

# PUBLICATION

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## Surprise Opposition Sinks the Better Care Reconciliation Act; New Vote on "Repeal-and-Delay" Uncertain to Advance

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### Overview of Key Recent Developments

On Monday evening, July 17, Senators Mike Lee (R-UT) and Jerry Moran (R-KS) issued joint statements in opposition to the Better Care Reconciliation Act (BCRA), the Senate Republicans' companion bill to the House-passed American Health Care Act (AHCA). The legislation, which reforms the Affordable Care Act (ACA), was originally introduced on June 22 with subsequent revisions released on June 26 and July 13. The unexpected opposition from Senators Lee and Moran, combined with previously announced opposition from Senators Susan Collins (R-ME) and Rand Paul (R-KY), meant that Senate Republicans no longer had the minimum 50 votes for the motion to proceed to consideration of the BCRA. It appears that Senate Republicans' health care reform efforts have stalled following deep divisions between moderate and conservative members over the goals and various provisions of the BCRA – including restructuring the ACA's income-based premium subsidies, repealing the ACA's market regulations and taxes, phasing out Medicaid expansion, and transitioning Medicaid to a per capita cap or block grant program.

Following these developments, Senate Majority Leader Mitch McConnell (R-KY) quickly announced that in the coming days, the Senate will instead vote on the motion to proceed to consideration of the House AHCA, with the Senate's 2015 reconciliation bill offered as the first amendment to replace the House-passed text. The 2015 reconciliation bill, Restoring Americans' Healthcare Freedom Reconciliation Act (H.R. 3762) (also known as "Repeal-and-Delay"), was passed by the Senate 52 to 47 and vetoed by then-President Barack Obama. All Republican Senators voted in favor of the legislation, with the exceptions of Senator Collins and former Senator Mark Kirk (R-IL). The bill would retroactively eliminate the ACA's penalties for the individual and employer mandates and immediately repeal the ACA's taxes and fees. After a two-year delay, the bill would repeal the ACA's premium tax credits, Cost-Sharing Reductions (CSRs) and Medicaid expansion. Leader McConnell stated that the two-year delay would provide time to consider a replacement health care reform plan. President Donald Trump also called for the Senate to repeal the ACA first and deal with a replacement later.

### CBO Estimate of 2015 Repeal-and-Delay

The Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) scored the 2015 Repeal-and-Delay bill, estimating that it would reduce federal deficits by \$474 billion over the 2016 – 2025 period. In a subsequent estimate released in January 2017, they projected that relative to current law the bill would increase the number of uninsured by 18 million in the first new plan year following enactment, increasing to 27 million after the year two elimination of the ACA's Medicaid expansion and premium subsidies, and finally reaching 32 million by 2026. The CBO also predicted that, relative to current law, premiums in the nongroup market would increase by 20 percent to 25 percent in the first year, reaching about 50 percent in year two and almost doubling by 2026. These projections, which anticipate a comparatively greater impact than the CBO's estimates on the House-passed AHCA and previous Senate-proposed BCRA, would, according to the CBO's analysis, occur because eliminating the ACA's mandate penalties and subsidies while retaining the market reforms would destabilize the nongroup market.

### Senate Health Reform Outlook

Immediate reactions to Leader McConnell's announcement suggest that the Repeal-and-Delay approach faces an uncertain path moving forward. Within hours of Leader McConnell's announcement, Senators Collins, Shelley Moore Capito (R-WV) and Lisa Murkowski (R-AK) issued statements in opposition to the motion to proceed to debate the Repeal-and-Delay bill, citing concerns over the uncertainty and turmoil that repealing without a replacement plan may cause. Senator Rob Portman (R-OH) also issued a statement indicating he has significant concerns with the Repeal-and-Delay approach. Additional Senators to watch include Senators Bill Cassidy (R-LA), John Hoeven (R-ND), Dean Heller (R-NV), Lamar Alexander (R-TN) and Bob Corker (R-TN). With all Democrats expected to vote in opposition, Leader McConnell can only afford to lose two Republican Senators while still assuring passage (assuming Vice President Pence breaks a tie).

**Takeaway:** On Tuesday, July 18, Leader McConnell stated that the Senate would hold a procedural vote early next week on the Repeal-and-Delay bill. As of this writing, it seems unlikely that Senate Republicans will be able to garner the 50 votes needed for the motion to proceed to consideration or passage of the bill. Following Leader McConnell's announcement of the vote next week, President Trump invited all 52 Republican senators to the White House for lunch on Wednesday, July 19, to continue negotiations over the Republican health care reform effort.

One of the greatest concerns regarding the ACA is stability of the nongroup market, as premiums continue to rise and insurer participation remains unsettled for plan year 2018. The future of the ACA's CSR payments to insurers remains murky, which has been a key concern. Insurers argue that the viability of the exchange market would be in jeopardy if CSRs were to be abruptly discontinued.

If the Senate Republican health care reform effort fails, President Trump has insisted that Republicans should "let Obamacare fail." Senate Health, Education, Labor and Pensions (HELP) Chairman Lamar Alexander, as well as other senior Republicans, have signaled that Republicans may elect to work with Democrats on a bipartisan market stabilization package, but timing, like everything else, remains uncertain.