



## Repeal/Replace, Health Care Back in the Spotlight on Capitol Hill

Health Policy Briefing  
April 8, 2019

The House of Representatives passed a measure (H.Res. 271) last week condemning the Trump administration’s support for a lawsuit that would invalidate the Affordable Care Act (ACA) by a vote of 240-186. Democratic Rep. Collin Peterson (Minn.) voted against the measure, and eight Republicans joined Democrats in voting for the resolution: Reps. Tom Reed (R-N.Y.), Fred Upton (R-Mich.), Brian Fitzpatrick (R-Pa.), Elise Stefanik (R-N.Y.), Pete Stauber (R-Minn.), Chris Smith (R-N.J.), Denver Riggleman (R-Va.), and John Katko (R-N.Y.). Rep. Anthony Gonzalez (R-Ohio) voted present. The GOP lawmakers were largely in agreement that a replacement plan should be in place before the law is repealed. The vote was largely symbolic and was meant to put Republicans on the record regarding the White House’s stance on the 2010 health care law. Republicans have characterized the resolution as meaningless, stating that it does nothing to actually protect people should the law be struck down. It is not expected to see any movement in the Republican-controlled Senate.

Senate Majority Leader Mitch McConnell (R-Ky.) also proceeded to fill the amendment tree for the disaster aid bill (H.R. 268) last week, keeping Democratic leader Chuck Schumer (D-N.Y.) from pushing a vote on an amendment that would prohibit Justice Department funds from being used to support the ACA lawsuit.

President Trump commented on the Republicans’ plan for health care in a series of tweets last week. He criticized the cost of the current health care law and stated that the Republican policy would be less expensive and more usable than the ACA and that it will be voted on after the 2020 elections when he predicted Republicans would hold the Senate and win back the House. The tweets followed a statement from Senate Majority Leader Mitch McConnell that he

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advised the President revisiting the debate to repeal and replace the ACA with a Democratic-controlled House. McConnell said that the White House will take the lead on devising a new, comprehensive health care plan. A group of Republican senators charged by President Trump with formulating an ACA replacement if the law is overturned in court has not yet formally met, according to aides. Sen. Lindsey Graham (R-S.C.) is acting as the go-between for the group and the White House.

### ***Senate Passes Medicaid Accountability Bill***

The Senate passed by voice vote H.R. 1839, the ***Medicaid Services Investment and Accountability Act of 2019***, last week. The legislation would extend the Excellence in Mental Health demonstration and the Money Follows the Person Program through September. It includes a provision establishing civil monetary penalties for the knowing misclassification of covered outpatient drugs in the Medicaid drug rebate program. The bill also incorporates the provisions of the ACE Kids Act and would allow state Medicaid programs to establish health homes for children with medically complex conditions. The bill was previously passed by the House and will now be sent to the President for his signature.

### ***E&C Advances Bipartisan Package of Generic Drug Legislation***

The House Energy and Commerce Committee advanced a package of 12 bills to strengthen the ACA and its protections for individuals with pre-existing conditions and to reduce the cost of health care and prescription drugs. Democratic and Republican panel members reached an agreement to approve a set of six bills aimed at increasing generic drug competition, and the bills were advanced with bipartisan support. Among the bills that were passed was a revised version of the ***CREATES Act*** (H.R. 965) to address Republican concerns about potential frivolous lawsuits between generic and brand manufacturers. Democrats also agreed to changes to the ***Protecting Consumer Access to Generic Drugs Act of 2019*** (H.R. 1499) to address Republican opposition to retroactively making pay-for-delay agreements illegal. The remaining legislation was largely approved along party lines, with Republicans objecting to the bills' lack of pay-fors and reduction of affordable health insurance options. A vote in the full House has not yet been scheduled, and it is unlikely the ACA-focused measures could be approved in the GOP-controlled Senate. Bipartisan support for the drug pricing measures makes it more likely that the Senate will act, especially given Senate Finance Committee Chairman Chuck Grassley's (R-Iowa) support for the ***CREATES Act*** and pay-for-delay legislation.

### ***Finance Committee Contacts PBMs Ahead of Tuesday Hearing***

Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) have [written](#) to three pharmacy benefit managers (PBMs) regarding their role in the rising price of insulin. The lawmakers wrote to Express Scripts, CVS Health Corp., and OptumRx requesting information related to the PBMs' relationships with insulin manufacturers and public insurance programs and private insurance plans, and how PBMs determine the availability of drugs and the size of rebates. Grassley and Wyden question whether PBMs are actually working to reduce the cost of insulin. The Senate panel is scheduled to hear testimony from PBMs on April 9. The House Energy and Commerce Oversight Subcommittee has a similar hearing scheduled for April 10.

### ***HELP Hopes to Advance Health Care Cost Legislation this Summer***

The Senate Health, Education, Labor, and Pensions (HELP) Committee plans to vote on legislation to lower health care costs early this summer, according to Chairman Lamar Alexander (R-Tenn.). He stated that the panel has received more than 400 specific recommendations on improving health outcomes and patient care experiences at a lower cost. The recommendations were sent to the HELP Committee in response to a letter that Alexander sent at the conclusion of the 115th Congress to the American Enterprise Institute, the Brookings Institution, governors, state insurance commissioners, economists, doctors, hospitals, patients, and innovators. Alexander will compile the proposals, which could include efforts to increase transparency, lower drug costs, eliminate surprise billing, expand primary care, improve electronic health records (EHRs), and address consolidation in the health care industry, into a single package to be voted on by HELP. He said that he is working with Ranking Member Patty Murray (D-Wash.), alongside Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.), on developing bipartisan legislation that has the potential to be sent to the President's desk for his signature. He called on his Senate colleagues to send specific proposals for lowering health care costs to the leadership of each committee.

### ***House Dems Continue Internal Drug Pricing Discussions***

Several progressive House lawmakers are in talks with Speaker Nancy Pelosi's (D-Calif.) office regarding legislation to lower drug prices. Reps. Lloyd Doggett (D-Texas) and Pramila Jayapal (D-Wash.) hope to advance legislation that would impose severe punishments on pharmaceutical manufacturers that refuse to negotiate prices with the federal government. The bill would allow Medicare to negotiate drug prices and strip a company of its exclusivity if it refuses to reach an agreement. The lawmakers have expressed concerns that leadership will either strike a deal with the White House on drug pricing or propose its own legislation that does not go as far as their own legislation. Staff for Pelosi stress that any drug pricing bill will move through regular order, but that the Speaker is also considering a bill that would use an arbitrator to set a price for a drug in the case that Medicare and the drug company cannot reach a pricing agreement; this proposal would only apply to a subset of high-cost treatments.

### ***FY2020 Appropriations Update***

Some lawmakers have already indicated that a stopgap spending measure may be necessary to keep the government open after the end of the fiscal year (FY) on September 30. Appropriators had hoped to reach an agreement to raise funding caps under the Budget Control Act (BCA), but in the increasing likelihood that this does not occur, the House and the Senate will mark up bills with different top-line spending figures. According to Ranking Member of the House Appropriations Labor-Health and Human Services-Education Subcommittee Tom Cole (R-Okla.), appropriations negotiators now appear content with relying on a last-minute government funding deal.

### ***Lawmakers Request Suicide Prevention Funding***

Suicide Prevention Task Force co-chairs John Katko (R-N.Y.) and Don Beyer (D-Va.) sent a [letter](#) to appropriations leadership requesting funding for the purpose of suicide prevention. They request \$51.2 million for the National Suicide Prevention Hotline and \$10 million for the Centers for Disease Control and Prevention (CDC) to study suicide.

### ***FDA Commissioner Scott Gottlieb to Return to AEI***

Commissioner of Food and Drugs Scott Gottlieb addressed his colleagues during his final all-hands meeting last week. Gottlieb touted the work that was accomplished during his time at the agency: to reduce the morbidity and mortality associated with tobacco use, address opioid abuse and addiction, advance drug competition, develop and approve new medical technologies and devices, expand access to investigative medicines for patients with terminal illness, improve food safety, approve a record number of generic and novel drugs, advance medical products for American soldiers, and aid in the recovery of Puerto Rico in the aftermath of recent hurricanes. He thanked his colleagues for their support and dedication to the mission of the Food and Drug Administration (FDA) and expressed confidence that meaningful change will continue under the leadership of deputy commissioners Amy Abernethy, Frank Yiannas, and Anna Abram and incoming Acting Commissioner Ned Sharpless. Gottlieb also announced plans to return to work at AEI and focus on the issue of drug prices.

### ***HHS IG to Resign***

U.S. Department of Health and Human Services (HHS) Inspector General Daniel Levinson submitted his resignation to the President last week. He plans to leave the department at the end of May. Levinson has led the Office of the Inspector General (OIG) for 15 years. Principle Deputy Inspector General Joanne Chiedi will serve as acting inspector general upon Levinson's departure. "Under Dan's leadership, the HHS Office of Inspector General (OIG) has done tireless, invaluable work to protect program beneficiaries and taxpayer funds, improve the management and integrity of HHS programs, and respond to emerging challenges such as the ongoing opioid crisis," Secretary of Health and Human Services Alex Azar said in a statement.

### ***OIG Investigates CMS Administrator Verma***

The OIG has replied to a letter from House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) saying that it has opened an internal investigation into the matter of whether Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma has complied with rules and ethics requirements for government contracts. Verma has come under scrutiny in recent weeks after it was reported that she spent millions of dollars on private communications consultants.

## ***Upcoming Congressional Hearings and Meetings***

***House Education and Labor Committee markup of H.R. 1010, To provide that the rule entitled "Short-Term, Limited Duration Insurance" shall have no force or effect; 10:15 a.m.; 2175 Rayburn; April 9***

***Senate Finance Committee hearing to examine drug pricing in America, focusing on a prescription for change, part III; 10:15 a.m.; 215 Dirksen; April 9***

***House Ways and Means Committee markup of H.R. \_\_\_\_, "Prescription Drug Sunshine, Transparency, Accountability and Reporting Act" (STAR Act); 10:30 a.m.; 1100 Longworth; April 9***

***House Appropriations Subcommittee on Interior, Environment, and Related Agencies hearing on Indian Health Service Budget Request for FY'20; 10:30 a.m.; 2008 Rayburn; April 9***

***House Appropriations Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies Public Witness hearing day; 2:00 p.m.; 2358-C Rayburn; April 9***

***House Energy and Commerce Subcommittee on Oversight and Investigations hearing titled "Priced Out of a Lifesaving Drug: Getting Answers on the Rising Cost of Insulin;" 10:30 a.m.; 2123 Rayburn; April 10***

***Senate Veterans' Affairs Committee hearing to examine VA MISSION Act, focusing on implementing the Veterans Community Care Program; 2:30 p.m.; 418 Russell; April 10***

**Recently Introduced Health Legislation**

*H.Res.271 — Condemning the Trump Administration’s Legal Campaign to Take Away Americans’ Health Care; Sponsor: Rep. Allred, Colin Z. [D-TX-32]; Committees: House - Energy and Commerce, Judiciary*

*H.Res.279 — Supporting the goals and ideals of National Public Health Week; Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House - Energy and Commerce*

*H.R.2000 — To establish a public health plan; Sponsor: Rep. Delgado, Antonio [D-NY-19]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2009 — To amend titles XVIII and XIX of the Social Security Act to provide equal coverage of in vitro specific IgE tests and percutaneous tests for allergies under the Medicare and Medicaid programs, and for other purposes; Sponsor: Rep. Clarke, Yvette D. [D-NY-9]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2011 — To amend the Public Health Service Act with respect to the treatment under section 351(k)(7) of such Act (relating to exclusivity for reference products) of certain products deemed to have a biologics license pursuant to section 7002 of the Biologics Price Competition and Innovation Act of 2009; Sponsor: Rep. DeGette, Diana [D-CO-1]; Committees: House - Energy and Commerce*

*H.R.2012 — To amend the Controlled Substances Act to provide that Federal law shall not preempt State law; Sponsor: Rep. DeGette, Diana [D-CO-1]; Committees: House - Judiciary, Energy and Commerce*

*H.R.2014 — To amend the Public Health Service Act to prohibit governmental discrimination against providers of health services that are not involved in abortion; Sponsor: Rep. Harris, Andy [R-MD-1]; Committees: House - Energy and Commerce*

*S.961 — A bill to amend the Internal Revenue Code of 1986 to expand eligibility for the refundable credit for coverage under a qualified health plan; Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Finance*

*S.962 — A bill to provide funding for Federally qualified health centers and the National Health Service Corps; Sponsor: Sen. Sanders, Bernard [I-VT]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.964 — A bill to amend the Patient Protection and Affordable Care Act to improve cost-sharing subsidies; Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.966 — A bill to amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes; Sponsor: Sen. Portman, Rob [R-OH]; Committees: Senate - Finance*

*S.967 — A bill to amend the Public Health Service Act to establish limitations on cost-sharing for out-of-network services in the individual market, to prohibit balance billing for such services, and for other purposes; Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.970 — A bill to amend the Public Health Service Act to provide for the participation of physical therapists in the National Health Service Corps Loan Repayment Program, and for other purposes; Sponsor: Sen. Tester, Jon [D-MT]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.977 — A bill to address the high cost of prescription drugs; Sponsor: Sen. Scott, Rick [R-FL]; Committees: Senate - Health, Education, Labor, and Pensions*

*H.Res.280 — Protecting the health care of all Americans, especially those with preexisting conditions; Sponsor: Rep. Walden, Greg [R-OR-2]; Committees: House - Energy and Commerce, Judiciary, Ways and Means*

*H.R.2020 — To amend the Controlled Substances Act to require a person that possesses or intends to possess a tableting machine or encapsulating machine to obtain registration from the Attorney General, and for other purposes; Sponsor: Rep. Kustoff, David [R-TN-8]; Committees: House - Energy and Commerce, Judiciary*

*H.R.2035 — To amend title XXIX of the Public Health Service Act to reauthorize the program under such title relating to lifespan respite care; Sponsor: Rep. Langevin, James R. [D-RI-2]; Committees: House - Energy and Commerce*

*H.R.2038 — To allow State-based, market-oriented, prescription drug negotiations to lower pharmaceutical drug prices, to encourage competition, to increase consumer choice and access, and for other purposes; Sponsor: Rep. Meadows, Mark [R-NC-11]; Committees: House - Judiciary*

*S.Res.134 — A resolution expressing the sense of the Senate that the Department of Justice should reverse its position in Texas v. United States, No. 4:18-cv-00167-O (N.D. Tex.); Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Judiciary*

*S.981 — A bill to establish a public health plan; Sponsor: Sen. Bennet, Michael F. [D-CO]; Committees: Senate - Finance*

*S.988 — A bill to amend title XVIII of the Social Security Act to prohibit prescription drug plan sponsors and MA-PD organizations under the Medicare program from retroactively reducing payment on clean claims submitted by pharmacies; Sponsor: Sen. Capito, Shelley Moore [R-WV]; Committees: Senate - Finance*

*S.989 — A bill to amend the Controlled Substances Act to require a person that possesses or intends to possess a tableting machine or encapsulating machine to obtain registration from the Attorney General, and for other purposes; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Judiciary*

*S.995 — A bill to amend title XXIX of the Public Health Service Act to reauthorize the program under such title relating to lifespan respite care; Sponsor: Sen. Collins, Susan M. [R-ME]; Committees: Senate - Health, Education, Labor, and Pensions*

*H.R.2050 — To place a moratorium on permitting for mountaintop removal coal mining until health studies are conducted by the Department of Health and Human Services, and for other purposes; Sponsor: Rep. Yarmuth, John A. [D-KY-3]; Committees: House - Natural Resources, Transportation and Infrastructure, Energy and Commerce*

*H.R.2061 — To facilitate the efforts of States to establish auto-enrollment systems to enroll certain individuals in health insurance coverage, and for other purposes; Sponsor: Rep. Bera, Ami [D-CA-7]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2062 — To amend the Public Health Service Act to protect the confidentiality of substance use disorder patient records; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Energy and Commerce*

*H.R.2064 — To amend title XI of the Social Security Act to require manufacturers of certain drugs, devices, biologicals, and medical supplies to report on product samples provided to certain health care providers, and for other purposes; Sponsor: Rep. Chu, Judy [D-CA-27]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2069 — To amend title XI of the Social Security Act to provide for drug manufacturer price transparency; Sponsor: Rep. Horsford, Steven [D-NV-4]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2074 — To amend the Federal Food, Drug, and Cosmetic Act to require the label of a drug that is intended for human use and contains an ingredient that is derived directly or indirectly from a gluten-containing grain to identify each such ingredient, and for other purposes; Sponsor: Rep. Ryan, Tim [D-OH-13]; Committees: House - Energy and Commerce*

*H.R.2075 — To amend the Public Health Service Act to reauthorize school-based health centers, and for other purposes; Sponsor: Rep. Sarbanes, John P. [D-MD-3]; Committees: House - Energy and Commerce*

*H.R.2077 — To galvanize United States Government programs in support of brain health for global victims of autism, hydrocephalus and Alzheimer's and other forms of dementia, and for other purposes; Sponsor: Rep. Smith, Christopher H. [R-NJ-4]; Committees: House - Foreign Affairs, Energy and Commerce*

*S.1001 — A bill to amend the Indian Health Care Improvement Act to allow the Indian Health Service to cover the cost of a copayment of an Indian or Alaska Native veteran receiving medical care or services from the Department of Veterans Affairs, and for other purposes; Sponsor: Sen. Thune, John [R-SD]; Committees: Senate - Indian Affairs*

*S.1012 — A bill to amend the Public Health Service Act to protect the confidentiality of substance use disorder patient records; Sponsor: Sen. Manchin, Joe, III [D-WV]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.1013 — A bill to amend the Public Health Service Act to reauthorize school-based health centers, and for other purposes; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.1017 — A bill to amend the Older Americans Act of 1965 in order to address the needs of caregivers, and for other purposes; Sponsor: Sen. Durbin, Richard J. [D-IL]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.1023 — A bill to amend title 38, United States Code, to furnish hospital care and medical services to veterans, members of the reserve components of the Armed Forces, and dependents who were stationed at military installations at which they were exposed to perfluorooctanoic acid or other per- and polyfluoroalkyl substances, to provide for a presumption of service connection for those veterans and members of the reserve components, and for other purposes; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Veterans' Affairs*

*S.1024 — A bill to amend title 38, United States Code, to furnish hospital care and medical services to veterans, members of the reserve components of the Armed Forces, and dependents who were stationed at Wurtsmith Air Force Base in Oscoda, Michigan, and were exposed to volatile organic compounds, to provide for a presumption of service connection for those veterans and members of the reserve components, and for other purposes; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Veterans' Affairs*

*H.Res.290 — Supporting increased awareness of sepsis and the importance of early diagnosis and appropriate intervention; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce*

*H.R.2085 — To amend the Public Health Service Act to establish a public health insurance option, and for other purposes; Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Committees: House - Energy and Commerce*

*H.R.2086 — To amend the Internal Revenue Code of 1986 to allow a refundable tax credit against income tax for the purchase of qualified access technology for the blind; Sponsor: Rep. Thompson, Mike [D-CA-5]; Committees: House - Ways and Means*

*H.R.2087 — To amend title XVIII of the Social Security Act to require certain manufacturers to report drug pricing information with respect to drugs under the Medicare program, and for other purposes; Sponsor: Rep. Doggett, Lloyd [D-TX-35]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.2094 — To amend title 38, United States Code, to increase the maximum age for children eligible for medical care under the CHAMPVA program, and for other purposes; Sponsor: Rep. Brownley, Julia [D-CA-26]; Committees: House - Veterans' Affairs*

*H.R.2095 — To direct the Secretary of Health and Human Services, for the purpose of addressing public health crises, to require the manufacturers of covered products to develop, maintain, and update a plan to mitigate the effects of such products on public health, and for other purposes; Sponsor: Rep. DeSaulnier, Mark [D-CA-11]; Committees: House - Energy and Commerce*

*H.R.2102 — To amend title 38, United States Code, to furnish hospital care and medical services to veterans and dependents who were stationed at military installations at which the veterans and dependents were exposed to perfluorooctanoic acid or other per- and polyfluoroalkyl substances, to provide for a presumption of service connection for certain veterans who were stationed at military installations at which the veterans were exposed to such substances, and for other purposes; Sponsor: Rep. Kildee, Daniel T. [D-MI-5]; Committees: House - Veterans' Affairs*

*H.R.2108 — To allow individuals to choose to opt out of the Medicare part A benefit; Sponsor: Rep. Palmer, Gary J. [R-AL-6]; Committees: House - Ways and Means*

*H.R.2111 — To amend the Public Health Service Act to provide for a Reducing Youth Use of E-Cigarettes Initiative; Sponsor: Rep. Wasserman Schultz, Debbie [D-FL-23]; Committees: House - Energy and Commerce*

*S.1030 — A bill to allow individuals to choose to opt out of the Medicare part A benefit; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Finance*

*S.1033 — A bill to amend the Public Health Service Act to establish a public health insurance option, and for other purposes; Sponsor: Sen. Whitehouse, Sheldon [D-RI]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.1034 — A bill to amend title 38, United States Code, to increase the maximum age for children eligible for medical care under the CHAMPVA program, and for other purposes; Sponsor: Sen. Brown, Sherrod [D-OH]; Committees: Senate - Veterans' Affairs*

*S.1037 — A bill to amend title XVIII of the Social Security Act to modernize provisions relating to rural health clinics under Medicare; Sponsor: Sen. Barrasso, John [R-WY]; Committees: Senate - Finance*

*S.1044 — A bill to impose sanctions with respect to foreign traffickers of illicit opioids, and for other purposes; Sponsor: Sen. Schumer, Charles E. [D-NY]; Committees: Senate - Banking, Housing, and Urban Affairs*

*S.1045 — A bill to amend the Public Health Service Act to expand the authority of the Secretary of Health and Human Services to permit nurses to practice in health care facilities with critical shortages of nurses through programs for loan repayment and scholarships for nurses; Sponsor: Sen. Young, Todd [R-IN]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.1048 — A bill to amend the Public Health Service Act to provide for a Reducing Youth Use of E-Cigarettes Initiative; Sponsor: Sen. Blumenthal, Richard [D-CT]; Committees: Senate - Health, Education, Labor, and Pensions*