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## House Energy and Commerce Committee Advances American Health Care Act After 27-Hour Markup

On March 8 – 9, U.S. House of Representatives Energy and Commerce Committee member Republicans and Democrats faced off in a grueling, 27-hour markup of the Committee’s portion of the American Health Care Act (AHCA), GOP legislation that would repeal and replace parts of the Affordable Care Act (ACA).

The committee’s Democratic members used opening statements to lambast the substance of the bill, taking particular issue with proposals that would transition the Medicaid program from an entitlement to a per capita cap system, sunset the essential health benefits (EHB) requirement for the Medicaid expansion population and impose a 30 percent premium increase as a penalty on individuals who fail to maintain continuous coverage in place of the ACA’s individual mandate.

Democrats also criticized Republicans for proceeding with the markup outside of regular order, referring to the majority’s decision to forego the traditional Health Subcommittee hearing and markup sessions that normally precede a full committee markup. In arguments reminiscent of those made by Republican lawmakers during the 2009 ACA debate, Democratic members called on the majority to give the committee and members of the public more time to review the draft legislation, which was released less than 48 hours before the markup began on the morning of March 8. In addition, the minority questioned why the committee was proceeding with a markup without a score and coverage analysis from the Congressional Budget Office.

In an attempt to slow down the markup process, Democrats moved to require that the Committee clerks read the entire 66-page bill before allowing the Committee to proceed with the amendment consideration process. Democrats then spent the next 20-plus hours offering more than 100 amendments on topics ranging from preventing the defunding of Planned Parenthood to maintaining the ACA’s current age rating band at 3-1 instead of the GOP’s proposed 5-1 to a nonsubstantive amendment that would have renamed the bill “the Republican Pay More for Less Care Act.”

The debate turned to drug pricing issues late Thursday morning when Rep. Peter Welch, D-Vt., offered an amendment that would have delayed AHCA implementation until the Secretary of Health and Human Services could certify that the legislation would have the effect of lowering drug prices. Although the amendment was defeated 30-21 on party lines, several Republican members, including Health Subcommittee Chair Rep. Michael Burgess, R-Texas, acknowledged that the price of drugs is a problem that must be addressed.

Rep. Buddy Carter, R-Ga., the only pharmacist in Congress, discussed the role that pharmacy benefit managers play in driving the high cost of prescription drugs through rebates. While he did not support Rep. Welch's amendment, Carter did say that he would support the underlying effort to rein in drug costs, saying Welch had "no greater ally" on the issue. Rep. Gus Bilirakis, R-Fla., also discussed his bipartisan bill with Rep. Kurt Schrader, D-Ore.: H.R. 749, The Lower Drug Costs Through Competition Act, which aims to incentivize more generic drug competition. Please see the Sidley Update entitled [House Health Subcommittee Holds Hearing on User Fee Program Reauthorizations and Generic Drug Competition Bill](#) for more information.

The committee voted on party lines to advance its portion of the bill to the House Budget Committee without amendments, although Committee Vice Chair Joe Barton, R-Texas, offered and then withdrew two Medicaid amendments. Rep. Barton's amendments would have frozen enrollment and federal funding for the Medicaid expansion population at an earlier date than proposed in the GOP legislation (specifically, at the end of this year instead of the beginning of 2020). The conservative House Republican Study Committee backed Rep. Barton's amendments. It is possible that lawmakers could debate these changes at a later date, especially in light of concerns from the most conservative wing of the party, which has threatened to withdraw its support for the bill based on concerns that it does not go far enough to repeal the ACA or reform the Medicaid program.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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