Order Code RS22746
Updated October 29, 2007

CRS Report for Congress

SCHIP: Differences Between H.R. 3963 and the Vetoed H.R. 976

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Summary

The Balanced Budget Act of 1997 (P.L. 108-173) established the State Children's Health Insurance Program (SCHIP) under a new Title XXI of the Social Security Act. SCHIP builds on Medicaid by providing health insurance to low-income, uninsured children in families with incomes above applicable Medicaid income standards. In BBA 97, Congress authorized and appropriated funds for FY1998-FY2007. No federal appropriations are slated for FY2008 and beyond. However, a continuing resolution that contains short-term funding for SCHIP (P.L. 110-92) was enacted at the end of September 2007.[1]

The 110th Congress has considered reauthorization legislation that would make important changes to Medicaid and SCHIP, including the Senate-passed Children's Health Insurance Program Reauthorization Act of 2007 (S. 1893/H.R. 976) and the House-passed Children's Health and Medicare Protection Act of 2007 (H.R. 3162). A bicameral agreement on SCHIP reauthorization passed the House on September 25 and the Senate on September 27 as an amendment to H.R. 976. President Bush vetoed H.R. 976 on October 3. The House sustained the President's veto with a vote on October 18.

The House passed H.R. 3963, a modified version of the vetoed H.R. 976, on October 25, 2007, with a vote of 265 to 142. A Senate vote is expected. This report summarizes the differences between the two bills across key provisions, and will be updated as legislative activity warrants.[2]

[1] For additional information on the impact of the continuing resolution on SCHIP financing, see CRS Report RS22739, *FY2008 SCHIP Allotments*, by Chris L. Peterson.

[2] For a brief description of current law and a side-by-side comparison of the changes that would be made to Medicaid and SCHIP under H.R. 3162, S. 1893/H.R. 976, and the bicameral agreement, see CRS Report RL34129, *Medicaid and SCHIP Provisions in H.R. 3162, S. 1893/H.R. 976, and Agreement*, by Evelyne P. Baumrucker et al.

Overview of H.R. 3963 and the Vetoed H.R. 976

Although this report focuses on differences between the bills, the vetoed H.R. 976 and H.R. 3963 share many common elements, including:

- national allotment appropriations totaling $61.4 billion over five years (an increase of $36.2 billion over the current law baseline of $25.2 billion), distributed to states and territories using a new formula that builds on provisions in the House and Senate reauthorization bills;
- a new contingency fund (for making payments to states for certain shortfalls of federal SCHIP funds), which would receive deposits through a separate appropriation each year through FY2012 and make payments of up to 20% of the available national allotment for SCHIP;
- new performance bonus payments (for states exceeding certain enrollment levels), which are funded with an FY2008 appropriation of $3 billion and deposits of certain unspent SCHIP funds through FY2012;
- additional grants for outreach and enrollment totaling $100 million each year through FY2012;
- provisions to remove barriers to enrollment;
- provisions related to benefits (e.g., dental, mental health and Early and Periodic, Screening, Diagnosis and Treatment [EPSDT]);
- provisions to eliminate barriers to providing premium assistance;
- provisions to strengthen quality of care and health outcomes of children;
- program integrity and miscellaneous provisions, including some that affect the Medicaid program; and
- tobacco tax changes.

A cost estimate from the Congressional Budget Office (CBO) indicates that the vetoed H.R. 976 would increase outlays by $34.9 billion over 5 years and by $71.5 billion over 10 years.[3] A cost estimate for H.R. 3963 indicates that it would increase outlays by $35.4 billion over 5 years and by $71.5 billion over 10 years.[4] Costs in both bills would be offset by an increase in the federal tobacco tax and other changes, which the Joint Committee on Taxation (JCT) estimates would increase net revenue by $36.3 billion over 5 years and by $72.8 billion over 10 years.

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[3] CBO, letter to the Honorable John Dingell (September 25, 2007), available at [http://www.cbo.gov/ftpdocs/86xx/doc8655/hr976.pdf].

[4] CBO, *CBO's Estimate of the Effects on Direct Spending and Revenues of the Children's Health Insurance Program* (October 24, 2007), available at [http://www.cbo.gov/ftpdocs/87xx/doc8741/hr976DingellLtr10-24-2007.pdf].

Differences Between the Bills

Funding/Financing

Allotments. The vetoed H.R. 976 appropriated a total of $61.4 billion for SCHIP allotments between FY2008 and FY2012. H.R. 3963 does not alter these amounts or the formulas for calculating states' SCHIP allotments.[5]

Bonus Payments. The vetoed H.R. 976 called for bonus payments to states that (1) increase their enrollment of children in Medicaid or SCHIP above certain levels and (2) implement four out of seven specific activities to encourage enrollment and retention among Medicaid and SCHIP-eligible children. Qualifying states would receive cash payments as a percentage of the state share of their Medicaid/SCHIP expenditures, though setting a higher bar and paying a lower percentage in SCHIP as compared to Medicaid.

Unlike H.R. 976 as vetoed, H.R. 3963 would not make bonus payments available for increases in SCHIP enrollment — only for increases in enrollment among children in Medicaid. To be eligible for bonus payments under H.R. 3963, a state would have to implement five, rather than four, of eight, rather than seven, specific activities to encourage enrollment and retention.[6] In addition, the second tier percentage for bonus payments would be slightly higher — 62.5% of the state share, rather than the 60% in H.R. 976 as vetoed for increases in child enrollment in Medicaid. Unlike H.R. 976 as vetoed, H.R. 3963 also specifies that bonus payments "may only be used to reduce the number of low-income children who do not have health insurance coverage in the State."

Redistribution of Unspent FY2005 Allotments. H.R. 3963 would allow the redistribution of unspent FY2005 allotments to occur as specified in the recently enacted continuing resolution (H.J.Res. 52, P.L. 110-92), which would go to states in the order in which they face shortfalls (with unused FY2005 funds not available for redistribution after FY2008).

Limitations on SCHIP Matching Rate and Availability of Federal Funds. Under current law, states can set their upper income eligibility threshold for SCHIP at the higher of 200% of the federal poverty line (FPL) or 50 percentage points above their income eligibility level for Medicaid children prior to SCHIP's enactment. However, by using existing flexibility to define what counts as income, any state can raise its effective income eligibility threshold for SCHIP through the use of income disregards, which must

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[5] The only change in the legislation in these sections would reduce the amount of the FY2012 semiannual appropriations for SCHIP allotments to $1.15 billion, from $1.75 billion, with the one-time appropriation for SCHIP allotments in FY2012 (Section 108 of the bill) increased to $13.7 billion, from $12.5 billion. Although the total appropriation for FY2012 allotments is $16 billion in both versions, the substantive impact is that the "baseline" of funding for SCHIP allotments from FY2013 onward will reflect the $1.35 billion in semiannual installments, rather than $1.75 billion. This change affects the baseline between FY2013 and FY2017 for the purposes of the score by the CBO (even though the legislation itself provides appropriations directly for SCHIP allotments only through FY2012).

[6] The new, eighth activity is "implementing the option of providing premium assistance subsidies...."

be approved by the federal government. There are two types of income disregards that have been used by states. The first type excludes a particular dollar amount based on a type of income (e.g., earnings) or expense (e.g., child care). The second type of income disregard excludes an entire block of income.

Although H.R. 976 as vetoed would not affect states' ability to use income disregards, it would *reduce* the federal reimbursement rate for costs associated with SCHIP enrollees whose income would exceed 300% FPL without the use of a block of income disregard. An exception would be provided for states that, on the date of enactment, have federal approval or have enacted a state law to cover SCHIP enrollees above 300% FPL. In contrast, H.R. 3963 would *deny* federal funding for costs associated with SCHIP enrollees whose income would exceed 300% FPL without the use of a block of income disregard. An exception would only be provided for states that have federal approval to cover SCHIP enrollees above 300% FPL on the date of enactment (New Jersey is the only state that currently meets this requirement).

Illegal Aliens and Unauthorized Expenditures. H.R. 976 as vetoed would specify that nothing in the bill allows federal payment for individuals who are not legal residents. H.R. 3963 would add an additional statement that Titles XI, XIX, and XXI provide for the disallowance of federal financial participation for erroneous expenditures under Medicaid and SCHIP.

Eligibility

The vetoed H.R. 976 allowed broader coverage of pregnant women under SCHIP, in terms of eligibility and benefits, when certain conditions were met. It largely followed the Senate-passed SCHIP bill with modifications based on the House bill. Pregnancy-related assistance included all services covered under SCHIP for children in a state as well as prenatal, delivery and postpartum care, and also included Medicaid benefits provided to pregnant women in the state. H.R. 3963 would delete coverage of Medicaid services for the new group of pregnant women under SCHIP.

With respect to SCHIP coverage of adult populations (e.g., nonpregnant childless adults and parents of Medicaid and SCHIP-eligible children), the vetoed H.R. 976 would phase out SCHIP coverage of non-pregnant childless adults after two years, and in FY2009, federal reimbursement for such coverage would be reduced to the Medicaid federal medical assistance percentage (FMAP) rate. Under H.R. 3963, SCHIP coverage of non-pregnant childless adults would end on December 31, 2008, and federal reimbursement for such coverage would be maintained at the SCHIP enhanced federal medical assistance percentage rate. Under both bills, such states would be permitted to apply for Medicaid waivers to continue coverage for such populations, but such waivers would be subject to a specified budget neutrality standard (i.e., tied to the 2008 state spending on this population increased by a specified growth factor).

The treatment of parents is identical under the vetoed H.R. 976 and H.R. 3963. Coverage of parents would still be allowed, but beginning in FY2010, allowable spending under the waivers would be subject to a set aside amount from a separate allotment and would be matched at the state's regular Medicaid FMAP rate unless the state is able to prove that it met certain coverage benchmarks (related to performance in providing coverage to children). Finally, in FY2011 and FY2012, the federal matching rate for costs

associated with such parent coverage would be reduced to a rate between the Medicaid and SCHIP rates for states that meet certain coverage benchmarks, and to the state's regular Medicaid FMAP for all other states.

Enrollment and Access

The vetoed H.R. 976 and H.R. 3963 include identical provisions to facilitate access and enrollment in Medicaid and SCHIP. Among the major provisions, the bills would create a state option to rely on a finding from specified agencies to determine whether a child under age 19 (or an age specified by the state not to exceed 21 years of age) has met one or more of the eligibility requirements (e.g., income, assets or resources, citizenship, or other criteria) necessary to determine an individual's initial eligibility, eligibility redetermination, or renewal of eligibility for medical assistance under Medicaid or SCHIP. The bills would not relieve states of their obligation to determine eligibility for Medicaid, and would require the state to inform families that they may qualify for lower premium payments or more comprehensive health coverage under Medicaid if the family's income were directly evaluated by the state Medicaid agency. Both bills would drop the requirement for signatures on a Medicaid application form under penalty of perjury.

Current law and regulations require that SCHIP plans include procedures to ensure that SCHIP coverage does not substitute for coverage provided in group health plans, also known as crowd-out. On August 17, 2007, the Administration issued a guidance letter explaining how CMS would apply existing requirements in reviewing state requests to extend SCHIP eligibility to children with income levels exceeding 250% FPL, including specified crowd-out strategies states would be required to implement within one year.

The vetoed H.R. 976 included a crowd-out provision. It would have required states already covering children with income exceeding 300% FPL (and beginning in 2010, new states that propose to do so) to describe how they will address crowd-out and implement "best practices" to avoid crowd-out (to be developed by the Secretary in consultation with the states). H.R. 3963 would amend this provision to require *all* states to submit a state plan amendment describing how they will address crowd-out and incorporate such best practices in their SCHIP programs.

Under the vetoed H.R. 976, beginning in 2010, higher income states (those covering children with income exceeding 300% FPL) cannot have a combined rate of public and private coverage for low-income children that is less than the "target rate of coverage for low-income children." This target rate would be calculated by the Secretary to represent the average rate of private and public coverage combined among the 10 states and DC with the highest percentage of such coverage. States failing to meet this requirement in a given fiscal year would not receive any federal SCHIP payments for higher income children until they come into compliance with this rule. States would develop corrective action plans and the Secretary would not be permitted to deny payments if there is a reasonable likelihood that such plans would bring affected states into compliance.

H.R. 3963 would also add language to require that, in the case of state plan amendments denied on or after August 16, 2007 on the basis of policy or interpretation in effect prior to the date of enactment of this Act, if such a state submits a modification of such a state plan amendment that complies with the crowd-out provisions in this bill,

the original date of submission for the state plan amendment must be applied to the modified state plan amendment. However, such a modified state plan amendment must not be effective before the date of enactment of this Act. Also, payments for services to children with income exceeding 300% FPL (if applicable) would not be permitted for such a modified state plan amendment.

The crowd-out provisions in both the vetoed H.R. 976 and H.R. 3963 would supersede the August guidance letter.

Citizenship Documentation. Under current law, U.S. citizens and nationals must present documentation that proves citizenship and documents personal identity in order for states to receive federal Medicaid reimbursement for services provided to them. H.R. 976 as vetoed would modify existing Medicaid citizenship documentation rules (e.g., by requiring additional documentation options for federally recognized Indian tribes and specifying the reasonable opportunity period for individuals who are required to present documentation). It would also provide a new option for states to meet Medicaid citizenship documentation requirements through name and Social Security number (SSN) validation, make citizenship documentation a requirement for SCHIP, and provide an enhanced match for certain administrative costs. H.R. 3963 would include the same changes, except that (1) the name and SSN option for citizenship documentation would determine whether an individual's name or SSN, or declaration of citizenship or nationality, is inconsistent with information in the records maintained by the Commissioner of Social Security; and (2) $5 million would be appropriated to carry out the Commissioner's citizenship documentation responsibilities. (H.R. 976 as vetoed would require name and SSN validation only. SSNs by themselves do not denote citizenship, because certain noncitizens are eligible for them.)

Premium Assistance

Both bills would allow states to offer a premium assistance subsidy for qualified employer sponsored coverage to all targeted low-income children who are eligible for child health assistance and have access to such coverage, or to parents of targeted low-income children. The bills would also allow states to offer a premium assistance subsidy for qualified employer sponsored coverage (ESI) to Medicaid-eligible children and/or parents of Medicaid-eligible children where the family has access to ESI coverage (H.R. 3963 includes language to ensure that Medicaid premium assistance programs coordinate with premium assistance programs offered under this provision). In addition, both bills specify that family participation in premium assistance programs would be optional.

Payments

In mid-August and early September, the Administration issued proposed rules to restrict Medicaid coverage or payments for rehabilitation services and certain school-based services. The vetoed H.R. 976 would prohibit the Secretary of HHS from taking any actions (including through regulation) to restrict Medicaid coverage or payment for rehabilitation and school-based services if such actions are more restrictive in any aspect than those applied to such coverage or payments as of July 1, 2007. Under H.R. 976 this prohibition would have been in effect until May 28, 2008. H.R. 3963 would change this moratorium date from May 28, 2008 to January 1, 2010.