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Legislative Bulletin……………………………………October 25, 2007

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H.R. 3963—Children's Health Insurance Program Reauthorization Act
(Dingell, D-MI)
DRAFT

Order of Business: An earlier version of SCHIP legislation, H.R. 976, was vetoed by President Bush on October 3, 2007. This bill was originally passed in the House by a vote of 265-159 on September 25, 2007. On October 18, 2007, the House sustained the President's veto of H.R. 976 by a vote of 273–156 (needing 2/3 to override a veto). Today, the House will consider a slightly revised version, H.R. 3963, under a closed rule.

Summary: H.R. 3963 reauthorizes and significantly expands the State Children's Health Insurance Program (SCHIP), while increasing cigarette taxes to supposedly offset the bill's costs. The legislation follows closely the recently-vetoed version of SCHIP reauthorization. *Highlights* of the revised legislation are as follows:

Cost: H.R. 3963 provides $35.4 billion over five years and $71.5 billion over ten years in *new* mandatory spending—this spending is on top of the $25 billion over five years that would result from a straight extension of the program.

The new spending is *partially* offset by increasing taxes on tobacco products (see below). However, this CBO score overlooks a major gimmick which the bill employs to lower its costs. The bill dramatically lowers the SCHIP funding in the fifth year by 84%, from $13.75 billion in the first six months to $1.15 billion. In all likelihood, such a reduction would not actually take effect, which would make this a gimmick to generate unrealistic savings in order to comply with PAYGO rules. To that end, H.R. 976 is technically compliant with PAYGO.

Block Grant: Under current law, a federal block grant is awarded to states, and from the total annual appropriation, every state is allotted a portion for the year according to a statutory formula. The bill extends the SCHIP block grants from FY 2008-12. In addition, the bill also creates a new Child Enrollment Contingency Fund capped at 20% of the total annual appropriation, for states that exhaust their allotment by expanding coverage, and Performance Bonus Payments comprised of a $3 million lump sum in FY 2008 plus unspent SCHIP funds in future years.

Expansion to Higher Incomes: Under current law, states can cover families earning up to 200% of the Federal Poverty Level (FPL) or $41,300 for a family of four in 2007 *or* those at 50% above Medicaid eligibility. However, states have been able to "disregard" income with regard to eligibility for the program, meaning they can purposefully ignore various types of income in an effort to expand eligibility. For instance, New Jersey covers up to 350% of FPL by disregarding any income from 200-350%, allowing them to cover beyond 200% with the enhanced federal matching funds that SCHIP provides.

H.R. 3963 increases the eligibility limit to 300% of FPL or $61,950 for a family of four but also continues the current authority for states to define and disregard income. States which extend coverage beyond 300% of FPL would receive the lower Medicaid match rate. The bill limits states from expanding their programs above 300% of FPL through an income disregard whereby they block "income that is not determined by type or expense or type of income." However, a state could get around this restriction in a host of ways by disregarding *specific* types of income, such as income paid for rent or transportation or food. Practically speaking, H.R. 3963 still places no limit on SCHIP eligibility since states can still manipulate the definition of income to expand coverage, and CMS is limited in its ability to reject such determinations. [New Jersey would be grandfathered from this limitation until 2010, but they would then have to ensure that they are in the top ten of states with the highest coverage rate for low-income children.]

Furthermore, Section 116 overturns CMS' current policy of requiring states to ensure that 95% of the eligible children in their state below 250% of FPL are enrolled before expanding coverage to higher incomes. As a result, some conservatives may be concerned that this does not adequately ensure that SCHIP funding targets truly low-income children.

Unlike past legislation, the bill would not grandfather New York's proposed plan (seeking to cover 400% of FPL or $82,600 for a family of four). However, New York could merely use specific income disregards to effectively cover up to 400% of FPL. Some conservatives may be concerned that a family with an income of $82,600 will still potentially be eligible for SCHIP funding after this bill is enacted.

Childless Adults: The earlier bill, phased adults off of the program within two years. H.R. 3963 would remove childless adults from the program (all would be off by 2009), while allowing parents of eligible SCHIP kids to continue receiving healthcare under SCHIP. According to CBO estimates, there will still be approximately 700,000 (roughly 10% of the total SCHIP enrollees) adults (parents of eligible kids and pregnant women) enrolled in SCHIP by 2012.

H.R. 3963 states that no new waivers for non-pregnant childless adults will be granted to states, and any currently existing waivers will be extended through FY 2008 (terminating such waivers at the end of FY 2008). H.R. 3963 states that any current state waiver for non-pregnant childless adults which expires before January 1, 2009 may be extended until December 31, 2008 to retain all currently covered non-pregnant childless adults on the program until the end of FY 2008. The bill extends enhanced FMAP to apply to such waivers through December 31, 2008.

H.R. 3963 grants states the opportunity to apply for a Medicaid waiver for non-pregnant childless adults by September 30, 2008, for those whose SCHIP coverage will end December 31, 2008, and requires that the Secretary approve such waivers within 90 days or the application is automatically deemed approved.

Parents: The bill provides a two year transition period and automatic extension at the state's discretion through FY 2009 for the currently covered parents of SCHIP eligible/covered kids, and states that no new waivers be granted or renewed to states to cover the parents of SCHIP kids if such waivers do not currently exist. Similar to what would be done with non-pregnant childless adults, H.R. 3963 states that any current state waiver for parents of SCHIP kids which expires before October 1, 2009 may be extended until September 30, 2009 to retain all currently covered parents on the program until the end of FY 2009. The bill states that the enhanced FMAP shall apply to these expenditures under an existing waiver for parents of eligible SCHIP kids during FY 2008 and 2009.

H.R. 3963 requires that any state which provides coverage under a currently existing waiver for a parent of an SCHIP child *may continue to provide such coverage through FY 2010, 2011, or 2012*, but such coverage must be paid for by a block grant funded from the state allotment. If the state makes the decision to continue the coverage of parents through 2012, the Secretary may set aside for the state for each fiscal year an amount equivalent to the federal share of 110% of the state's projected expenditures under currently existing waivers. The Secretary will then pay out such funds quarterly to the state. States that enhanced FMAP only applies in fiscal year 2010 for states with "significant child outreach or that achieve child coverage benchmarks."

In addition, H.R. 3963 retains the statement from H.R. 976 that states there shall be no increase in income eligibility level for covered parents (i.e. no expenditures for providing child health assistance or health benefits coverage to a parent of a "targeted low-income child" whose family income exceeds the income eligibility level applied under the applicable existing waiver).

Private Insurance Crowd-Out: According to CBO, under H.R. 3963, 2 million children will still shift from receiving private health insurance to government health insurance. This means that they may get worse health care service and become increasingly dependent on the federal government. In addition, as H.R. 3963 begins to reduce SCHIP funding in 2012 (if such a reduction is actually intended, see above), some have noted that states may shift these children made newly eligible for a government program into Medicaid. This phenomenon takes place despite a provision in H.R. 3963 to offer a premium assistance subsidy under SCHIP for employer-sponsored coverage. A qualifying employer-sponsored plan would have to contribute at least 40 percent of the cost of any premium toward coverage. The bill includes new language requiring the Secretary, in consultation with the states, to measure crowd-out and to develop best practices designed to limit it. States would then be required to limit SCHIP crowd-out and incorporate those best practices. However, many conservatives are likely to be concerned that this language is not enough of protection when CBO maintains that two million will lose their health insurance under this bill.

Legal Immigrants and Citizenship Certification: H.R. 3963 states that "nothing in this Act allows Federal payment for individuals who are not legal residents." However, the bill weakens existing law by removing the documentation requests under the Deficit Reduction Act (DRA), specifically the burden that citizens and nationals provide documentation proving their citizenship in order to be covered under Medicaid and SCHIP. Instead, the bill would require that a name and Social Security number be provided as documentation of legal status to acquire coverage and that those names and Social Security numbers be submitted to the Secretary to be checked for validity. If a state is notified that a name and Social Security number do not match, the state must contact the individual and request that within 90 days the individual present satisfactory documentation to prove legal status. During this time, coverage for the individual continues. If the individual does not provide documentation within 90 days, he is "disenrolled" from the program but maintains coverage for another 30 days (after the 90 days given to come up with proper documentation), giving the individual up to four months of coverage on a false identity.

It is unclear what substantive changes were made to the vetoed bill beyond the cosmetic, with regard to citizenship certification. Some conservatives may be concerned that a Social Security number and name are not enough for a proof of citizenship and that more documents should be required to determine eligibility. For instance, according to a recent letter from Social Security Administration Commissioner Michael Astrue, a Social Security number would *not* keep someone from fraudulently receiving coverage under Medicaid or SCHIP (if they claimed they were someone they were not). Thus, this bill may allow illegal aliens the opportunity to enroll falsely in Medicaid or SCHIP and retain coverage for an undetermined amount of time before they are disenrolled for lack of proper identification.

Tax Increase: H.R. 3963 increases the cigarette tax by 61 cents to $1 per pack, and the cigar tax up to $3 per cigar, supposedly generating $35.5 billion over five years and $71.1 billion over ten years. It is important to note that this is a substantial tax increase on low-income individuals in order to pay for an expansion of SCHIP to higher income levels, which it was not initially designed for. In addition, this revenue source is constantly declining as fewer and fewer individuals smoke, and since placing a tax on cigarettes will likely deter sales, some have questioned the efficacy of the offset. According to a study by the Heritage Foundation, "To produce the revenues that Congress needs to fund SCHIP expansion through such a tax would require 22.4 million new smokers by 2017." The bill also changes the timing for some corporate estimate tax payments.

<u>Encourages Spending</u>: H.R. 3963 shortens from three to two years the amount of time a state has to spend its annual SCHIP allotment. Under current law, states are given three years to spend each year's original allotment, and at the end of the three-year period, any unused funds are redistributed to states that have exhausted their allotment or created a "shortfall," i.e. making commitments beyond the funding it has available. In addition, the bill establishes a process through which any unspent funds would be redistributed to any states with a shortfall. Some conservatives may be concerned that this process provides incentives both for states to spend their allotment quickly and to extend their programs beyond their regular allotments into shortfall, so as to be relieved by the unspent funds of other states or the new Contingency Fund.

<u>Other Provisions:</u>

- **Disregarding of Pension Contributions as Income.** The bill disregards "extraordinary employer pensions" as income. According to CMS, only one state would fall into this category—Michigan, due to the auto manufacturers. Some conservatives may view this as an authorizing earmark.

- **Name Change.** H.R. 3963 renames the program the "Children's Health Insurance Program."

- **Medicaid Disproportionate Share Hospital (DSH) Allotment for TN and HI.** The bill sets the DSH allotments for Tennessee at $30 million a year beginning in FY 2008, and sets the DSH allotment increases for Hawaii, beginning in FY 2009 and thereafter, as the allotments for low DSH states. Some conservatives may view these provisions as authorizing earmarks.

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: Yes, the bill would expand the SCHIP program by $35 billion over five years and loosen the program's eligibility requirements.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: A formal CBO cost estimate with such information is not yet available.

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