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IN THIS BRIEF

- ✓ Draft House and Senate Children's Health Insurance Program (CHIP) extension legislation include provisions to extend CHIP program funding for five years.
- ✓ Both proposals would phase down the current 23 percentage point increase in the enhanced CHIP matching rate. In fiscal year (FY) 2020 the increased match would drop to an 11.5 percentage point increase and be eliminated in FY 2021.
- ✓ The Medicaid and CHIP maintenance of effort provision included in the Affordable Care Act (ACA) would be extended for three years and modified to apply only to children in families at or below 300 percent of the federal poverty level (FPL) for FY 2020-2022.
- ✓ The House draft would delay cuts to Medicaid Disproportionate Share Hospital (DSH) payments for one year and provide additional federal Medicaid funding to support Puerto Rico and the Virgin Islands.
- ✓ The draft House legislation includes offsets to pay for the legislation; the Senate has not yet determined how it will pay for the CHIP extension.
- ✓ Timing for final action is uncertain but at least 10 states will run out of CHIP funding by the end of the year.
- ✓ In light of this funding uncertainty, states are increasingly considering actions to freeze enrollment and provide notices to families that could lose coverage.

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Introduction

The Children's Health Insurance Program (CHIP) covers nearly nine million children and is a key contributor to record low levels of uninsurance among children. However, Congress only provided funding for CHIP through fiscal year (FY) 2017, which ended on September 30, and has not yet acted to authorize new funding for FY 2018. This Issue Brief reviews the current status of state CHIP programs in light of the CHIP funding extension delay and summarizes key features of proposed House and Senate extension legislation.

Current Status of State CHIP Programs

States can use funding from their prior year funding allotments until they are gone, but new dollars will not be available until Congress takes action. However, some states could use up available dollars within a matter of weeks and the Centers for Medicare & Medicaid Services (CMS) has already reallocated unspent CHIP money to provide Minnesota with \$3.6 million to continue its program until Congress approves new funding. According to the Kaiser Family Foundation, at least 10 states are projected to run out of funding by the end of 2017 and at least 32 other states project they will exhaust their allotments by the end of March.¹

In light of the uncertainty about future funding, states are beginning to take action to address anticipated funding shortfalls. These actions include planning to freeze enrollment and to send notices to families and providers to alert them of pending program termination.²

Overview of Congressional Activity to Extend CHIP

In early October, both the House and Senate marked up legislation to extend CHIP funding. Both bills would extend CHIP funding for five years and generally maintain the current structure of CHIP. One notable exception is both bills phase out the enhanced CHIP matching funds authorized under the ACA (a 23 percentage point bump) beginning in FY 2020. While the two bills are similar in their substantive approach to renewing CHIP, the Senate bill (The Keep Kids' Insurance Dependable and Secure Act of 2017 (the KIDS Act, S. 1827)³) is a CHIP-only bill that does not specify how the new CHIP funds will be paid for. The House bill (The Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act of 2017 (the HEALTHY KIDS Act, H.R. 3921)⁴) includes offsets as well as several non-CHIP provisions.

Because the House and Senate appear poised to pass different versions of CHIP extension legislation, the two chambers will need to reconcile their competing versions of legislation. While key leaders in Congress have publicly expressed their commitment to quick action, it is not yet clear whether final legislative approval will take place this fall or will linger into December, when other must-pass legislation such as the next continuing resolution for funding the federal government would offer a vehicle for the CHIP funding extension. With more states sounding the alarm about exhausting their funding before December, momentum may be building for more immediate action.

Below we summarize the key provisions in the House and Senate CHIP packages.

CHIP Funding Extension

Unlike Medicaid, CHIP is funded on an annual basis with appropriated amounts specified in statute and divided among states according to a formula. For FY 2016 and FY 2017, the annual appropriation amounts were \$19.3 billion and \$20.4 billion, respectively. States can use their share of appropriated CHIP funds (typically referred to as a state's "allotment") for up to two years, and, depending on circumstances, may also have access to additional federal dollars from a contingency fund or from other states that did not use their full allotments.⁵

Funding Level. The House and Senate proposals would extend CHIP funding for five years, at the following levels:

- > FY 2018: \$21.5 billion
- > FY 2019: \$22.6 billion
- > FY 2020: \$23.7 billion
- > FY 2021: \$24.8 billion
- > FY 2022: \$25.9 billion

As has been the practice in the past, these appropriation levels are set at levels above what states are expected to actually need, ensuring that states are unlikely to run out of CHIP funds despite the capped nature of the federal funding stream.⁶ Both proposals make technical changes to the CHIP allotment rebasing formula but generally continue the key features of CHIP funding distribution, including the contingency fund to assist states that experience funding shortfalls.

Enhanced CHIP Matching Rate (or CHIP "bump"). State spending on CHIP is matched at an enhanced matching rate, which ranges from 65 percent to 85 percent. The ACA increased this enhanced matching rate by 23 percentage points (not to exceed 100 percent) for most CHIP expenditures from FY 2016 through FY 2019. The House and Senate legislation would maintain the current law's 23 percentage point increase for two years (FYs 2018 and 2019), transition to an 11.5 percentage point increase in FY 2020, and then eliminate the increase entirely for FYs 2021 and 2022.

Qualifying States. Certain states that expanded Medicaid eligibility for children prior to CHIP enactment in 1997 are eligible to use their CHIP allotment funds to finance the difference between their Medicaid and CHIP matching rates for the cost of covering children above 133 percent FPL.⁷ Both bills extend this authority through FY 2022.

Medicaid and CHIP Coverage Provisions

Express Lane. Under current law, states may rely on eligibility determinations made by "Express Lane" agencies (e.g., TANF, SNAP, CHIP, and Medicaid) for initial determinations of eligibility for Medicaid or CHIP, as well as for redeterminations and renewals for these programs. This authority ended on September 30, 2017 and the Senate legislation would reinstate it and extend it through FY 2022. Nine states currently use Express Lane for eligibility or renewal, or both, in their Medicaid or CHIP programs.⁸

Maintenance of Effort. For children up to age 19, states are required to maintain their Medicaid and CHIP programs with the same eligibility standards, methodologies, and procedures in place as of the date of enactment of the ACA (March 23, 2010) through September 30, 2019. The House and Senate legislation maintain the current law maintenance of effort provision

KEY DIFFERENCES BETWEEN HOUSE AND SENATE BILLS

The House bill includes several provisions that are not included in the Senate bill:

- > **CHIP Look-Alike Plans and Risk Pools.** States may consider children enrolled in state-funded CHIP look-alike programs to be part of the same risk pool as CHIP-enrolled children if the look-alike plan coverage is at least equivalent to CHIP coverage, lowering the cost of purchasing coverage.
- > **Medicaid Disproportionate Share Hospital (DSH) Payments.** The House bill eliminates \$2 billion in scheduled reductions in Medicaid DSH payments to hospitals for FY 2018. However, the legislation adds \$8 billion in DSH cuts in FY 2026 and an additional \$8 billion in FY 2027 to offset the cost of the short-term delay.
- > **Payments to Puerto Rico and Virgin Islands.** The House bill makes up to \$1 billion in new federal Medicaid funds available for Puerto Rico and also provides relief to the Virgin Islands, determined on a per capita equivalent basis to the amount provided to Puerto Rico. The legislation also includes other temporary funding adjustments for Puerto Rico and the Virgin Islands, all subject to the territories' ability to contribute the non-federal share.
- > **Offsets.** To pay for extending CHIP financing through FY 2022, the House bill would change Medicaid's third-party liability policy, require states to remove lottery winners from state Medicaid programs, and increase means-testing in Medicare for high-income seniors.

through FY 2019 and then extend the provision, with revisions, for three more years. Specifically, from October 1, 2019 through September 30, 2022, the bills would extend the Medicaid and CHIP maintenance of effort for children in families, except states would not be obligated to maintain coverage for children with incomes above 300 percent FPL. Ninety-seven percent of children enrolled in CHIP are at or below 250 percent FPL.⁹

CHIP Look-Alike Plans and Risk Pools. Some states have established state-funded CHIP look-alike programs for children under age 19 who are not eligible for Medicaid or CHIP. Beginning in January 2018, as long as the coverage offered by these look-alike programs is at least equivalent to CHIP coverage, children enrolled in look-alike plans can be considered as part of the same risk pool as CHIP-enrolled children. This is likely to decrease the cost of such plans by improving the risk pool. The House proposal also specifies that children enrolled in these plans are to be treated as having “minimum essential coverage” for purposes of satisfying the individual mandate. A qualified look-alike program must be funded exclusively through non-federal funds, which can include premiums paid by families on behalf of their children. The Senate bill does not have an equivalent provision.

Additional Funding to Support Children’s Health

When CHIP was reauthorized in 2009, Congress added funding to conduct various demonstration projects, grants, and other activities aimed at improving children’s health. These include a Childhood Obesity Demonstration Project, efforts to support pediatric quality measurement, and Outreach and Enrollment grants. The House and Senate bills extend funding for these provisions at levels consistent with previous years’ funding.

Other Provisions

DSH Payments. The House bill eliminates \$2 billion in scheduled reductions in Medicaid DSH payments to hospitals for FY 2018. However, the proposed legislation adds \$8 billion in DSH cuts in FY 2026 and an additional \$8 billion in FY 2027 to offset the cost of the short-term delay. The Senate bill does not address DSH.

Relief for Puerto Rico and the Virgin Islands. The House bill includes several provisions to aid Puerto Rico and the Virgin Islands. First, the bill makes up to \$1 billion in new federal Medicaid funds available for Puerto Rico and also provides relief to the Virgin Islands, determined on a per capita equivalent basis to the amount provided to Puerto Rico. The legislation also includes other temporary funding adjustments for Puerto Rico and the Virgin Islands, all subject to the territories’ ability to contribute the non-federal share.

Offsets

The cost of the provisions under consideration in Congress is expected to exceed \$8 billion over 10 years, according to preliminary estimates by the Congressional Budget Office (CBO).¹⁰ The Senate has not yet settled on a strategy for financing its bill, but the House has identified specific offsets.

Medicaid Third Party Liability. Longstanding Medicaid rules require that, when a Medicaid beneficiary has another source of coverage, states must generally ensure that the other insurer is billed before Medicaid. The House bill repeals exceptions to these rules for prenatal and pediatric care and child support orders. The legislation also makes a series of other changes to clarify the responsibilities of states and Medicaid managed care organizations in carrying out third party liability, to both incentivize states to carry out these third party liability requirements, and to penalize states for failing to do so.

Treatment of Lottery Winnings and Lump Sum Payments for Purposes of Determining Medicaid Eligibility. The House legislation includes a provision that modifies Medicaid eligibility rules so that states can disenroll high-dollar lottery winners (or recipients of other lump sum payments) for specified periods of time based on the size of the lump sum.

Means Testing Part B and Part D Medicare Premiums. The House legislation would increase from 80 percent to 100 percent the amount of Medicare Part B and Part D premiums that Medicare beneficiaries with incomes above \$500,000 (or \$875,000 for a couple filing jointly) pay. In other words, higher income individuals would pay the full cost of their Part B and Part D coverage. Beginning in FY 2027, the legislation also indexes these higher amounts for inflation.

Conclusion

States are facing a looming shortfall of CHIP funding as Congress has not yet authorized CHIP funding for the current fiscal year. House and Senate legislation would extend funding for five years and generally continue the CHIP program unchanged, but there are differences in the House and Senate legislation that will need to be reconciled before legislation is signed into law. Timing for final legislative action remains unclear, and, as a result, more states are expected to take action to address anticipated funding shortfalls.

Endnotes

1. According to the Kaiser Family Foundation, of the 42 states (including DC) that provided an estimate of when they will run out of their FY 2017 CHIP allotment, 10 anticipate exhausting funding by the end of 2017. A total of 32 states project they will exhaust federal funds as of the end of March 2018. Kaiser Family Foundation, Current Status of State Planning for the Future of CHIP September 6, 2017, available at: <https://www.kff.org/medicaid/fact-sheet/current-status-of-state-planning-for-the-future-of-chip/>.
2. Utah has already requested permission from CMS to freeze enrollment and, without a new funding authorization, would begin sending notices to families next month. Nevada is reportedly monitoring spending in an effort to determine how long it can continue its current program; without new funding State officials have indicated the State might have to freeze enrollment on November 1 and end coverage by November 30. Phil Galewitz, 5 Takeaways From Congress' Failure to Extend Funding for Children's Coverage, Kaiser Health News, October 3, 2017, available at: <https://khn.org/news/5-takeaways-from-congress-failure-to-extend-funding-for-childrens-coverage/>.
3. Available at: <https://www.finance.senate.gov/imo/media/doc/9.18.17%20CHIP%20-%20S.1827.pdf>.
4. Available at: <http://docs.house.gov/meetings/IF/IF14/20171004/106486/BILLS-115pih-HEALTHYKIDSAct.pdf>.
5. The formula (as most recently adjusted) takes into account prior year spending as well as growth in per capita National Health Expenditures and child population in the state; the allotments are "rebased" every other year to reflect spending in the prior year.
6. Congress sometimes takes advantage of the gap between appropriated CHIP funds and the dollars actually needed by states to finance appropriations in other areas via a technical budgeting practice known as Changes in Mandatory Programs, or "CHIMPs." During the Senate markup of the CHIP bill, this practice was identified by some Senators as one that should be changed.
7. The so-called "qualifying states" are: Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.
8. These states are: Alabama, Colorado, Iowa, Louisiana, Massachusetts, New York, Pennsylvania, South Carolina, and South Dakota. Medicaid and CHIP Eligibility, Enrollment, Renewal, and Cost Sharing Policies as of January 2017: Findings from a 50-State Survey, Kaiser Family Foundation, January 2017, available at: <http://files.kff.org/attachment/Report-Medicaid-and-CHIP-Eligibility-as-of-Jan-2017>.
9. The Future of CHIP and Children's Coverage, Medicaid and CHIP Payment and Access Commission (MACPAC), March 2017, available at: <https://www.macpac.gov/wp-content/uploads/2017/03/The-Future-of-CHIP-and-Childrens-Coverage.pdf>.
10. Preliminary Estimate of the Budgetary Changes of the Keep Kids' Insurance Dependable and Secure (KIDS) Act of 2017, available at: https://www.finance.senate.gov/imo/media/doc/CHIP%20Extension_KIDSact.pdf. CBO estimates that the Senate bill would increase the deficit by a net amount of \$8.2 billion dollars over 10 years; while spending under the bill would increase by approximately \$14.9 billion over that period, spending would be offset by an increase in revenues.

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