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SCHIP Provisions of H.R. 6164 (NIH Reform Act of 2006)

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Summary

The State Children's Health Insurance Program (SCHIP) is a federal-state matching program providing health insurance to targeted low-income children (and some adults) in families with income above Medicaid eligibility levels. Because SCHIP is a capped-grant program, it is possible for states to exhaust all of the federal SCHIP funds available to them in a given year. According to data available in late December 2006, 14 states are projected to exhaust their federal SCHIP funds in FY2007 (i.e., have a federal SCHIP shortfall). On January 15, 2007, the President signed into law H.R. 6164 (National Institutes of Health Reform Act of 2006, P.L. 109-482). The SCHIP provisions of H.R. 6164 require a redistribution of certain unspent FY2004 and FY2005 SCHIP original allotments to shortfall states in FY2007. The goal is to delay as long as possible the date in FY2007 on which any state faces a shortfall. Congress may address the remaining FY2007 shortfalls as part of reauthorization that provides SCHIP with appropriations needed beginning in FY2008. The SCHIP provisions of H.R. 6164 delay shortfalls to the first part of May 2007, according to current CRS projections. Although the provisions redistribute an additional $124 million for projected FY2007 shortfalls, the shortfalls remaining for the rest of the fiscal year are projected at $745 million. This report summarizes the SCHIP provisions of H.R. 6164 and their impact on SCHIP financing in FY2007. This report will not be updated.

The Balanced Budget Act of 1997 (BBA 97, P.L. 105-33) established the State Children's Health Insurance Program (SCHIP). In general, this program allows states to cover targeted low-income children with no health insurance in families with incomes above Medicaid eligibility levels. In BBA 97, Congress authorized and appropriated annual funding levels totaling nearly $40 billion for FY1998-FY2007, with each state receiving access to a portion of the annual amount. Each state's portion — the original allotment — is available for three years. At the end of the three-year period of availability, states' unspent balances are redistributed to other states that have exhausted that allotment. The specific amounts redistributed to the other states are determined by the Secretary of Health and Human Services (hereafter referred to as "the Secretary").

FY2004 original allotments still unspent as of the end of FY2006 totaled $146.9 million and are available for redistribution to other states in FY2007. Based on prior actions, the Secretary would likely have used his authority to redistribute the unspent FY2004 funds to *all* the states facing shortfalls in FY2007, in proportion to their total projected shortfall (**Table 1**). However, in order to delay shortfalls as long as possible, the SCHIP provisions of H.R. 6164 require the Secretary to redistribute the funds "in the order in which such [shortfall] States[1] realize monthly funding shortfalls ... for fiscal year 2007."[2] According to CRS projections, as shown in **Table 1**, five of the 14 projected shortfall states would receive redistributed FY2004 funds under H.R. 6164. These states (Illinois, Maryland, Massachusetts, New Jersey and Rhode Island) are projected to receive redistributed FY2004 funds because they are the first projected to face FY2007 shortfalls. The redistribution of FY2004 allotments specified in H.R. 6164 is projected to delay the five states' shortfalls of federal SCHIP funds to approximately the end of March 2007.

To delay shortfalls even further, the SCHIP provisions of H.R. 6164 call for an initial redistribution of up to half of unspent FY2005 original allotments as of March 31, 2007 (capped at $20 million per state) — after 2½ years of availability. For a state to forgo unspent FY2005 funds on that date, H.R. 6164 requires not only that the state have unspent FY2005 balances but that the state's *total* SCHIP balances (from the FY2005-FY2007 original allotments) as of March 31, 2007, are at least double what the state projects to spend in federal SCHIP funds in FY2007. Sixteen states are projected to have unspent FY2005 balances on March 31, 2007, according to CRS projections. Of those 16 states, three (Arkansas, New Mexico and Wyoming) would not have total available balances of at least double their FY2007 projected spending and therefore would not forgo any FY2005 funds. **Table 2** shows the 13 states currently projected to forgo FY2005 funds due to the the SCHIP provisions of H.R. 6164. Four states (Florida, Tennessee, Texas, and Washington) are projected to forgo the maximum amount ($20 million) on March 31, 2007.

This redistribution of unspent FY2005 funds does not replace the regular redistribution at the end of the allotment's three-year period of availability. CRS projects that only Tennessee and Washington will forgo any additional FY2005 funds at the end of FY2007 through the regular redistribution process. The projected federal SCHIP spending in these two states is so small relative to their allotment of SCHIP funds that the SCHIP provisions of H.R. 6164 are not projected to increase the total amount of FY2005 funds forgone compared to current law; H.R. 6164 simply makes $20 million of the projected total available earlier in the year, on March 31, 2007, from these two states.

CRS projects that the redistribution of the FY2005 funds on March 31, 2007, would provide an additional $124 million to shortfall states. Again, in order to delay shortfalls as long as possible, the SCHIP provisions of H.R. 6164 require the Secretary to

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[1] As stated in paragraph (1)(B), a shortfall state is one whose projected FY2007 federal SCHIP expenditures exceeds its balances remaining from its FY2005 and FY2006 original allotments as well as its newly available FY2007 original allotment. For more information on SCHIP original allotments, see CRS Report RL33366, *SCHIP Original Allotments: Description and Analysis*, by Chris L. Peterson.

[2] Paragraph (1)(C). Unless noted otherwise, all legislative references in this report are to the new Section 2104(h) added by the SCHIP provisions of H.R. 6164.

redistribute the funds "in the order in which such [shortfall] States realize monthly funding shortfalls ... for fiscal year 2007."[3] According to CRS projections, as shown in **Table 1**, six of the 14 projected shortfall states would receive redistributed FY2005 funds.

The SCHIP provisions of H.R. 6164 are currently projected to delay federal SCHIP shortfalls into the first week of May, based on estimates from the CRS SCHIP Projection Model. The limitations of these projections are discussed on the last page of this report.

Additional Provisions

Redistributed FY2004 and FY2005 funds to shortfall states can only be used for covering individuals who were eligible in a state's SCHIP program as of October 1, 2006.

When paid from redistributed FY2004 or FY2005 funds, the federal matching rate for SCHIP expenditures on non-pregnant adults is the regular Federal Medical Assistance Percentage (FMAP) available in Medicaid, rather than the usual enhanced FMAP available for SCHIP child health assistance.[4]

The SCHIP provisions of H.R. 6164 authorize the Secretary to make a retrospective adjustment to the amounts of the FY2004 and FY2005 funds that are redistributed. The Secretary's initial determinations will be based on states' projections and the latest available data at the time those determinations are made. By permitting a retrospective adjustment, the Secretary may alter those initial determinations in light of states' actual FY2007 expenditure data reported by November 30, 2007. The Secretary's authority with respect to the retroactive adjustment is limited in the following ways.

- The amount of FY2005 funds forgone by a state on March 31, 2007, cannot be increased (but it can be reduced).
- Additional amounts that may be required for shortfall states because of the retrospective adjustments can only come from FY2005 original allotments still unspent at the end of FY2007 (after three years' availability).

The SCHIP provisions of H.R. 6164 also make clear that (a) the Secretary is *not* authorized to redistribute FY2006 or FY2007 original allotments in order to eliminate FY2007 federal SCHIP shortfalls, and (b) the Secretary *is* authorized to redistribute any unspent FY2005 original allotments still remaining at the end of FY2007 according to the regular redistribution process.

Any shortfall states that received redistributed FY2004 or FY2005 funds in FY2007 have access to those funds during FY2007 only. Any of the funds unspent at the end of FY2007 will not be available for another redistribution (though potentially available for retrospective adjustments by the Secretary).

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[3] Paragraph (2)(C).

[4] For all but Alaska, the most up-to-date FY2007 FMAPs are available at [http://aspe.hhs.gov/health/fmap07.pdf]. For Alaska, the information is available at [http://aspe.hhs.gov/health/fmap07a.pdf].

In previous years, the five commonwealths and territories (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) have received 1.05% of the total amount available for redistribution. However, the SCHIP provisions of H.R. 6164 stipulate that only states (defined to include the District of Columbia) may receive redistributed FY2004 and FY2005 funds in FY2007.

Extending the 20% Allowance. In 2003, P.L. 108-74 created Section 2105(g) of the Social Security Act, permitting qualifying states to apply federal SCHIP funds toward the coverage of certain children already enrolled in regular Medicaid. Specifically, these federal SCHIP funds are used to pay the difference between SCHIP's enhanced FMAP and the Medicaid FMAP that the state is already receiving for these children. Subsequent legislation amending this subsection has mostly added other years of federal SCHIP funds from which 20% spending could be drawn.

Qualifying states are limited in the amount they can claim for this purpose to the lesser of the following two amounts:

- 20% of the state's applicable original allotment(s) (hence the terms "20% allowance" and "20% spending"), and
- the state's balances (calculated quarterly) of available SCHIP funds from the applicable year's funds. If there is no balance, states may not claim 20% spending.

The 20% allowance can be used by qualifying states only for Medicaid enrollees (excluding those covered by an SCHIP-funded expansion of Medicaid) who are under age 19 and whose family income exceeds 150% of poverty. The primary purpose of the 20% allowance was to enable qualifying states to receive the enhanced FMAP for certain children who likely would have been covered under SCHIP had the state not expanded their regular Medicaid coverage before SCHIP's enactment in August 1997. Eleven states qualify to claim 20% spending: Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington and Wisconsin. In FY2006, only three states (New Hampshire, Vermont, and Washington) reported 20% spending.

Prior to H.R. 6164, the only funds available for 20% spending in FY2007 would have been from FY2005 funds. However, the SCHIP provisions of H.R. 6164 also permit FY2006 and FY2007 funds to be used for 20% spending, increasing the total amount permitted for 20% spending. This would at least triple the maximum amount of 20% spending permitted in FY2007 among qualifying states, according to CRS estimates.

Analysis

The goal of the SCHIP provisions of H.R. 6164 is to delay as long as possible the date in FY2007 on which any state faces a shortfall. Congress may address the remaining FY2007 shortfalls as part of reauthorization that provides SCHIP with appropriations needed beginning in FY2008. H.R. 6164 delays federal SCHIP shortfalls to the first part of May 2007, according to current CRS projections. Although H.R. 6164 provides an additional $124 million for projected FY2007 shortfalls (from redistributed FY2005 funds), the shortfalls remaining for the rest of FY2007 are projected at $745 million.

Table 1. Projected Amounts of Unspent FY2004 and FY2005 Funds Redistributed to Selected Shortfall States, Their Remaining Shortfalls, and Projected SCHIP Shortfall Date in FY2007

(in millions of dollars)

State	Shortfalls without FY2004 redistribution	*Pre-H.R. 6164*			*H.R. 6164*			
		Redistribution of FY2004 funds	Remaining shortfalls	Projected SCHIP shortfall date	Redistribution of FY2004 funds	Redistribution of FY2005 funds	Remaining shortfalls	Projected SCHIP shortfall date
Alaska	$13.5	$1.9	$11.5	5/14/07		$1.0	$12.5	5/3/07
Georgia	$128.5	$18.4	$110.1	5/25/07			$128.5	5/3/07
Illinois	$365.5	$52.3	$313.2	3/17/07	$68.5	$54.4	$242.6	5/3/07
Iowa	$15.0	$2.2	$12.9	7/10/07			$15.0	6/26/07
Maine	$0.5	$0.1	$0.5	9/24/07			$0.5	9/23/07
Maryland	$79.4	$11.4	$68.1	4/19/07	$2.4	$14.7	$62.4	5/3/07
Massachusetts	$139.1	$19.9	$119.2	3/10/07	$30.8	$20.6	$87.7	5/3/07
Minnesota	$15.8	$2.3	$13.5	7/30/07			$15.8	7/19/07
Mississippi	$23.7	$3.4	$20.3	7/31/07			$23.7	7/21/07
Missouri	$3.3	$0.5	$2.9	9/20/07			$3.3	9/18/07
Nebraska	$0.1	$0.0	$0.1	9/30/07			$0.1	9/30/07
New Jersey	$178.6	$25.6	$153.0	3/20/07	$32.0	$27.3	$119.3	5/3/07
Rhode Island	$49.9	$7.1	$42.7	2/21/07	$13.2	$6.4	$30.3	5/3/07
Wisconsin	$2.8	$0.4	$2.4	9/22/07			$2.8	9/20/07
Total	**$1,015.8**	**$145.3**	**$870.5**		**$146.9**	**$124.4**	**$744.5**	

Source: CRS SCHIP Projection Model, based on data from states provided to the Centers for Medicare and Medicaid Services as of late December 2006.

Notes: Pre-H.R. 6164 assumes the Secretary of Health and Human Services would have redistributed unspent FY2004 original allotments proportionally relative to states' projected FY2007 shortfalls. Projected SCHIP shortfall dates assumes constant claiming throughout the fiscal year. Redistribution of FY2004 funds pre-H.R. 6164 reflects 1.05% of the total going to the five commonwealths and territories.

Table 2. Projected Amounts of Unspent FY2004 and FY2005 Funds Forgone in FY2007
(in millions of dollars)

	FY2004	FY2005			
	Both pre- and with H.R. 6164	Pre-H.R. 6164	H.R. 6164		
State	Forgone at end of FY06	Forgone at end of FY07	Forgone on 3/31/2007	Forgone at end of FY07	Total
Colorado			$5.0		**$5.0**
Connecticut	$7.5	**$10.7**	$11.8		**$11.8**
Delaware	$0.8	**$0.6**	$2.4		**$2.4**
DC			$2.0		**$2.0**
Florida			$20.0		**$20.0**
Idaho			$4.5		**$4.5**
Nevada	$3.7	**$9.2**	$12.4		**$12.4**
New Hampshire			$1.2		**$1.2**
New Mexico	$1.4				
South Carolina			$3.9		**$3.9**
Tennessee	$58.0	**$56.0**	$20.0	$36.0	**$56.0**
Texas	$61.5		$20.0		**$20.0**
Vermont		**$0.4**	$1.1		**$1.1**
Washington	$14.1	**$37.7**	$20.0	$17.7	**$37.7**
Total	**$146.9**	**$114.6**	**$124.4**	**$53.6**	**$178.1**

Source: CRS SCHIP Projection Model, based on data from states provided to the Centers for Medicare and Medicaid Services as of late December 2006.

Limitations of the Projections

The CRS projections are based on what states provided to the Centers for Medicare and Medicaid Services (CMS) as of late December 2006. States' projections will inevitably change, not only because of the usual challenges of predicting expenditures, but because states make changes to their programs — changes that will affect how much is ultimately spent. The projections are also based on states' reported FY2006 expenditures as of late December 2006.

The pre-H.R. 6164 analysis of shortfalls shown in **Table 1** was based on the assumption that the Secretary would use his authority (under section 2104(f) of the Social Security Act) to redistribute the unspent FY2004 funds to shortfall states in proportion to their shortfall. However, he was not required to do so. He may instead have decided to redistribute the unspent FY2004 funds as specified in the SCHIP provisions of H.R. 6164.

The CRS projections of the amounts forgone and the amounts of monthly shortfalls assume that states' projected spending is spread evenly across the fiscal year. But states may change their claiming practices in order to affect the level of funds they receive or forgo.