

Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
“Oversight of the Ensuring Patient Access and Effective Drug Enforcement Act”
December 12, 2017

This hearing is on oversight of the Ensuring Patient Access and Effective Drug Enforcement Act. I’ll refer to it as “the Law” or “the Bill.” I’m eager to hear from all the witnesses.

Some would like to see this law repealed. Others insist it should remain in place. I haven’t made my own mind up. So I’m interested in hearing both sides of the argument. This discussion is particularly important given the continuing opioid epidemic that has ravaged this country through the past several years.

I do have concerns with how we got here.

When Congress took this bill up in 2015 and 2016, there was little to no fanfare about the proposal. The basic goal of the bill seemed modest: provide a definition for the term “imminent danger.” Distributors and other providers would have more clear guidance for what was required of them before DEA could issue an immediate suspension order, or “ISO.” In this industry, an ISO is a death sentence. From their standpoint, the clarification seemed not only fair but a necessary step in helping figure out how to comply with the law.

There was another practical concern: ordinary patients with legitimate needs could lose access to essential prescriptions if legitimate distributors were shut down.

DEA, understandably, had some concerns about curbing their enforcement powers. But the unlimited, undefined enforcement authority needed some refinement. DEA also had litigation risk with such undefined authority. So DEA, too, had an interest in working towards amending the language to reduce their own risk.

My understanding was that DEA provided technical assistance to both House and Senate staff for other members who were responsible for drafting the bill. In fact, DEA admitted as much in testimony before the House in October.

When the bill came to the Senate, it was referred to Judiciary. I took up the bill based in part on assurances from DEA and DOJ that they agreed to the language in the final bill. We discharged the bill from committee by a unanimous vote. The bill then passed the Senate by unanimous consent; it also passed the House by unanimous consent.

President Obama signed the bill into law in April 2016. DEA testified that they advised President Obama to do just that.

Let me be clear – if DEA or DOJ didn’t want this bill, I wouldn’t have taken it up. Period.

Then the *Washington Post* and *60 Minutes* ran pieces criticizing the bill. Both stories highlighted former DEA employees and quoted a law review article from the acting Chief Administrative Law Judge from the DEA.

The reports suggest that Congress was in the back pocket of the opioid industry – and that this bill was a giveaway to the prescription drug industry. Nothing could be further from the truth. I’ve worked hard my entire career trying to combat illegal drug trafficking, and providing more effective ways for law enforcement to do their jobs in the drug enforcement area.

I’m especially frustrated by the DEA itself – which gave Congress the go-ahead to enact this legislation. We wouldn’t be here today if the DEA told us that they objected.

The news reports also suggest that the law effectively stripped DEA of its enforcement power. The data appears to show otherwise.

Prior to the passage of the bill – between 2011 and 2015 – the amount of immediate suspension orders dramatically decreased. Since the law was passed, the amount of immediate suspension orders has increased. Moreover, the number of opiates distributed overall decreased between 2016 and 2017 after passage of the bill.

DEA has said that the law “did not stop DEA from doing its job in the diversion space.”

Even though this bill was vetted by Congress once, I’m open to re-examining the criticisms of this law. I’m looking forward to hearing what those are. That’s why we’re having this hearing.

But we shouldn’t be repealing laws just because of the loudest person in the room, and solely based on one person’s say-so. The DEA agent who was the centerpiece of the news articles is a consultant for trial lawyers who are suing the industry. So, his objectivity is under question. The sensational news reports failed to question this conflict of interest.

I look forward to hearing the testimony from the witnesses, and finding new ways to strengthen our law enforcement efforts without preventing legitimate access to medications that real patients with legal prescriptions need. Opioids continue to be a huge problem in this country. It is vital that our federal laws keep up with the best way to combat illegal opioid use.