



EXECUTIVE SUMMARY

Today, the House Ways and Means Committee and the Energy and Commerce Committee wrapped up marathon overnight mark-up sessions spanning 18 and 27 hours respectively. **Both committees voted along party lines to approve their portions of the AHCA** and advance them to the House Budget Committee. Democratic amendments ranging from preservation of the enhanced federal match for Medicaid expansion to measures to address increasing prescription drug costs were rejected along party lines.

In general, Republican committee members praised the efforts as historic and expressed optimism that the AHCA would increase fiscal responsibility by decreasing Medicaid spending for “able bodied adults,” expand freedom by allowing American families to select the health insurance plans of their choosing, and stabilize rural healthcare by reducing Disproportionate Share Hospital (DSH) cuts. Democratic committee members underscored concern about the bill’s impact on state spending, and argued that the bill would drastically increase the number of uninsured, cause deductibles to skyrocket, and cause hospitals to close due to increased utilization of the emergency room coupled with rising levels of uncompensated care. The Democrats also continued to express concern about the absence of a CBO score and the rushed processes that were utilized to advance consideration of the legislation without adequate time for meaningful consideration.

WAYS & MEANS COMMITTEE

After nearly 18 hours of markup, the Ways and Means Committee approved its portion of the AHCA at 4:15 a.m. in a party-line vote of 23-16. None of Democrats’ amendments were adopted as Democrats strenuously sought to delay and object to the AHCA’s advancement, frequently objecting to its tax repeal provisions and the lack of a CBO score.

Pharmaceutical & Insurer Tax Repeal

Late last night, Members resumed discussion of the ACA pharmaceutical and insurer taxes, with the pharmaceutical tax dominating discussion. Ultimately, the **Committee adopted the Amendment in Nature of a Substitute (AINS) on the Pharmaceutical and Insurer Taxes (24-16)** and agreed to transmit the Committee Print as amended to the House Budget Committee. The AINS did not make any substantive changes to the provisions in Monday’s bill.

During discussion:

- **Rep. Earl Blumenauer (D-OR)** asked if pharmaceutical pricing behaves like typical pricing. **Mr. Tom Barthold of the Joint Committee on Taxation** said pass-through of excise tax to consumers is generally expected to occur. Rep. Blumenauer said orphan drug pricing is “embarrassing” and competition is lacking. **Rep. Tom Reed (R-NY)** said the consumer pays the tax.
- **Rep. Judy Chu (D-CA)** asked about the average effective tax rate for the pharmaceutical industry, saying it could be as low as 8.85 percent or as high as 22 percent. Mr. Barthold said it is not comparable to look at worldwide effective tax rate vis a vis U.S. tax rate.

- **Rep. Sander Levin (D-MI)** said Republicans are giving back to PhRMA what it agreed to upon ACA passage, a “serious mistake,” he said.
- **Rep. Lloyd Doggett (D-TX)** discussed repatriation, citing the American Jobs Creation Act. He remarked on Pfizer and Merck, noting that Pfizer paid a nickel on the dollar in repatriated earnings. Rep. Doggett said nothing prevents pharmaceutical manufacturers from taking tax relief and using it for DTC ads instead of R&D. Rep. Doggett said that the pharma tax rewards the industry for “price gouging.” He said the Committee has failed to address drug pricing.
- **Rep. Kristi Noem (R-SD)** said that consumers bear the cost of the insurer tax and it disproportionately affects lower earners.

Net Investment Tax

Mr. Barthold said repealing the 3.8 percent net investment income tax would reduce revenues by \$157.6 billion over 10 years. Following discussion, **the Committee adopted the Amendment in a Nature of a Substitute on the Net Investment Tax** and agreed to transmit the Committee Print as amended to the House Budget Committee. The AINS did not make any substantive changes to the provisions in Monday’s bill. Rep. Levin said proponents of the tax’s repeal will have to answer “how this is not a boondoggle for the very wealthy.” **Rep. Tom Rice (R-SC)** said Republicans are looking to repeal all ACA taxes.

Range of Tax Policy Provisions

At 12:50am ET, Mr. Barthold highlighted key provisions, such as full recapture of ACA premium subsidies, delay of the Cadillac tax, and repeal of employer and individual mandate enforcement. He said starting in 2018, premium subsidies could be used for catastrophic and off-Exchange plans. He noted changes to the small business tax credits, including its repeal beginning in 2020, and changes to Health Savings Accounts (HSAs). Among other provisions, he noted the full repeal of the medical device tax. See JCT estimates of budgetary impacts [here](#). **The Amendment in a Nature of a Substitute was agreed to** and the Committee agreed to transmit it to the House Budget Committee as amended. The AINS did not make any substantive changes to the provisions in Monday’s bill.

Rep. Levin said the Kaiser Family Foundation found, on average, that new tax credits under the AHCA would be 36 percent less than ACA premium subsidies on average. The bill’s proposed 5:1 age bands also drew fire from Democrats.

Amendments

Rep. Earl Blumenauer (D-OR) proposed an amendment to strike the pharmaceutical tax repeal and transfer funds to the Medicare Trust Fund. He said that he is “hopeful that Trump shakes things up a little.” Chairman Brady said it is “easy to kick the pharmaceutical companies,” though urged that the amendment be defeated. The amendment failed, 16Y 24N.

Rep. Suzan DelBene (D-WA) proposed an amendment to continue access to care through Planned Parenthood, citing the organization’s delivery of cancer screening as well as family planning. The amendment was ruled by the Chairman as non-germane, ultimately failing along party lines.

Rep. Danny Davis (D-IL) proposed an amendment on drug testing of the 400 wealthiest beneficiaries of the net investment tax repeal. He said Republicans had all voted for mandatory drug testing of those receiving \$344 average weekly unemployment compensation. The amendment failed, 15Y, 24N.

Other amendments offered throughout the overnight session, all of which were ruled non-germane or rejected by party-line vote, included:

- Rep. Neal's amendment to strike the tax repeal applicable to high earners, which he said would abridge Medicare Trust Fund solvency;
- Rep. Pascrell's proposed Sense of Congress regarding the importance of Medicaid and not shifting costs to states;
- Rep. Blumenauer's amendment to allow individuals to keep ACA premium subsidies;
- Rep. DelBene's amendment on repealing the Cadillac tax;
- Rep. Sewell's amendment on farmers' access to healthcare;
- Rep. Sanchez's amendment on preventing HSA funds from being used to pay for erectile dysfunction medicines by sex offenders, which was withdrawn;
- Rep. Chu's amendment on striking sections disallowing the small business tax credit for plans covering abortion and related abortion provisions;
- Rep. Davis' amendment on community health centers;
- Rep. DelBene's amendment on expanding the small business tax credit; and
- Rep. Chu's amendment on adding a section regarding the impact on uninsured rates among racial and ethnic minorities.

ENERGY & COMMERCE COMMITTEE

Today, the House Energy & Commerce Committee concluded a marathon 27-hour mark-up focused on the AHCA. More than 60 amendments were considered and the committee ultimately voted 31 to 23 along party lines to transmit the bill with amendments to the House Committee on the Budget. Like the Ways and Means Committee, all Democratic amendments were rejected.

GOP debate in the Energy & Commerce Committee centered around arguments that the AHCA will restore fiscal responsibility by reigning back Medicaid, stabilize rural hospitals by reducing Disproportionate Share Hospital cuts, and give American families the freedom to choose the type of insurance that works the best for them. Conversely, Democrats argued that the bill would drastically increase the number of uninsured, cause deductibles to skyrocket, unwisely withdraw funding from innovative preventive health efforts, shift costs to states, and cause hospitals to close due to increased utilization of the emergency room coupled with rising levels of uncompensated care.

Amendments

The Committee spent a significant amount of time debating [Amendment 128](#) in the nature of a substitute that would allow states that have not yet expanded Medicaid to indefinitely maintain the opportunity to **expand Medicaid** in the future, and to receive a full 100% federal match for the first three years of their expansion. Democrats, including amendment author **Rep. Green (D-TX)** whose state has not yet expanded, underscored the positive impact of Medicaid expansion and the "fairness" of allowing states to continue to opt in with federal support. Democratic colleagues also expressed concern that the bill's proposal to delay Disproportionate Hospital Share (DSH) cuts for two years solely in non-expansion states rewarded such states and penalized expansion states. Republican committee members countered that delaying DSH cuts helped make non-expansion states fiscally whole. The amendment failed by a vote of 23 to 31.

[Amendment 86](#) would have prevented the elimination of the **Prevention and Public Health Fund**. Democratic members, including author **Rep. Clarke (D-NY)**, emphasized the key role public health and prevention play in addressing and decreasing health disparities, improving mental health and lowering suicide attempts among young people, and protecting children from lead poisoning. GOP committee members, including **Reps. Murphy (R-PA)** and **Burgess (R-TX)**, expressed concern about how the funding was spent and argued that the AHCA's proposed Patient and State Stability Fund would allow states to pursue innovative preventive measures, although the funding would not be obligated for such use. The amendment failed on party lines.

Rep. DeGette's (D-CO) [Amendment 60](#) sought to strike provisions in the bill that eliminate ACA protections related to **actuarial value** as well as **cost-sharing reductions**. Democratic committee members underscored the importance of affordability and insisted that without the ACA's protections, deductibles and out-of-pocket costs would skyrocket. GOP colleagues stated instead that American families should have the option to purchase only the insurance coverage provisions they wish to buy, and not those required by Washington. The amendment failed on party lines by a vote of 21 to 30.

Rep. Engel's (D-NY) amendment intended to require CMS to examine the **impact of the AHCA on hospitals** prior to proceeding with implementation. Democratic committee members expressed concern that hospitals cannot sustain reductions as a result increased volumes of uninsured patients. In their view, the AHCA will harm hospitals while failing to take actions to sustain them. GOP colleagues instead argued that hospital closures have continued under the ACA and that by increasing DSH funds, the AHCA will increase hospital sustainability in both urban and rural areas.

Additional failed amendments include [Amendment 166](#), which would have included measures to address **drug prices**. Democratic members including **Rep. Welch (D-VT)** emphasized the need for Congress to take action to address drug prices, and argued that in this arena the Democrats are in greater alignment with the President than the GOP. Republican members, including **Rep. Carter (R-GA)**, stated that although they agree with lowering drug costs, they would not support the amendment. The amendment failed 21 to 30.

Republican amendments included two that were offered jointly by **Reps. Barton (R-TX)**, **Blackburn (R-TN)**, and **Hudson (R-NC)**. Such amendments sought to shorten the time period during which states could opt to expand Medicaid from three years to one year – ending on Jan. 1, 2018 rather than in 2020. Additionally, the amendments would shorten the timeframe for enhanced match so that match rates dropped to standard state levels as of 2023. GOP committee members argued that that the amendment would reel back high federal spending by two years. Democratic committee members expressed opposition as the move would harm the 11 million Americans enrolled in coverage under the Affordable Care Act (ACA). Amendments were withdrawn and a vote did not occur.

Ultimately, the Committee Chairman called the effort historic and expressed gratitude to committee members and staff for their laborious efforts.