



**H.R. 976 – Children's Health Insurance Program Reauthorization Act of 2007
(Engrossed Amendment as Agreed to by Senate)**

FLOOR SITUATION

This legislation includes amendments to the Senate amendment to HR 976, which was an unrelated small business tax bill that was replaced by Senate Children's Health Insurance Program (CHIP) legislation (S. 1893) through amendment.

The Senate version of the CHIP expansion bill was passed on August 2, 2007 by a vote of 68 to 31 ([Record Vote Number: 307](#)). This legislation is significantly different from the House version (HR 3162), which passed by a vote of 225 to 204 ([Roll no. 787](#)) on August 1, 2007.

This legislation is expected to be considered on the House floor on September 25, 2007 under a closed rule providing for the disposition of Senate amendments. The Rule:

- Waives all points of order against the motion except those arising under clause 10 of the rule XXI. The rule provides that the Senate amendments and the motion shall be considered as read.
- Provides one hour general debate equally divided among and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce and the chairman and ranking minority member of the Committee on Ways and Means.

**Note: The Rule DOES NOT INCLUDED a provision making in order a motion to recommit the bill, a long standing right of the minority, nor does it include the standard provision making in order points of order arising under clause 9 (earmarks) of rule XXI.*

EXECUTIVE SUMMARY

H.R. 976, as amended, reauthorizes the State Children's Health Insurance Program (SCHIP), which was established under The Balanced Budget Act of 1997 to provide health coverage to uninsured children who would not otherwise qualify for Medicaid. Specifically this legislation would:

- Significantly expand the scope and coverage of CHIP and Medicaid

Note: The bill provides significant increases in federal funds to states to enable them to dramatically expand CHIP, costing \$60.2 billion over five years, which includes \$25 billion contained in the budget baseline and a \$35.2 billion expansion. (The bill that passed in the House of Representatives (HR 3162) provides significant increases in federal funds to states to enable them to dramatically expand CHIP, costing \$210 billion in federal dollars over ten years. Further, this combined with federal and state spending will ultimately cost the American taxpayer \$300 billion over ten years.)

Note: Using these new funds, a state could qualify a family of four making more than \$100,000 a year to receive taxpayer subsidized, government-run healthcare under a program that was originally intended for low-income children.

Note: This differs slightly for HR 3162 because it reduces the federal reimbursement rate for costs associated with CHIP enrollees whose income would exceed 300% of the federal poverty level (FPL). However, there is an exception for states that, on the date of enactment, have federal approval or have enacted a state law to cover CHIP enrollees above 300% FPL.

- Defines children eligible for CHIP to include any person up to the age of 21.

Note: This is a change from the previous legislation that covered children up to the age of 19.

- Treats a pregnant woman as a child; if a child would qualify for CHIP under the circumstances, then so does the pregnant woman.

Note: Many of these women would qualify for Medicaid and not require CHIP. This creates a whole new CHIP eligibility category.

- Extends the benefits for childless nonpregnant adults who are enrolled in CHIP until October 1, 2008, with the opportunity to extend their benefits further.

Note: While the legislation claims that the Secretary is “prohibited from approving, renewing a waiver, experimental pilot, or demonstration project that would allow funds to be used for nonpregnant childless adults,” it goes on to say that each state may submit a waiver no later than June 20, 2009 for childless non pregnant adults whose coverage has been terminated.

- Eliminates the citizenship test for individuals to become eligible for CHIP and simply requires that they present a Social Security number.

Note: Current law requires that states must determine whether persons applying for Medicaid and SCHIP are U.S. citizens and therefore entitled to participate in these programs.

Note: By simply allowing individuals to apply with a social security number this provision weakens the citizenship requirements and opens the door for: legal aliens who are not naturalized citizens, illegal aliens fraudulently using another persons valid name and Social Security number, and individuals who have illegally overstayed a valid work permit.

- Provides “bonus payments” for States who cut corners, including the assets test.

Note: Disregarding the assets test enables states to fund families significantly above the FPL.

- Changes the period of time that a state has to spend its CHIP allotment from three years to two years.

Note: A shorter time period deters a State’s focus from long term planning, encourages them to be less frugal and overspend their allotments. This has a particularly large impact on states with greater populations.

- Increases the rate of excise taxes at the manufacturing level on tobacco products and cigarette papers and tubes.

Note: This increases the tax on:

- cigars from 20.719% to 53% with a \$3 per cigar cap;
- cigarettes from 39 cents to \$1;
- cigarette papers from 1.22 cents to 3.13 cents;
- cigarette tubes from 2.44 cents to 6.26 cents;
- snuff from 58.5 cents to \$1.50;
- chewing tobacco from 19.5 cents to 50 cents;
- pipe tobacco from \$1.0969 to \$2.8126; and
- roll-your-own tobacco from \$1.0969 to \$8.8889

Note: With a shrinking tobacco market, this tax uses declining revenues to pay for an expanding program. According to estimates, it would take 22 million new smokers in the United States in the next 5 years to pay for this program.

- This reauthorization is set to expire in 2012 and includes a “drop-off” after that in FY 2013.

Note: CHIP uses a budget gimmick in order make their math work. From FY 2008-FY 2012, funding levels will increase to more than \$8.4 billion a year, then after FY 2012, the funding level will drop off to only \$600 million in 2013.

- Includes several earmarks that had not been included in previous versions of the CHIP legislation.
- This legislation will move children from private insurance to a government run insurance program.

Note: According to an estimate by the Congressional Budget Office (CBO), approximately 2 million children who already receive private insurance will move into the CHIP program.

- Changes the title of the bill from the State Children's Health Program ("SCHIP") to the Children's Health Insurance Program ("CHIP").

BACKGROUND

The Balanced Budget Act of 1997 established the State Children's Health Insurance Program (SCHIP) Title XXI of the Social Security Act. The purpose of this program is to target children who are uninsured and otherwise would not qualify for Medicaid.

It should be noted that Title XXI currently does not establish a new *individual* entitlement or entitlement program. Instead, Title XXI enables *states* with approved state SCHIP block grants to establish a children's health program. SCHIP awarded \$40 billion in Federal block grants over a 10 year period to assist states in the coverage of children. States are provided a fixed federal contribution each year based on a formula that includes the number of low income children, uninsured children and the cost of health care in the state. Each state has access to the allotment for three years, and any remaining funds leftover are reallocated to states that have exhausted their original allotments.

Eligibility

Children who are typically covered by SCHIP are under the age of 19, and are in families with incomes below 200% of the federal income poverty level (FPL). In 2004, this was \$31,340 for a family of three. Children who are eligible for Medicaid or other health insurance are generally not covered by SCHIP.

Administered

Similar to Medicaid, SCHIP is funded by a partnership between the federal government and the states. States provide SCHIP benefits in a variety of ways.

Some states targeting low-income children have elected to expand the Medicaid program to cover these children. There are 17 states that use Medicaid expansions.

Several states established an entirely new SCHIP program, and are subject to Title XXI law. Title XXI allows states to use the following factors in determining eligibility: geography (e.g., sub-state areas or statewide), age (e.g., subgroups under 19), income, resources, residency, disability status (so long as any standard relating to that status does not restrict eligibility), access to or coverage under other health insurance (to establish whether such access/coverage precludes SCHIP eligibility), and duration of SCHIP enrollment. These states with separate SCHIP programs are required to provide coverage for primary and preventive benefits. There are 18 states that have established separate state programs.

Finally, some states selected to do a combination of both. There are 21 states that elect to operate using this method.

SCHIP Today

At present there are approximately 6.1 million children covered by SCHIP/Medicaid and 794,000 children eligible for Medicaid/SCHIP but are not enrolled. While SCHIP enrollment has increased over time, the rate of growth has leveled off in recent years. However, the SCHIP population has expanded from its original definition of a child below 200% of the FPL. As of November 2006, 272 amendments to original state plans had been approved by HHS with 13 more were in review. Some States use amendments to extend coverage beyond income levels defined in their original state plans. Further States have submitted 1115 waivers to help expand those included under SCHIP and as a result 14 states are experiencing short falls. Since the establishment of SCHIP, several new populations have gained coverage:

Children Above 200% of FPL

Several states have begun to offer SCHIP coverage for children who are above 200% of the FPL. There are 18 states that currently have income eligibility threshold in SCHIP above 200% of the FPL. Some examples of these states range from 220% in West Virginia to 350% in New Jersey. Further, 16 states have income eligibility levels set at 200% of the FPL but apply in income disregards and/or deductions that allow them to effectively cover some children in families with incomes above 200% of FPL.

Pregnant Women

Another use for SCHIP funds has been directed toward unborn children. Five states have SCHIP waivers to cover pregnant women.

Parents

The Secretary of HHS granted waivers for parents whose children qualified for SCHIP, to enroll themselves along with their children. Eleven states provide family-based coverage that includes parents, covering 6.1 millions adults.

Other Adults

In The Deficit Reduction Act of 2005 (DRA) Congress prohibited HHS from granting new waivers that allowed states to use SCHIP funds to cover childless adults. However,

five states had already received such waivers so they were permitted to continue operating them.

SUMMARY

H.R. 976, as amended:

- Establishes the effective date of legislation to be October 1, 2007.

Financing of CHIP, Title I

- Establishes the following CHIP allotments for 2008-2012:
 - FY 2008- \$9.125 billion
 - FY 2009- \$10.675 billion
 - FY 2010- \$11.850 billion
 - FY 2011- \$13.750 billion
 - Makes two semi annual allotment of \$1.75 billion in FY2011 and FY2012
 - Creates a one time lump sum appropriation of \$12.5 billion in the first half of FY 2012

Note: CHIP uses a budget gimmick in order make their math work. From FY 2008-FY 2012, funding levels will increase to more than \$8.4 billion a year, then after FY 2012, the funding level will drop off to only \$600 million in 2013. Their plan essentially puts a gun to the head of a future Congress, which will face a simple choice: radically increase CHIP funding or let millions of American children lose their health coverage.

- Establishes calculations for state allotments
 - For FY 2008 a states allotment would be calculated as 110% of the greatest of the following four amounts
 - (1) the state's FY2007 federal CHIP spending multiplied by the annual adjustment;
 - (2) the state's FY2007 federal CHIP allotment multiplied by the annual adjustment;
 - (3) for shortfall states that receive federal CHIP funds in FY2007 because of their shortfalls, the state's FY2007 projected federal spending as of November 2006 multiplied by the annual adjustment; and
 - (4) the state's FY 2008 federal CHIP projected spending as of August 2007 and certified by the state not later than September 30, 2007.

- States would be allotted in FY2009-FY2011 will be calculated by indexing Federal payments to the state in the previous fiscal year by growth in national health expenditures and child population.
- Establishes a CHIP Contingency Fund
 - For FY2008, the Contingency Fund appropriation would be 20% of the CHIP available national allotment. Then for FY2010 through FY2012, would be however much is necessary as long as it does not go over 20%.
 - The fund would be directed toward states with shortfalls.
 - The Secretary shall make monthly payments from the Fund to all states determined eligible for a month.
- Significantly expands the cost and scope of the CHIP program by creating an “incentive pool” for bonus payments for States that enroll children above their monthly average baseline.
 - The cost appropriated for this is \$3 billion.
- Creates performance bonus payments for States that enroll children above their baseline. The Secretary can grant funds/bonus payment to States that meet at least 4 of the following conditions:
 - State elects to have continuous eligibility for children one year
 - Liberalization of asset requirements by eliminating the asset test, or takes steps to verify the parents/caregivers assets
 - Elimination of the in person interview
 - Use a joint application for Medicaid and CHIP
 - Automatic Renewal
 - Presumptive eligibility for children
 - Use of an Express Lane Eligibility (ELE) standard to determine eligibility, which is a less investigative method.

The performance bonus is available for enrollment of children who are currently eligible for CHIP or Medicaid but are not currently enrolled.
- Provides states two years to spend the federal CHIP allotment for fiscal allotment (currently it is three years).
- Redistributes unused funds to address state shortfalls:
 - Establishes a system for redistributing any State allotments unspent after three years.
- Expands CHIP matching rate for children to be covered by Medicaid.
- Permits State’s to expand or add coverage of certain pregnant women and children under CHIP

- As long as the pregnant woman is at least 185% of the FPL
 - Automatic enrollment of children born to pregnant women who are already enrolled in CHIP
- Extends the benefits for childless non-pregnant adults who are enrolled in CHIP until October 1, 2008, with the opportunity to extend their benefits further.
 - While the legislation claims that the Secretary is “prohibited from approving, renewing a waiver, experimental pilot, or demonstration project that would allow funds to be used for non-pregnant childless adults” it goes on to say that each state may submit a waiver no later than June 20, 2009 for childless non pregnant adults whose coverage has been terminated.
 - Attempts to phase out CHIP coverage of non-pregnant childless adults after two years. In FY2009, federal reimbursement for such coverage would be reduced to the Medicaid federal medical assistance percentage (FMAP) rate.
- Permits coverage of parents, but starting in FY2010, States may receive an additional year at CHIP match if they meet outreach or coverage benchmarks. For FY2011 and FY2012, States receive a reduced match rate if they meet the following coverage benchmarks:
 - the State is in the lowest 1/3 of all States in terms of the number of uninsured low-income kids, or
 - the State is eligible for a bonus fund payment for increasing enrollment. States that do not meet benchmarks will get the Medicaid match rate. No new parent waivers are permitted.
- Limitation on matching rate for state that propose to cover children in families with incomes over 300% of the FPL
 - An exception would be provided for states that, on the date of enactment, have federal approval or have enacted a state law to cover CHIP enrollees above 300% FPL.
- Makes technical corrections regarding current state authority under Medicaid
 - Weakens the income methodologies, by allowing states to determine the federal matching rate. Allowing states to use the regular Medicaid matching rate instead of the enhanced CHIP.
- Mandates that the Government Accountability office (GAO) and the Institute of Medicine (IOM) publish a study on the impact and occurrence of “crowd-out” within the insurance market as a result of a higher income level within CHIP.

- Requires that states who extend CHIP coverage to children above 300 percent FPL must submit to the Secretary a State plan amendment describing how they will address crowd-out for this population, incorporating the best practices recommended by the Secretary.
- Bans states from covering children whose family incomes exceed 300 percent of poverty if the State does not meet a target for the percentage of children at or below 200 percent of poverty enrolled in CHIP. The target rate would be the average rate of insurance coverage (public and private) among the highest-ranking 10 States.
 - This target rate goes into effect October 1, 2008

Outreach and Enrollment- Title II

- Sets aside \$100 million for FY 2008-2012 for a grant program to finance outreach and enrollment
- Requires the Secretary to set aside 10 percent of the grant program for a national enrollment campaign when awarding grants the Secretary considers the following criteria:
 - Target geographic areas with high rates of eligible but unenrolled children or racial and ethnic minorities.
- Requires the Secretary to set aside 10 percent of the grant program for Indian children.
- Requires that enrollment data and effectiveness assessments be available to the public on an annual basis.
- Requires the enhancement of administrative funding for translation or interpretations services under CHIP.
- Requires the Secretary to establish a 3 year demonstration program to determine components of eligibility.
 - Under this demonstration program states would be permitted to rely on a finding made by the Express Lane agency to determine whether a child has met one or more of the eligibility requirements
 - Express Lane agencies would include public and governmental agencies to make eligibility determinations.
- Citizenship documentation requirements
 - Permits states to use name and Social Security number validation, make citizenship documentation a requirement for CHIP, and

require separate identification numbers for children born to women on emergency Medicaid.

Note: Current law requires that states must determine whether persons applying for Medicaid and SCHIP are U.S. citizens and therefore entitled to participate in these programs.

Note: By simply allowing individuals to apply with a social security number this provision weakens the citizenship requirements and opens the door for: legal aliens who are not naturalized citizens, illegal aliens fraudulently using another persons valid name and Social Security number, and individuals who have illegally overstayed a valid work permit.

- Requires the Secretary to make special provisions with regard to Indian tribes.
 - For tribes that have an international border, whose members are not all US citizens, the Secretary must issue regulations authorizing the presentation of tribal documentation.
- Allows alien mothers to receive medical attention for their pregnancy and first year of the child's life.
- Requires states to describe their procedures that are in place to help reduce administrative barriers for enrollment of children and pregnant women.
- Requires the Secretary to work with states to establish a model for interstate coordination and increased enrollment in Medicaid and CHIP programs.

Reducing Barriers to Providing Premium Assistance- Title III

- Allows states to give 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 the parents of targeted low-income children.
- Creates additional state options for providing premium assistance
 - Permits states to establish an employer-family premium assistance purchasing pool for employers with less than 250 employees;
 - Requires states who elect to participate in premium assistance to offer no less than 2 private health plans;
 - Require that states make information regarding premium assistance and subsidies to be available during the enrollment period of the CHIP plan.

- Establishes a special enrollment period under group health plans in some cases where Medicaid or CHIP coverage is terminated or eligibility for assistance in purchase of employment based coverage:
 - Amends federal law applicable federal laws to coordinate between public and private health coverage.
- Requires the Secretary to establish a working group to develop a model of coordination between CHIP, Medicaid and employers sponsored insurance no later than 60 days after this Act is signed into law.
 - The working group must file a report 18 months after the enactment of this act.

Quality of Care and Health Outcome of Children- Title IV

- Requires the development of an initial core set of health care quality measures for children enrolled in Medicaid to be published by the Secretary.
- Requires the Secretary to encourage voluntary and standardized reporting and the adoption of best practices in implementing “quality programs.”
- Requires the Secretary to report to Congress every 3 years on the status of efforts to improve the quality of the CHIP program.
- Requires the Secretary to establish Pediatric quality measures, no later than January 2010.
- Requires each state to compile an annual report on the status of Medicaid and CHIP quality measure in their state.
- Establishes demonstration projects for children’s health care and the use of Health IT (10 grants totaling \$20 million from FY 2008-FY2012).
- Establishes a Childhood Obesity Demonstration project to identify the factors and cause of obesity (\$25 million from FY2008-FY2012).
- Requires the Secretary to develop a model for electronic health record format for children enrolled in CHIP no later than January of 2009 (\$5 million).
- Requires a study of pediatric health and health care quality measures to be conducted by the Institute of Medicine (IOM) no later than July 1, 2009 (\$1 million).
- Bans the use of evidence based quality measures that are developed, published or used as a basis of measurement or reporting from being employed in establishing the need for medical care for an individual child receiving coverage under CHIP (\$45 million from FY 2008-FY2012).

- Requires the inclusion of process and access measures in annual state reports, such as eligibility criteria, enrollment, retention data, and data regarding denials of eligibility.
- Requires the Secretary to make new data and reporting regarding the enrollment in CHIP (\$5 million for FY 2008).
- Requires a GAO study on access to primary and specialty care services.
- Mandates new managed care safeguards, such as information disclosure.

Access to Benefits- Title V

- Makes significant changes to the Deficit Reduction Act (DRA) and The Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program.
 - Requires that EPSDT cover all individuals under the age of 21, who are eligible for Medicaid.
 - Requires the Secretary to compile and publish a list of the provisions in Title XIX (Medicaid) that do not apply to states when providing benchmark or benchmark-equivalent coverage for Medicaid.
- Allots funding for dental services, federally-qualified health centers (FQHC) and rural health clinics (RHC). Also specifies that school health services are covered.
- Provides dental care access for children
 - Establishes an educational program for new parents regarding oral hygiene
 - Prohibits states from preventing federally-qualified health centers from entering into contractual relationships with private practice dental providers
 - Requires a GAO study and report regarding dental services
- Allows States to cover preventive service -including mental illness- that the Secretary determines to be reasonable and necessary.
- Applies a prospective payment system for services provided by Federally Qualified Health Centers and Rural Health Centers.
- Provides a grace period of 30 days for individuals enrolled in program to make premium payments, before children's enrollment is terminated.
- Creates a demonstration project for diabetes research and prevention (\$15 million for FY 2008-FY2012).

Program integrity and other Miscellaneous Provisions- Title VI

- Changes to the payment error rate measurement (“PERM”).
 - Mandates a federal matching rate of 90% to all costs related to administration of PERM requirements applicable to CHIP.
 - Exclude 10% cap on CHIP administrative costs relating to the administration of PERM requirement applicable to CHIP.
 - Forbids the Secretary from publishing PERM error rates for CHIP until 6 months after date of final PERM rule.
 - Mandates that PERM include a clearly defined for errors for both States and providers, a definition of the process for appealing error determinations, and a explanation of the responsibilities and deadlines for each State.
 - Requires the Secretary to review the Medicaid Eligibility Quality Control (MEQC) requirements with PERM requirements and coordinate the two.

- Increases the funding for data collections from \$10 million to \$20 million for FY 2008.

- Requires the Secretary to conduct a federal evaluation of CHIP that focuses on 10 states.
 - The study must be submitted to Congress by December 31, 2007
 - This study is funded at \$10 million for FY 2009

- Ensures that the GAO has access to records and evolutions of the CHIP program.

- Renames the SCHIP program to CHIP.

- Increases the percentage of enrollees who may enroll in a county Medicaid health organization from 14% to 16%.

- Creates a moratorium on certain payment restrictions, forbidding the Secretary from limiting payments under Medicaid for rehabilitation services, school-based administration, transportation, or medical services beyond such coverage or payment as of July 1, 2007.

- Provides disproportionate share hospital allotments for several states.

- Clarifies that a regional medical center located on the border of multiple States may receive Medicaid reimbursement from any of those States.

- Extends the existing SSI Web-based asset demonstration program to Medicaid beginning in FY2013, in the States in which the demonstration is currently operating.

- Includes an unrelated “Support for Injured Service members Act”, making several amendments to the Family Leave Act of 1993, such as defining servicemember family leave to be a total of 26 work weeks in one year.
- Includes an unrelated “Military Family Job Protection Act” which prohibits discrimination in employment against family members who are caring for injured member of the armed forces.
- Establishes a taskforce regarding outreach for health insurance coverage for children.
- Includes a sense of Senate regarding access to affordable health insurance.

Revenue Provisions- Title VII

- Mandates an increase in the excise tax on tobacco products
- Increases the rate of excise taxes at the manufacturing level on tobacco products and cigarette papers and tubes.
 - Increases the tax on cigars from 20.719% to 53% with a \$3 per cigar cap;
 - Increases the tax on cigarettes from 39 cents to \$1;
 - Increases the tax on cigarette papers from 1.22 cents to 3.13 cents;
 - Increases the tax on cigarette tubes from 2.44 cents to 6.26 cents;
 - Increases the tax on snuff from 58.5 cents to \$1.50;
 - Increases the tax on chewing tobacco from 19.5 cents to 50 cents;
 - Increases the tax on pipe tobacco from \$1.0969 to \$2.8126; and
 - Increases the tax on roll-your-own tobacco from \$1.0969 to \$8.8889

Note: With a shrinking tobacco market, this tax uses declining revenues to pay for an expanding program. According to estimates, it would take 22 million new smokers in the United States in the next 5 years to pay for this program.

- Requires more reports and inventories for tobacco manufactures and threatens revocation of tobacco license.
- Amends the “Tax Increase Prevention and Reconciliation Act of 2005” from 114.5% to 113.25%.

ADDITIONAL VIEWS

According to the Statement of Administration Policy on H.R. 976, as amended: “The Administration strongly supports reauthorization of the State Children’s Health Insurance Program (SCHIP) which maintains SCHIP’s original purpose of targeting health care

dollars to low-income children who need them most. However, the current bill goes too far toward federalizing health care and turns a program meant to help low-income children into one that covers children in some households with incomes of up to \$83,000 a year. If H.R. 976 were presented to the President in its current form, he would veto the bill.

It is urgent that Congress complete its work and send the President a bill he can sign before the program expires September 30, 2007, or at a minimum to pass a clean, temporary extension of the current SCHIP program that he can sign by September 30th."

COST

A cost estimate from the Congressional Budget Office (CBO) was not available at the time of publication.

STAFF CONTACT

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