

# Health Care Reform Management Alert Series



## Is Health Care Reform DOA?

## Issue 111

By Benjamin Conley and Diane Dygert

*This is the one hundred and eleventh issue in our series of alerts for employers on selected topics on health care reform. (Click [here](#) to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.*

**Seyfarth Synopsis:** *The Republican's efforts to repeal and replace the Affordable Care Act may be dead on arrival. The defection of a total of four Senators from support of BCRA 2.0 means that bill has no chance of passage. A pure repeal bill (like that in 2015) is now on the table, but three Senators have already come out against that course of action.*

We recently provided an analysis of the Republican party's efforts to repeal and replace Obamacare through the House's [American Health Care Act \("AHCA"\)](#) and the Senate's [Better Care Reconciliation Act \("BCRA"\)](#). Senators Rand Paul (KY) and Susan Collins (ME) immediately announced their opposition to BCRA 2.0 leaving Senator Mitch McConnell with the absolute minimum 50 Republican senators he needed to move the BCRA forward. Last night two more Republicans announced their opposition to the BCRA -- Senators Mike Lee (UT) and Jerry Moran (KS) -- effectively killing any chance of passage of the BCRA repeal and replace bill. While Republicans share a general animosity toward the Affordable Care Act ("ACA"), they are not united in their solutions to the ACA problem. Conservatives, led primarily by Senator Paul, favor a complete repeal of the ACA, while moderates hope to keep some of the more popular provisions and not lose the coverage expansions gained under the ACA. BCRA 2.0 had attempted to craft legislation that united these disparate Republican goals, but without success.

Following Senators Lee and Moran's announcement, Senator McConnell and President Trump both signaled a change in course and advocated a complete repeal of the ACA with a two year sunset provision to allow them time to craft new health care reform legislation. Senator McConnell (who as recently as two weeks ago criticized full repeal as a possible avenue) would put in front of the legislature the same bill that was passed in 2015, at a time when the stakes were not as high knowing the bill would be vetoed by President Obama.

While a full repeal would appeal to the conservative faction in the party, it is far from clear that Senator McConnell has enough votes among the moderates to accomplish repeal in the current environment. There is early word that three Republican senators (Collins, Capito and Murkowski) have already gone on record that they would oppose a repeal then replace scenario. Further, the numbers do not look good even compared to the AHCA and BCRA. Back in 2015, the

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Congressional Budget Office scored the full repeal bill and found that, in just the first year following enactment and before the ACA would be cancelled, 18 million more people would lose coverage and premiums would increase by 20-25% relative to projections under the ACA. In ten years, 32 million more people would lose insurance and premiums would double.

In light of last night's and this morning's developments, the chance of repeal (with or without replacement) of the ACA is becoming remote. For planning and compliance purposes, employers should assume that the ACA remains the law of the land for the foreseeable future. Any health care reform changes would take the form of agency guidance, or bi-partisan legislative efforts which are likely to be far less comprehensive in scope.

Seyfarth Shaw will continue to monitor Congressional and regulatory efforts and will alert clients as new developments occur.

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