



## Health Policy Briefing

July 22, 2019

### House Votes to Repeal Cadillac Tax

The House of Representatives voted to repeal the Affordable Care Act’s (ACA) 40 percent excise tax on high-cost employer health insurance plans, known as the “Cadillac Tax,” last week. The *Middle Class Health Benefits Tax Repeal Act of 2019* (H.R. 748) was sponsored by Rep. Joe Courtney (D-Conn.) and passed by a vote of 419-6.

### *E&C Advances Eight Health Bills*

The House Energy and Commerce Committee marked up 26 bills last week, including eight proposals to reauthorize public health and Medicare programs, improve drug pricing transparency, provide Medicaid funding for the U.S. territories, and address surprise insurance gaps.

The markup included the following health bills:

- H.R. 2781, the “Educating Medical Professionals and Optimizing Workforce Efficiency and Readiness for Health Act of 2019” or the “EMPOWER for Health Act of 2019”
- H.R. 728, the “Title VIII Nursing Workforce Reauthorization Act of 2019”
- H.R. 1058, the “Autism Collaboration, Accountability, Research, Education and Support Act of 2019” or the “AUTISM Cares Act of 2019”
- H.R. 2507, the “Newborn Screening Saves Lives Reauthorization Act of 2019”
- H.R. 776, the “Emergency Medical Services for Children Program Reauthorization Act of 2019”
- H.R. 2035, the “Lifespan Respite Care Reauthorization Act of 2019”
- H.R. 2296, the “More Efficient Tools to Realize Information for Consumers Act” or the

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“METRIC Act”

- H.R. 2328, the “Reauthorizing and Extending America’s Community Health Act” or the “REACH Act”

The Committee was successful in striking a last minute deal on the *No Surprises Act* (H.R. 3630), which would protect patients from surprise insurance gaps in cases of emergencies and when procedures are done by an out-of-network provider at an in-network hospital. Under the latest version of the legislation, which was incorporated into H.R. 2328, when a billing dispute arises between a provider and insurer the payment rate would be set based on the in-network median rate for the area in which the service occurred in calendar year 2019 starting in 2021. For subsequent years, the rate would be adjusted over time to allow for inflation. An amendment from Reps. Raul Ruiz (D-Calif.) and Larry Bucshon (R-Ind.) would add a backstop that allows providers to appeal the benchmark payment rate through an independent dispute resolution (IDR) process in some cases. The provider would have to demonstrate that they have not been fairly compensated, and the arbitrator would not be allowed to consider initial billed charges in making a decision. The committee also adopted an amendment from Rep. Ben Ray Lujan (D-N.M.) that would require the U.S. Department of Health and Human Services (HHS) and the Government Accountability Office (GAO) to submit a report to Congress on the costs of providing air ambulance services.

All bills were favorably reported out of committee to the full House by voice vote. The surprise billing legislation is not on the House calendar for consideration this week. The House Education and Labor Committee, which also has jurisdiction over HR 3630, is not expected to mark up the measure before the August recess.

### ***CBO Scores HELP Health Care Costs Bill***

The Congressional Budget Office (CBO) estimates that the Senate Health, Education, Labor, and Pensions (HELP) Committee’s package to reduce health care costs would save \$7.6 billion over the next decade. The savings would largely be the result of the bill’s provisions to address surprise insurance gaps. CBO estimates that Title I of the bill (related to surprise out-of-network care) would save \$25 billion as a result of lowering marketplace and employer-sponsored insurance premiums. Title II of the legislation, which includes measures to lower prescription drug costs, would save \$4.6 billion over 10 years. Title III, to improve health care transparency, would increase federal revenues by \$2.7 billion. The bill’s provisions to prohibit anti-tiering and anti-steering clauses would reduce premiums and increase revenues by \$1.1 billion, while new requirements for pharmacy benefit managers (PBMs) would decrease plan spending on drugs and also decrease premiums. Title IV of the bill would fund community health centers and other public health programs and would increase the federal deficit by \$24.3 billion.

Committee Chairman Lamar Alexander (R-Tenn.) has stated that his package is ready for a Senate floor vote. However, when Alexander hotlined the bill last week, he met opposition from some lawmakers who continue to urge the inclusion of an independent dispute resolution (IDR) process alongside the bill’s benchmark solution to addressing reimbursement disputes between providers and payers. Sen. Bill Cassidy (R-La.) continues to negotiate with the Chairman on his proposal, which would allow providers and issuers to combine multiple charges to reach a certain threshold to begin IDR. Under the House’s version of the bill, providers and payers cannot move to IDR unless a single charge reaches \$1,250, a policy which Cassidy argues could lead to artificially inflated rates.

### ***Update on Congressional Drug Pricing Negotiations***

Democrats in the House have not yet reached an agreement on a proposal to allow Medicare to negotiate drug prices, and according to Energy and Commerce Health Subcommittee Chairwoman Anna Eshoo (D-Calif.), no such measure will be considered before the August recess. House Majority Leader Steny Hoyer (D-Md.) confirmed that there is still no agreement between Democratic leadership and more progressive lawmakers on how to structure the legislation, which is being worked on in both the Ways and Means and Energy and Commerce committees.

Medicare price negotiation is not expected to be included in the forthcoming drug pricing measure being drafted by the Senate Finance Committee. Panel Republicans met with officials from CBO last week, but no firm decisions about the legislation were made. CBO reportedly told the lawmakers that the package would reduce out-of-pocket costs for beneficiaries and save federal dollars but did not provide any specific estimates. Chairman Chuck Grassley (R-Iowa) has stated that a bill could be marked up as early as this week if a CBO score has been made available.

Twelve members of the New Democrat Coalition have [written](#) to House Democratic leadership requesting a vote on three drug pricing bills this week. The CREATES Act (H.R. 965), the Protecting Consumer Access to Generic Drugs Act (H.R. 1499), and the BLOCKING Act (H.R. 938) had previously been considered and passed by the chamber as a part of the ***Strengthening Health Care and Lowering Prescription Drug Costs Act*** (H.R. 987), which also included provisions to strengthen the ACA. The lawmakers argue that considering the drug pricing legislation separately would prompt the Senate to also consider and pass the bills. The letter was signed by Reps. Kur Schrader (D-Ore.), Kim Schrier (D-Wash.), Angie Craig (D-Minn.), Greg Stanton (D-Ariz.), Derek Kilmer (D-Wash.), Suzan DelBene (D-Wash.), Terri Sewell (D-Ala.), Ami Bera (D-Calif.), Chrissy Houlahan (D-Pa.), Lizzie Fletcher (D-Texas), Donna Shalala (D-Fla.), and Scott Peters (D-Calif.).

### ***Budget, Debt Ceiling Negotiations Stretch into the Weekend***

The White House sent House Speaker Nancy Pelosi (D-Calif.) a list of proposed spending cuts and reforms to consider as negotiations continue on a budget agreement that would include a deal to raise the debt ceiling. The policies proposed by the administration would produce savings to offset the cost of a two-year budget caps agreement. Lawmakers and White House officials insist that they are close to an agreement that would set spending level ceilings for the next two years and be moved with a debt limit fix. An agreement has apparently been reached on top-line defense and non-defense spending figures, while offsets remain as the final outstanding issue to be addressed. Pelosi has indicated her hopes to file a bill this week to set up a House vote on the package before the chamber adjourns for the six-week August recess.

### ***GAO Makes Determination on WH Waiver Guidance***

The GAO has determined that Congress can overturn recent changes made by the administration to state innovation waivers. The July 15 guidance states that Section 1332 waivers fall under the boundaries of the Congressional Review Act, which allows lawmakers to reverse federal regulations by passing a resolution disapproving of the rule by simple majority in each chamber. The White House policy loosens current restrictions around state use of federal funding to pay for health insurance, such as association and short-term, limited-duration plans, that do not comply with all of the ACA patient protections like those for pre-existing conditions. No states have applied for or been approved for a waiver since the regulation was released.

### ***Finance Republicans Request Increased HHS Puerto Rico Oversight***

Several Republicans on the Senate Finance Committee have sent a [letter](#) to HHS Secretary Alex Azar requesting increased transparency on how Puerto Rico spends its Medicaid funding. The letter was sent following recent allegations of widespread corruption amongst former Puerto Rico agency officials. The lawmakers ask the Secretary to develop new measures to reduce waste, fraud and abuse. They also request an implementation timeline for such measures.

### ***W&M Creates New Health Task Force***

The House Ways and Means Committee has announced the creation of the Rural and Unserved Communities Health Task Force. The bipartisan group will focus on the challenges of delivering health care in rural and underserved areas and consider policy options that could improve outcomes and care in these communities. The effort will be led by four co-chairs: Brad Wenstrup, D.P.M. (R-Ohio), Jodey Arrington (R-Texas), Danny Davis (D-Ill.), and Terri Sewell (D-Ala.). The task force's first meeting will be held on July 25.

### ***Treasury Expands HSA Preventive Benefits for Chronic Conditions***

The Department of Treasury has expanded the preventive care benefits that can be provided by high-deductible health plans paired with health savings accounts (HSAs) to include medical care services, devices, and prescription drugs for certain chronic conditions, including asthma, congestive heart failure, diabetes, coronary artery disease, osteoporosis, hypertension, liver disease, heart disease, and depression. The new guidance will allow first dollar coverage of these items, meaning the products will not count against the individual's deductible before the insurer would pay for these health expenses.

### ***MedPAC Releases 2019 Data Book***

The Medicare Payment Advisory Commission (MedPAC) has released its 2019 data [book](#) on health care spending and the Medicare program. The book provides details on national health care and Medicare spending, beneficiary demographics, payer financial liability, dual-eligible beneficiaries, Medicare quality of care, acute inpatient services, ambulatory care, post-acute care, Medicare Advantage, and prescription drugs.

## Upcoming Congressional Hearings and Markups

*House Oversight and Reform Subcommittee on Economic and Consumer Policy hearing titled “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I;” 9:00 a.m., 2154 Rayburn Bldg.; July 24*

*House Veterans’ Affairs Committee hearing titled, “True Transparency? Assessing Wait Times Five Years after Phoenix;” 10:00 a.m., 210 House Visitors Center; July 24*

*Senate Foreign Relations Subcommittee on African Affairs hearing to examine confronting Ebola, focusing on addressing a 21st century global health crisis; 2:30 p.m., 419 Dirksen Bldg.; July 24*

*House Veterans Affairs Technology Modernization Subcommittee hearing titled “Vista Transition: Assessing the Future of an Electronic Health Records Pioneer;” 10:00 a.m., 210 House Visitors Center; July 25*

*House Homeland Security Subcommittee on Intelligence and Counterterrorism hearing titled “Homeland Security Implications of the Opioid Crisis;” 10:00 a.m., 310 Cannon Bldg.; July 25*

*House Oversight and Reform Subcommittee on Economic and Consumer Policy hearing titled “Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II;” 2:00 p.m., 2154 Rayburn Bldg.; July 25*

*House Oversight and Reform hearing titled “The Patient Perspective: The Devastating Impacts of Skyrocketing Drug Prices on American Families;” 9:30 a.m., 2154 Rayburn Bldg.; July 26*

## Recently Introduced Health Legislation

*H.Res.488 — Supporting the designation of July 2019 as Uterine Fibroids Awareness Month; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce*

*S.Res.275 — A resolution calling for international ethical standards in genome editing research. Sponsor: Sen. Feinstein, Dianne [D-CA]; Committees: Senate - Foreign Relations*

*S.Res.276 — A resolution designating July 15, 2019, as “National Leiomyosarcoma Awareness Day” and the month of July 2019 as “National Sarcoma Awareness Month”; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate – Judiciary*

*S.2116 — A bill to amend title XVIII of the Social Security Act to establish rules for payment for graduate medical education (GME) costs for hospitals that establish a new medical residency training program after hosting resident rotators for short durations; Sponsor: Sen. Menendez, Robert [D-NJ]; Committees: Senate – Finance*

*H.R.3753 — To amend title XVIII of the Social Security Act to establish rules for payment for graduate medical education (GME) costs for hospitals that establish a new medical residency training program after hosting resident rotators for short durations; Sponsor: Rep. Gottheimer, Josh [D-NJ-5]; Committees: House - Ways and Means, Energy and Commerce*

*H.R.3756 — To ensure that pre-apprenticeship programs are considered when planning health professions opportunity grant career pathway demonstration projects; Sponsor: Rep. Beyer, Donald S., Jr. [D-VA-8]; Committees: House - Ways and Means*

*H.R.3762 — To amend title XXVII of the Public Health Service Act to improve health care coverage under vision and dental plans, and for other purposes; Sponsor: Rep. Loebach, David [D-IA-2]; Committees: House - Energy and Commerce*

*H.R.3767 — To ensure an evidence-based funding approach to study the effects of health professions opportunity grant demonstration projects, and to evaluate the demonstration projects; Sponsor: Rep. Schneider, Bradley Scott [D-IL-10]; Committees: House - Ways and Means*

*H.R. 3771 – To establish an interagency One Health Program, and for other purposes; Sponsor: Rep. Schrader, Kurt [D-OR-5]; Committees: House - Energy and Commerce, Agriculture, Natural Resources, Foreign Affairs*

*H.R.3772 — To amend title XVIII of the Social Security Act to ensure equitable payment for, and preserve Medicare beneficiary access to, diagnostic radiopharmaceuticals under the Medicare hospital outpatient prospective payment system; Sponsor: Rep. Peters, Scott H. [D-CA-52]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.3778 — To amend the Public Health Service Act to authorize certain grants (for youth suicide early intervention and prevention strategies) to be used for school personnel in elementary and secondary schools and students in secondary schools to receive student suicide awareness and prevention training, and for other purposes; Sponsor: Rep. Cleaver, Emanuel [D-MO-5]; Committees: House - Energy and Commerce, Education and Labor*

*H.R.3781 — To increase the minimum levels of financial responsibility for transporting property, and to index future increases to changes in inflation relating to medical care; Sponsor: Rep. Garcia, Jesus G. “Chuy” [D-IL-4]; Committees: House - Transportation and Infrastructure*

*H.R.3784 — To amend title XXVII of the Public Health Service Act and title XI of the Social Security Act to prohibit surprise billing with respect to air ambulance services; Sponsor: Rep. Neguse, Joe [D-CO-2]; Committees: House - Energy and Commerce*

*H.R.3796 — To amend the Internal Revenue Code of 1986 to provide that coverage under Medicare is permissible for purposes of contributions to health savings accounts; Sponsor: Rep. Bera, Ami [D-CA-7]; Committees: House - Ways and Means*

*H.R.3797 — To amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes, and for other purposes; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Energy and Commerce, Judiciary*

*H.R.3798 — To amend title 38, United States Code, to provide for limitations on copayments for contraception furnished by the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Brownley, Julia [D-CA-26]; Committees: House - Veterans’ Affairs*

*H.R.3805 — To reform prescription drug pricing and reduce out-of-pocket costs by ensuring consumers benefit from negotiated rebates; Sponsor: Rep. Gallagher, Mike [R-WI-8]; Committees: House - Energy and Commerce*

*H.R.3812 — To amend the Federal Food, Drug, and Cosmetic Act with respect to approval of abbreviated new drug applications; Sponsor: Rep. McKinley, David B. [R-WV-1]; Committees: House - Energy and Commerce*

*H.R.3813 — To amend title 38, United States Code, to ensure that certain health care contractors of the Department of Veterans Affairs are subject to Federal tort claims laws, to improve the accountability of physicians of the Department, and for other purposes; Sponsor: Rep. Meadows, Mark [R-NC-11]; Committees: House - Veterans’ Affairs*

*H.R.3815 — To increase access to pre-exposure prophylaxis to reduce the transmission of HIV; Sponsor: Rep. Schiff, Adam B. [D-CA-28]; Committees: House - Energy and Commerce, Oversight and Reform, Veterans’ Affairs, Ways and Means, Natural Resources, Armed Services, Financial Services*

*H.Res.504 — Supporting the goals and ideals of National Clinicians HIV/AIDS Testing and Awareness Day, and for other purposes; Sponsor: Rep. Waters, Maxine [D-CA-43]; Committees: House - Energy and Commerce*

*H.Res.505 — Recognizing July 28, 2019, as “World Hepatitis Day”; Sponsor: Rep. Meng, Grace [D-NY-6]; Committees: House - Energy and Commerce*

*H.R.3819 — To amend the Public Health Service Act to provide for the continued implementation of the Climate and Health program by the Centers for Disease Control and Prevention; Sponsor: Rep. Underwood, Lauren [D-IL-14]; Committees: House - Energy and Commerce*

*H.R.3835 — To amend title XVIII of the Social Security Act to provide for coverage of cancer care planning and coordination under the Medicare program; Sponsor: Rep. DeSaulnier, Mark [D-CA-11]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.3842 — To amend titles XIX and XXI of the Social Security Act to require a State child health plan to include certain lead screening coverage and to codify such requirement under the Medicaid program; Sponsor: Rep. Katko, John [R-NY-24]; Committees: House - Energy and Commerce*

*H.R.3849 — To address maternity care shortages and promote optimal maternity outcomes by expanding educational opportunities for midwives, and for other purposes; Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House - Energy and Commerce*

*H.R.3853 — To amend title XIX of the Social Security Act to increase under the Medicaid program the minimum monthly personal needs allowance for institutionalized individuals and couples, and for other purposes; Sponsor: Rep. Wexton, Jennifer [D-VA-10]; Committees: House - Energy and Commerce*

*S.2157 — A bill to amend title XI of the Social Security Act to expand the use of global payments to hospitals in rural areas; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance*

*S.2158 — A bill to improve certain programs of the Department of Health and Human Services with respect to heritable disorders; Sponsor: Sen. Hassan, Margaret Wood [D-NH]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.2161 — A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for reciprocal marketing approval of certain drugs, biological products, and devices that are authorized to be lawfully marketed abroad, and for other purposes; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Health, Education, Labor, and Pensions*