



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



July 7, 2017

## BCRA Remains on a Bumpy Road while Lawmakers Consider a Detour

Comments this week from several Republican senators suggest ever-increasing uncertainty around the future of the Better Care Reconciliation Act (BCRA) – the Senate Republican health reform package. The bill is far from dead, but differences within the Republican caucus may present an insurmountable challenge to finding the 50 votes needed to pass a bill. Although efforts are underway to appease the competing factions, some Republicans are beginning to offer contingency plans, in the event an agreement on BCRA cannot be reached.

### The Senate Continues to Tinker with BCRA

On the way out of town for the Independence Day recess, Senate Republicans tasked the Congressional Budget Office (CBO) with estimating the cost and coverage implications of additional changes to BCRA. To help appease moderates, the modified proposal includes a longer phase out of Medicaid expansion and more funding for opioid addiction. Revisions also included the addition of a conservative-friendly six-month waiting period for anyone attempting to purchase individual market coverage if they had a gap in coverage for 63 or more days.

The CBO is also analyzing an amendment, proposed by Ted Cruz (R-TX), to the initial draft of BCRA. By way of background, the Affordable Care Act's (ACA) market reforms mandate that individual market plans meet minimum standards, such as not imposing restrictions on preexisting conditions, coverage for ten categories of essential health benefits (e.g., maternity care and hospitalization), and no annual or lifetime dollar limits on those benefits. The Cruz amendment allows carriers that offer ACA-compliant coverage to also offer noncompliant coverage in the individual market.

**Lockton comment:** Senate Republicans are attempting to pass BCRA through the filibuster-proof, but complex, procedure called budget reconciliation. It is widely accepted that attempting to eliminate the ACA market reforms altogether will violate the budget reconciliation rules and kill the bill. The Cruz amendment would not completely eliminate the market reforms – carriers would still need to sell ACA-compliant plans – but comes close enough that it is uncertain whether the proposal complies with the reconciliation rules.

Advocates of the Cruz amendment believe those with higher health costs will choose the government-subsidized, ACA-compliant plans while healthier individuals, with lower costs, will gravitate toward the likely lower-cost ACA-noncompliant plans. The intended result is to help stabilize the individual market by effectively making the ACA-compliant plans a high risk pool subsidized by the federal government. The specific language of the amendment is yet to be released, so we will have to wait for the CBO score to better understand whether the amendment will be viewed positively enough to be incorporated into BCRA.

The CBO report is likely to be available next week, which means a vote on the proposal is not likely to occur before the week of July 17th. Perhaps more likely is the vote, if it happens at all, will be pushed off for at least a couple more weeks as lawmakers continue to iron out their differences. Sensing the need for more time, 20-plus Republican lawmakers have called on Senate Majority Leader Mitch McConnell (R-KY) and Speaker of the House Paul Ryan (R-WI) to cancel Congress's traditional August recess if necessary to pass a health reform bill.

### **Discussion of Alternative Strategies Grows**

Reports yesterday quote McConnell as saying Republicans will need to work with Democrats to pass a more limited package to stabilize the health insurance markets if a Republican-only proposal cannot be achieved. Any bipartisan solution would almost certainly build on the ACA framework, therefore making it difficult for Republicans to argue that they fulfilled their promises over the last seven years to repeal and replace the ACA. *But that just might be McConnell's point* – to motivate Republicans to pass some form of BCRA by alerting them to the consequences if they don't.

McConnell's comments come on the heels of calls by more conservatives for Congressional Republicans to separate their repeal and replace efforts – i.e., repeal the ACA now with a run out period to give lawmakers time to develop a replacement plan. Advocates of this strategy, including Sen. Ben Sasse (R-NE) who urged President Donald Trump in a [letter](#) to support it, suggest that once the ACA is repealed, Republicans (and maybe even Democrats) will have all the motivation necessary to come up with a cohesive replacement plan.

***Lockton comment:*** This "repeal and delay" strategy was originally floated earlier in the year, but was ultimately scrapped. Opponents, both within and outside of the Republican Congressional delegation, appeared to successfully argue that repealing the ACA without a replacement strategy in place could have a catastrophic destabilizing effect on the insurance markets. It is unclear whether repeal and delay advocates have found a way to counter this destabilization argument.

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