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RPTS JANSEN

DCMN WILTSIE

MARKUP OF H.R. _____ AND H.R. 4067

MONDAY, JULY 28, 2014

House of Representatives,
Subcommittee on Health,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 3:03 p.m., in Room 2123, Rayburn House Office Building, Hon. Joseph R. Pitts [chairman of the subcommittee] presiding.

Present: Representatives Pitts, Burgess, Rogers, Lance, Bilirakis, Ellmers, Upton (ex officio), Pallone, Dingell, Green, and Waxman (ex officio).

Staff Present: Clay Alspach, Chief Counsel, Health; Gary Andres, Staff Director; Mike Bloomquist, General Counsel; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Leighton Brown, Press Assistant; Noelle Clemente, Press Secretary; Paul Edattel, Professional Staff Member, Health; Sydne

Harwick, Legislative Clerk; Brittany Havens, Legislative Clerk; Robert Horne, Professional Staff Member, Health; Kirby Howard, Legislative Clerk; Peter Kielty, Deputy General Counsel; Alexa Marrero, Deputy Staff Director; Charlotte Savercool, Legislative Coordinator; Heidi Stirrup, Health Policy Coordinator; Ziky Ababiya, Minority Staff Assistant; Michelle Ash, General Counsel; Phil Barnett, Staff Director; Jen Berenholz, Chief Clerk; Eddie Garcia, Professional Staff Member; Kaycee Glavich, GAO Detailee; Amy Hall, Senior Professional Staff Member; and Karen Nelson, Deputy Committee Staff Director for Health.

Mr. Pitts. The subcommittee will come to order.

Chair recognizes the ranking member to make an objection.

Mr. Pallone. Mr. Chairman, I seek to be recognized to raise an objection. I will be very brief, Mr. Chairman.

I just want everyone to understand that I want to have regular order in this subcommittee, meaning that, if a bill comes up, it has to have a hearing, it has to have a markup, and then it goes to the full committee. That is what regular order is.

And the two bills that are on the agenda today -- one of them I have never even heard of. It hasn't been introduced before.

The other one, I did have a brief conversation, not with you, but with the chairman of the full committee last Friday, and indicated again that I wanted to have a hearing and a markup.

So, I mean, under the circumstances, I have to raise an objection because we are not having a hearing and a markup on either bill at this point before they go to the full committee and I think that is not the way we should be doing business here on this committee. That is not the way we have operated in the past.

It is certainly not the way you have operated, Mr. Chairman.

So this meeting does not comply with House Rule 11, Clause --

The Chairman. Will the gentleman yield?

Mr. Pallone. Certainly.

The Chairman. I just -- you know, I just -- it was last Thursday that we had the discussion. In a subsequent conversation --

Mr. Pallone. Well, you talk, Chairman, and then I will come back and respond.

The Chairman. Gentleman -- I went to the gentleman. I asked if he wouldn't mind missing the subcommittee mark and go to full-committee mark.

Both these bills are noncontroversial. Both enjoy broad bipartisan support. One is passed, as I am told, by unanimous consent already in the Senate.

And in an effort to go to subcommittee markup, I asked the gentleman if he would allow us to go to full committee. You came back to me on Friday and said you would prefer not to. And I said, "Well, we will schedule it very quickly. It could mean even 8:00 a.m." And that is what -- the decision was made.

We don't have a lot of legislative days left. I want to mark this bill -- both these bills up on Wednesday because of the bipartisan support that they have and certainly the interest that they have with groups around the country.

And I understand that, you know, I guess by 24 hours or so we didn't give an appropriate notice for a markup today. But if you -- if you raise an objection to this, we will go right to full committee on Wednesday.

And I yield back to the gentleman.

Mr. Pallone. Mr. Chairman, again -- Chairman Upton, I think that this is the problem and the reason that we should have regular order, meaning that we have a hearing in subcommittee, we

have a markup in subcommittee, and, you know, there is some time in between, a week or so between, before we then go to the full committee.

Because I think that, if we don't do that, then there is probably confusion about what bills we are talking about, what is in the bills, what other members feel about the bills.

That is why I believe in regular order, because it is the only time that members, other than the chairmen or the ranking members, have an opportunity to actually see what the bills are, have a hearing on the bills, and we get full input in it.

I don't want to get into what you said or I said. I mean, the bottom line is there are two bills that are being marked up in subcommittee today. Neither one of them has had a hearing. You may misinterpreted. I was making it quite clear that I wanted to have a hearing and a markup, not just a markup.

And one of the bills is a new bill which wasn't discussed. We talked about a diabetes bill and we talked about the other bill briefly. But I think this is the kind of problems that you have when you don't go through regular order.

So I just insist that we have regular order, meaning you have a hearing in the subcommittee, you follow that with a markup in the subcommittee, and then you go to the full committee, and you have a little time in between to actually review what we are doing.

Mr. Waxman. Gentleman yield to me?

Mr. Pallone. Of course I would. Sure.

Mr. Waxman. I want to point out to the chairman of the full committee, these are not bipartisan, noncontroversial bills.

The AMA opposes this registry because they think it is overburdensome and may have the opposite effect of making it more difficult to create the registries, and I would like to know why they think that and a hearing would elicit it. Also, I want to know why we want to do it.

And then the other bill is an extension of an enforcement which was already extended once and then was supposed to be enforced. Yet, I don't know of any -- and the Senate passed it before other things happened.

The Chairman. Will the gentleman yield?

Mr. Waxman. So it is already in effect.

Mr. Pallone. It is my time. I will certainly yield to Chairman Upton.

But I also wanted to point out we have another -- it is not part of this 3:00, but, at 4:00, we are having a hearing on a bill which I see has also been noticed for full committee on Wednesday.

So in the case of the 4:00 one, it is the opposite. We are having the hearing, but no subcommittee markup. And that one wasn't discussed either.

So, you know, we have got a number of problems here that require, I think, objection on our part -- on the part of the Democrats.

But, yes, I will yield to Chairman Upton.

The Chairman. I am not aware of the AMA objection to the -- do you have a -- I know that we have been talking to them. I don't know that they weighed in officially that they are against this, the diabetes bill? Is that right?

Mr. Pallone. Well, you talk about the diabetes bill.

The Chairman. The registry bill.

Mr. Pallone. The diabetes bill was a bill that was already introduced that dealt with diabetes. You have a bill on the schedule for today that has no number, which appears to be totally different. There may be some reference to diabetes, but this isn't the diabetes bill that you discussed with me last week. That was a bill that had a number that was about diabetes.

So this is the problem. I mean, what is this bill today that is up? It doesn't have a number. Is a new bill. We haven't even seen the bill until today.

Again, they are so many problems here, Mr. Chairman. I don't even know where to begin. We have bills that we haven't seen at all. We have bills that are going to have a markup without a hearing. And, at 4:00, we have bills that are going to have a hearing, go to full committee without a markup.

I mean, it is just -- this is not the way we should be conducting business. I have to object.

But go ahead. I don't mean to cut you off.

Mr. Pitts. No.

Mr. Pallone. I yield to the chairman.

The Chairman. I just want to say we tried to clear this with you. Again, they have broad, bipartisan support. We have been working with the different associations.

And, again, H.R. 4067 -- I happened to see Senator Moran. He was on the floor.

He asked if we would move this quickly. And I said, as a matter of fact, I had talked to you just in the previous hour on the floor.

And he said, "Well, it has already passed by unanimous consent in the Senate. We would love to have it happen."

I said, "Go" -- I said, "There is Mr. Pallone right over there. Go talk to him."

I presume that you did. And we shared this information last Thursday with you and noticed it, I think, on Friday.

But if you -- you are perfectly capable to object and we will --

Mr. Pallone. Well, I just reclaim my time.

I think there is a lot of confusion on the part of the majority as to what they think they represented. And I don't want to get into the details of it at this point other than to say that, at least for the bills that are up now at 3:00 and the other one that you have a hearing on at 4:00, clearly they are not going through regular order.

And, therefore, you know, they don't comply with House Rule

11, Clause (2)(G)(3), requiring 3 days' notice. So I object, Mr. Chairman.

Mr. Dingell. Would the gentleman from New Jersey yield?

Mr. Pallone. Yes. Certainly.

Mr. Dingell. You know, there is enough bad will in this place to sink a battleship. And I really don't see any reason why on a small procedural matter like this we ought to have the kind of hassle we are having here. We have wasted now about 10 or 15 valuable minutes of the committee, and we have done so in spite of the fact that the regular order says that we would do things in a certain way. We are not.

The end result of that is that the goodwill that it takes to move legislation isn't there or it is going to be hurt. And I say this with great affection for my good friend from Michigan, the chairman of the committee, and, also, to the others, including the chairman of the subcommittee, who has a rather remarkable record for fairness and decency.

But it doesn't take much to give notice. And if I can recall back with some of my friends on the other side of the aisle, when we used to be careless about this, we would always get a huge eruption on the Republican side, not always because the complaint was a legitimate one, but simply because there was sometimes a sense of bad treatment that caused the members over there to want to fuss to protect their rights on the rules and under the rules.

So I am hopeful that, when we can, we will abate this kind of

ill will by talking to each other, by seeing to it that the rules are adhered to, and that, when notice is supposed to go out, it goes out in a timely fashion.

Now, sometimes if there is an urgent matter, it can go out at the say-so of the ranking minority member and the senior member on the Republican side, the chairman of the committee and the subcommittee, and that is proper.

We are not going to make things impossible to do around here just because we want to make it difficult for our Republican friends. But you have got to remember that we have to protect the rights of all the Members of the committee because the rules of the committee are both the sword and the shield of every Member of this committee.

And so I hope that the leadership on the committee will listen to Mr. Pallone and Mr. Waxman and try and cooperate with us so that, if we are going to have fights, we can have fights over important matters instead of piddling matters and so that we don't have fights over piddling matters so that we have the time to deal with the hundreds or thousands of questions that this country confronts.

So I have said more than I wanted to say, but I do hope my colleagues on the other side will listen, because I think these matters are important. We are drawing a lot of pay, and this place is costing the taxpayers a lot of money. And I think they would kind of like to see us give them something back for what

they are paying us.

I thank the gentleman for yielding to me.

Mr. Pitts. The gentleman's time has expired.

Does the ranking member insist on objection?

Mr. Pallone. I do.

Mr. Pitts. The subcommittee will now stand adjourned.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned.]