

Spending Bill Expected to Eliminate Certain Taxes

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The congressional spending bill for 2020 will be released today. Reports indicate that the bill will permanently repeal three separate taxes originally implemented by the Affordable Care Act (ACA). All three of the taxes are currently suspended until at least 2020. The bill would permanently eliminate them. The taxes on the congressional chopping block are:

- A tax on medical device manufacturers, which was originally slated to become effective in 2016. It has been the subject of two two-year moratoriums, the latest of which was slated to end December 31, 2019. Without congressional action, this tax would impose an additional 2.3% tax on medical devices other than those provided through retail to the general public.
- The so-called "Cadillac tax", which imposes a significant (40%) tax on health plans which provide "excess value," based upon an annually indexed measure. Although this tax is imposed only on the excess value, the increasing cost of healthcare created a substantial possibility that it would have applied much more broadly than intended. Like the medical device tax, the Cadillac tax has been subject to several administrative delays in enforcement, and is currently not due to become effective until January 1, 2022.
- The Health Insurance Tax (HIT), which is essentially a sales tax on health insurers. This tax was originally effective in 2014. However, it has been suspended since 2017, slated to become re-effective next year.

All three taxes were (and are) exceptionally unpopular, and their suspension or elimination has been the subject of intense lobbying by industry groups. The HIT was blamed for substantial increases in consumer costs, and both the medical device tax and Cadillac Tax were anticipated to have similar negative consequences. Permanent repeal is likely to be popular in the impacted business communities, especially since Congress is not expected to take any action to make up any resulting budgetary shortfall.

Funding for the package comes from the CREATES Act, which is intended to make it easier for generic drug makers to more easily obtain samples of branded drugs to develop a generic copy.

However, the bill did not address surprise billing legislation, which was excluded after a lengthy bi-partisan effort to address the surprise billing issue. Also excluded from the package was an exclusion for non-invasive ventilators from the Medicare competitive bidding program, although durable medical equipment manufacturers did get a victory in that complex rehabilitative manual wheelchairs are excluded from CMS's competitive bidding program.

There is expectation that the surprise billing legislation will be part of further discussions in 2020.

If you have questions or would like further information, please contact L. Stephen Bowers (bowersss@whiteandwilliams.com; 215.864.6247) or another member of the Healthcare Group.

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