and on. This is fraud. Let's be clear that that is what it is. This is fraud. This is people who are systemically abusing these programs so they can obtain commercial-scale quantities of a very valuable narcotic, which is also very dangerous and very addictive, because it can be lucrative. Why is it lucrative? In part, because the American taxpayer pays for their supply. That is how outrageous this is. People are getting multiple prescriptions, going to multiple pharmacies, and when the prescription is filled at all of these pharmacies on these multiple occasions, the bill is submitted to Medicare, and Medicare reimburses.

Think about this. We have this criminal enterprise where the supply of narcotics is being paid for by taxpayers, and then the people who fraudulently obtain these drugs go out and sell them in what I am sure is a very lucrative arrangement. This is beyond outrageous; It is the description of the obviously fraudulent.

There is another category of people who end up with multiple prescriptions and it is completely innocent. There is no criminal intent whatsoever, no criminal activity. It is especially elderly people who have multiple illnesses and they have different doctors who treat them. In many cases, there is not

a good coordination of the care for those patients. There is nobody coordinating what all of the doctors are doing, so doctors separately and—if it weren't for what other doctors are doing—appropriately give a prescription for a powerful narcotic. They don't know there is another doctor doing the same thing. This patient unwittingly ends up with an excessive quantity of these opioids, which dramatically increases the risk that the patient will become addicted and will suffer any number of very harmful consequences.

So we have the fraudulent cases of excessive prescriptions and then we have the innocent cases, but both are problems. The legislation I have introduced addresses both problems. First, I want to thank the cosponsors, the co-author of the bill. Senator SHERROD BROWN from Ohio is the lead Democrat on this bill. It is a bipartisan bill. Senator PORTMAN and Senator KAINE have also been very helpful. They are original cosponsors of the bill. It is called Stopping Medication Abuse and Protecting Seniors Act. We now have 25 cosponsors.

We had a very constructive hearing last week in the Senate Finance Committee about this legislation, this approach. Senator HATCH said he hopes the bill will move very soon. I hope the bill will move very soon. It is very important.

Here is what it does. When Medicare discovers that a beneficiary is obtaining multiple prescriptions well beyond what any individual should appropriately have, then Medicare would have the authority to require that person to get their prescriptions in the future from one doctor and get it filled at one pharmacy. It is called lock-in because you are locked in to a single doctor and you are locked in to a single pharmacy. In one step, that would go a very long way to making it very difficult to commit this kind of fraud or to accidentally obtain more prescriptions than you ought to have.

This procedure is not a new concept. It already exists in Medicaid. It is used every day in Medicaid to protect innocent people from excessive prescriptions and to protect taxpayers from fraudulent abuse. It is done by private carriers all the time. Private health insurance carriers use this lock-in mechanism when they discover excessive prescriptions being written. It is designed in a way—as these other programs are, the private and Medicaid—so that no one who legitimately needs a prescription—because there are legitimate prescriptions for opioids and for narcotics. No one who has a legitimate need will have an access problem. People will still be able to obtain exactly what they need. The lock-in applies only to a narrow category of controlled substances, schedule II controlled substances, which is what we think is appropriate.

I think this is going to be very helpful. It is going to help opioid-addicted

seniors be identified as such so they can get the treatment they need. It is going to stop the diversion of these powerful narcotics. It is going to save taxpayers money. CBO estimates that \$79 million over 10 years will be saved by bringing an end to these illegal prescriptions. And it is going to reduce the quantity of these terribly powerful drugs on the streets.

This legislation has very broad bipartisan support. Just last weekend the National Governors Association came out fully in favor of adding a lock-in provision for Medicare. We had nearly identical language passed in a bill in the House as part of the 21st-century cures legislation, which passed overwhelmingly. The support includes the President of the United States. His budget has repeatedly asked Congress to give Medicare this authority. CMS's Acting Administrator, Andy Slavitt, just recently, before our committee, said this legislation makes "every bit of sense in the world." We have the support of the CDC Director; the White House drug czar; Pew Charitable Trusts; Physicians for Responsible Opioid Prescribing; many law enforcement groups; senior groups, such as the Medicare Rights Center. This is a list of just some who support this legislation.

This is really just common sense. We already have this capability in Medicaid. We already have this capability in private health insurance. It is long past due that Medicare have the ability to protect seniors from accidental excessive prescriptions but also to prevent people from committing fraud, which we know is happening on a very large scale today.

I am not aware of any opposition to this. We have broad bipartisan support. I am hoping we can get this passed very soon, certainly in the next week or so. The House will certainly pass this, as it already has as part of the 21st-century cures legislation, and we can get this to the President and get this signed into law and start to help save lives and save taxpayers money at the same time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

#### SMARTPHONE SECURITY

Mr. NELSON. Mr. President, on December 2, 2015, 14 innocent souls in San Bernardino were gunned down in a violent act of terrorism, and it involved one of these, an iPhone. This item has become ubiquitous, and a lot of us carry them around in our pocket. Yet almost 3 months later, law enforcement has not been able to fully access the iPhone—the one used by the terrorists in gunning down these 14 people. The information on this particular iPhone could shed some light on how he planned the attack with his wife and would obviously give authorities an opportunity to see if others were involved in the attack. The contacts in that

iPhone could indicate whether there were other terrorists in the United States or abroad who helped them in that attack. Yet 3 months after these murders, the FBI cannot access the contents of the iPhone because a security feature on the iPhone potentially erases its contents after 10 incorrect passwords are entered. The maker of the iPhone, Apple, says it would need to develop new software—software that it claims does not exist today—in order to disable that feature.

If this security feature were to be disabled by Apple, the FBI could use what it calls “brute force attack,” which is the ability to run different combinations of numbers through the iPhone in milliseconds, to try to assess the different password combinations in order to gain access to the iPhone, but they still don’t have access even though the court is involved.

Last week a Federal magistrate judge ordered Apple to provide reasonable technical assistance to the FBI in order to provide access to the perpetrator’s iPhone. Apple opposes this order, given the concerns that technology developed to intentionally weaken its security features could be abused if it is in the wrong hands. In other words, there would not be the privacy concern. They claim it would put smartphone users’ data and privacy at risk. It is a legitimate argument. They also view the Federal magistrate judge’s order as an example of government overreach.

Well, in response the Department of Justice filed a motion in district court to compel Apple to comply with the magistrate judge’s order, and because of the complicated nature of the issues of national security, individual privacy, which we value, and First Amendment questions involved, there will no doubt be prolonged litigation that may ultimately have to be resolved by the U.S. Supreme Court.

I certainly understand the risk to Americans’ privacy, as expressed by Apple and other technology companies, but I don’t want to run the risk of letting the trail go so cold on this terrorist attack—and potentially other similar cases—that we lose this valuable information all because this is winding itself through months and years in the courts. In other words, we need to know what was behind this attack. Everybody recognizes that this was a terrorist attack. We need to obtain this information in order to get to the bottom of it and root out and see if there are other terrorists in the country planning to do the same thing so we can protect our people and our national security. There has to be a way that the FBI can get the information it needs from the terrorist’s iPhone in a manner that continues to protect American smartphone users.

Now, surely common sense can prevail here. This is why this Senator urges Apple and the FBI to work together in order to resolve the stalemate.

Let me go back over this again. We have a dead terrorist. He and his wife killed 14 Americans. We have that dead terrorist’s iPhone, and we have a Federal judge’s order that says we have the right to get that information in order to protect the Nation and its people. It is just like if we had this terrorist, dead or alive, and we needed to get an order to invade that person’s privacy to get into their home and get evidence to protect the Nation from other terrorist attacks. There would certainly be no objection to that. The judge’s order would be the protector of that privacy. This is a similar situation, except the FBI has an iPhone and they still can’t get the information in it.

What if this terrorist were not an American citizen and this terrorist were illegally in the United States? Would the same standard apply? I think Apple would say yes. We can draw up the different scenarios, but the bottom line is we are going to have to protect our people. That is why this Senator urges Apple and the FBI to work together in order to resolve the stalemate. I understand that consideration must be given as far as the protection of privacy in people’s iPhones. We have always found a way to balance our cherished right to privacy and our cherished right of securing ourselves and our national security, and that is what is needed in this case. The safety and security of our fellow Americans depend on it. Otherwise, when the next terrorist strikes—51 percent of Americans who have been surveyed today say they feel the government needs access to this information to protect against future attacks. If the next attack happens and information is on an iPhone, that 51 percent will soar and it will be very clear that the American people support the protection of our national security.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

#### FILLING THE SUPREME COURT VACANCY

Mr. GRASSLEY. Mr. President, yesterday the minority leader came to the floor to disparage the work of the Senate Judiciary Committee and also disparage the work of the Senate as a whole. And, of course, as he does from time to time, he launched into a personal attack against me. Now, that is OK. I don’t intend to return the favor. I love Senator REID. I don’t want to talk about the nuclear option and the tremendous damage that did to the Senate, not to mention the years and years that Democratic Senators had to endure his leadership without even being able to offer an amendment. There is at least one Democratic Senator, who was defeated in the last election, who never got a chance to get a vote on an amendment during the entire 6 years he was in the Senate.

We all know that is how some people act when they don’t get their own way,

but childish tantrums are not appropriate for the Senate. I think if my friend Senator BIDEN had been in the Chamber yesterday, he would have said—as we have heard him say so many times—“that is a bunch of malarkey.”

I didn’t come to the floor today to talk about the minority leader. However, I did want to follow up on my remarks from earlier this week on the Biden rules. Now, in fairness, Senator BIDEN didn’t just make these rules up out of thin air. His speech, back in 1992, went into great historical detail on the history and practice of vacancies in Presidential election years. He discussed how the Senate handled these vacancies and how Presidents have handled and should handle them. Based on that history and a dose of good common sense, Senator BIDEN laid out the rules that govern Supreme Court vacancies arising during a Presidential election year, and of course, he delivered his remarks when we had a divided government, as we have today, in 1992.

Now, the Biden rules are very clear. My friend from Delaware did a wonderful job of laying out the history and providing many of the sound reasons for these Biden rules, and they boil down to a couple fundamental points. First, the President should exercise restraint and “not name a nominee until after the November election is completed.” As I said on Monday, President Lincoln is a pretty good role model for this practice. Stated differently, the President should let the people decide. But if the President chooses not to follow President Lincoln’s model but instead, as Chairman BIDEN has said, “goes the way of Fillmore and Johnson and presses an election-year nomination,” then the Senate shouldn’t consider the nomination and shouldn’t hold hearings. It doesn’t matter “how good a person is nominated by the President.” Stated plainly, it is the principle, not the person, that matters.

Now, as I said on Monday, Vice President BIDEN is an honorable man and he is loyal. Those of us who know him well know this is very true, so I wasn’t surprised on Monday evening when he released a short statement defending his remarks and of course, as you might expect, defending the President’s decision to press forward with a nominee. Under the Constitution, the President can do that. Like I predicted on Monday, Vice President BIDEN is a loyal No. 2, but the Vice President had the difficult task of explaining today why all the arguments he made so cogently in 1992 aren’t really his view.

It was a tough sell, and Vice President BIDEN did his best Monday evening, but I must say that I think Chairman BIDEN would view Vice President BIDEN’s comments the same way he viewed the minority leader’s comments yesterday. He would call it like he sees it and as we have so often heard him say: It is just a bunch of malarkey. Here is part of what Vice President