Issue BRIEF

9 Million Children and Counting:
The Administration's Attack on Health Coverage for America's Children

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As 2007 drew to a close, President Bush twice rejected bipartisan legislation that would have reauthorized the state Children's Health Insurance Program (CHIP) and given states new tools to provide health coverage for an additional 4 million children.

But President Bush has done more than simply block the reauthorization of a successful and respected program: A new policy issued by his Administration is preventing more than 150,000 children from getting health care in states that have tried to increase CHIP coverage, and it jeopardizes health care for more than 33,000 children in 10 states and the District of Columbia who are currently insured through CHIP. What's more, the President's recently released budget for fiscal year 2009 includes additional proposals to curb CHIP (see page 6).

The President has launched this campaign against children's health care at the same time that the nation is experiencing economic turmoil that will cause many American families to lose their private health coverage. This decline in private coverage will increase the number of uninsured children and put additional pressure on state CHIP programs.

In recent years, states have recognized the importance of expanding coverage for children and have taken steps to enact expansions within the existing, successful CHIP program. The Bush Administration's actions have stifled this progress, leaving families with uninsured children to fend for themselves. If the Administration's policies are not stopped, the number of uninsured children—currently about 9 million—will likely continue to rise as it has for the last two years.[1]

Children's Coverage Hindered by Insufficient Funding

After the President's second veto of bipartisan legislation that would have reauthorized and expanded CHIP, Congress passed a compromise, short-term extension of the program that will carry it through March 31, 2009. The compromise legislation provides states with $5 billion per year for FY (fiscal year) 2008 and FY 2009.[2] However, $5 billion is not enough for states to maintain coverage for the children currently enrolled in CHIP, so Congress also included $1.6 billion in supplemental funds to help those states that are expected to run out of CHIP funds in FY 2008 and a small amount of similar supplemental funds for the first half of FY 2009.

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This short-term extension is only the bare minimum necessary to keep CHIP running over the next year. It does not include any funding or policy changes that would allow states to move forward in covering the more than 9 million children who are currently uninsured.

To make matters worse, this extension will soon be tested: As the nation's economy slips into a recession, more families will be faced with the reality of losing the employer-based health coverage they rely on for themselves and their children. Research has shown that for every 1 percent increase in the unemployment rate, the percentage of children who are uninsured increases by 0.43 percent.[3] Using the most recent data from the Census Bureau, this would mean that about 326,000 children will become uninsured this year if the unemployment rate rises by just 1 percent.[4] Research from the Joint Economic Committee of the U.S. Congress anticipates that even a slow-down in employment growth could cause 700,000 to 1.1 million children to become uninsured and qualify for CHIP or Medicaid this year.[5]

As families lose job-based health coverage, they will turn to CHIP and Medicaid. But because the CHIP reauthorization legislation was not signed into law, states will have significantly less flexibility to meet increasing demands for coverage. Many states could be faced with difficult choices: limit enrollment and find other ways to cut CHIP spending, or fund additional coverage on their own, without federal support.

For every dollar that a state spends on CHIP, the federal government matches it with $2.56, on average. This means that a state that pays to cover children without federal matching funds would have to pay, on average, more than three times as much as it would have paid with the federal match.[6]

Recent reports from states indicate that we are again heading into a period of state budget shortfalls, and resources to supplement children's health coverage without federal assistance will become increasingly scarce.[7] In this climate, it is unlikely that many states will be able to take on the burden of paying for the increasing demand for children's health coverage without any federal support.

CMS Directive Limits the Ability of States to Cover Kids

Approximately six months ago, the Administration unleashed the most harmful children's health care policy of its tenure. On August 17, 2007, it sent out a directive—essentially, a letter—to state CHIP administrators proclaiming that a stringent series of requirements would be applied to all states seeking to cover children with family incomes above 250 percent of poverty ($44,000 for a family of three[8]). Because these requirements are nearly impossible for states to meet, the directive sets a de facto cap on CHIP eligibility.

■ What Does the Directive Say?

The directive imposes two layers of onerous new requirements on states that are attempting to cover children with family incomes above 250 percent of poverty.

The first layer requires states to meet two criteria in order to be eligible to cover these children:

- States must cover 95 percent of all children who are eligible for Medicaid and CHIP and who have family incomes below 200 percent of poverty; and
- States must prove that the percentage of low-income children enrolled in private coverage has not declined by more than 2 percent in the preceding five years.

Assuming a state meets the above criteria, the second layer of the directive then requires the state to apply the following to its CHIP coverage for those with incomes above 250 percent of poverty:

- Out-of-pocket costs must be set at the maximum allowed in CHIP—5 percent of family income—or at levels comparable to coverage in the private market, whichever is lower.
- Children must be uninsured for an entire year before they are permitted to enroll. There are no exceptions to this rule, even if a parent has lost his or her job or has died.

States that currently cover children with family incomes above 250 percent of poverty must comply with the directive by August 17, 2008. These are very challenging requirements for states to comply with. Most states will have trouble complying, and some may not be able to comply at all.

What's Wrong with the CMS Standards?

Participation rate: Although intensive outreach efforts over the past 10 years have resulted in impressive gains in participation among children eligible for CHIP and Medicaid, no state has reached a 95 percent participation rate.[9] In fact, the only health program that does have such a high participation rate is Medicare, a universal program in which people are automatically enrolled when they reach age 65. By contrast, CHIP and Medicaid have an average of 75 percent and 80 percent participation, respectively.[10] Research also suggests that CMS does not currently have a methodologically sound way to even begin to measure states' participation rates.[11]

Ironically, the CHIP reauthorization legislation that President Bush vetoed included additional funding and new tools that would have encouraged states to work even harder to find and enroll eligible, uninsured children in Medicaid and CHIP.[12]

Decline in employer-based coverage: The directive is presumably meant to address concerns about "crowd-out" of employer-based health coverage. "Crowd-out" is the replacement of private, employer coverage with public health coverage, such as Medicaid or CHIP. However, employer-based coverage can decline for many reasons—such as natural disasters, economic slowdowns, or industry failures—that are completely unrelated to the availability of CHIP. In

fact, nationally, the rising cost of health care has contributed to a more than 4 percent decline in the percentage of children enrolled in private coverage (employer-based and directly purchased) since 2001.[13] Medicaid and CHIP were able to compensate for these private insurance losses in previous years, resulting in a decline in the number and percentage of uninsured children between 1998 and 2004, even as the total number of uninsured Americans rose steadily.[14]

As discussed earlier, the directive will prove particularly harmful to efforts to expand coverage for children. The slowing economy will almost certainly result in decreases in employer-based coverage. As this happens, low-wage workers will be hit first and hardest.[15] Yet at the same time, the directive would prevent states from expanding their safety net for children in low-income families, and it might even mean rolling back coverage for states that already cover children with family incomes above 250 percent of poverty.

Waiting periods: Requiring children to be uninsured for a period of time before they can qualify for CHIP is not a new idea, nor an unusual policy. Waiting periods are designed to ensure that families do not voluntarily drop employer-based health coverage in order to enroll their children in CHIP. As of January 2008, 37 states had waiting periods for children who had previously had employer-based coverage.[16] Only three states had 12-month waiting periods, and all of these states included reasonable exceptions to this rule. Such exceptions allow children to bypass the waiting period and enroll in CHIP right away if they have lost private health coverage for a reason they could not control. Such reasons include the employer withdrawing its offer of health coverage; the covered parent losing his or her job; the parent's death; and in some states, the cost of employer-based coverage being unaffordable for the family.

A 12-month waiting period with no exceptions is a harmful, draconian policy that would force children to miss needed health care.

High cost-sharing: Most states with CHIP programs that have income limits above 200 percent of poverty charge cost-sharing. However, no state charges the maximum amount of cost-sharing allowed by federal CHIP law: 5 percent of family income. Extensive research has shown that even moderate amounts of cost-sharing cause hardship for families and result in children going without needed health care.[17]

Federal law allows states to charge cost-sharing in CHIP, but it does not require states to do so. Making this a requirement represents a major change in federal policy that was unprompted by congressional action and was made through a directive rather than the formal rule-making process for CHIP, which would have allowed individuals to submit comments about the proposed change. It violates the state-federal partnership integral to the operation of CHIP and Medicaid, and it is not a change that should be made unilaterally by the Administration.

How Does the Directive Affect Expansions in Children's Health Coverage?

In 2007, states moved ahead with great momentum to expand children's coverage: At least 17 states considered or approved expansions of such coverage.[18] In several states, these expansions increased eligibility levels above the 250 percent threshold established in the directive. To date, the only one of these states that has been able to realize its expansion is **Wisconsin**, which decided not to apply for federal funding for the portion of their expansion for children with family incomes between 250 and 300 percent of poverty. The state is instead paying for coverage for these children—an estimated 3,000—without any federal support.[19]

Other states have tried to expand coverage to children, but the Administration has blocked their efforts:

- On September 7, 2007, CMS denied **New York's** plan to expand coverage to some 70,000 children because the state was unable to meet the participation rate required by the directive.[20] Covering these children without federal support would cost New York an estimated $30 million in the first year alone.[21] The state is pursuing legal action against the Administration.
- **Louisiana** and **Oklahoma** are currently waiting for approval of their child health expansions. Although both states initially planned to cover children in families with incomes up to 300 percent of poverty, following the directive, they scaled back their plans to cover only children in families with incomes below 250 percent of poverty. **Indiana** also passed a CHIP expansion to children with family incomes up to 300 percent of poverty that it plans to scale back to 250 percent of poverty.[22] These decisions mean that tens of thousands of children who would have gotten health coverage will now be left uninsured.
- **West Virginia** had planned a CHIP expansion in 2008, from 220 percent to 300 percent of poverty. However, following the issuance of the directive, the state has not applied for federal approval of this expansion. An additional 4,000 children could be covered if the expansion were to move forward.[23]

While the directive technically affects only state CHIP programs and not Medicaid programs, *CMS also intends to block states from using Medicaid to expand coverage for children*. In September 2007, **Ohio** sought federal approval for its plan to expand its Medicaid program for children with family incomes up to 300 percent of poverty. This expansion would have covered 35,000 children.[24] But CMS rejected Ohio's plan, sending a clear signal to states that it will stand in the way of further expansions of children's health coverage.

The directive also affects the 11 states that already have CHIP eligibility levels above 250 percent of poverty. Although it is unclear how CMS will pursue corrective action against states that fail to comply by August 17, 2008, it claims that no children who are currently enrolled will lose coverage because of the directive. This may mean that although individual children will be grandfathered in and retain their coverage, no new children with family incomes above 250 percent of poverty will be allowed to enroll in Medicaid or CHIP, even though these states have long had eligibility levels up to 275, 300, or 350 percent of poverty. This, despite the fact that children with family incomes between 200 and 399 percent of poverty accounted for nearly half of the increase in uninsured children in the latest Census.[25]

The directive eligibility guidelines also mean that if currently enrolled children lose coverage (for example, if they fail to renew on time or have fluctuations in family income that make them temporarily ineligible), they would not be permitted to re-enroll at a later date. Current enrollment estimates in these 10 states and the District of Columbia show that this jeopardizes health coverage for more than 33,000 children.[26] Unless something is done to address the directive before CMS begins enforcing it in August, children will continue to fall through this trap door and join the other 47 million uninsured Americans.

The President Seeks to Restrict CHIP Even Further

While the Administration has already erected huge barriers through the CMS directive, the President's budget for FY 2009 proposes even more draconian policies for children's coverage. His budget includes a proposal to reauthorize CHIP that would provide an additional $19.7 billion to the program over the next five years (2009-2013). Although this is a marked increase over his proposal last year ($5 billion between 2008 and 2012), it still falls short of the funding needed simply to sustain current enrollment.[27] The President's budget suggests that the proposed funding would allow CHIP to cover an additional 1.6 million children by 2013, but this would be possible only if the current program were significantly curtailed. It appears that this is precisely what the President envisions for CHIP.

The President proposes a series of policy changes to focus the program exclusively on children with incomes below twice the poverty level:[28]

- **Set a "hard cap" on CHIP eligibility at 250 percent of poverty.** All states would have to determine eligibility for CHIP using gross income, eliminating all income disregards. The majority of states currently use income disregards when determining CHIP eligibility. This new policy would take away states' long-standing power to set eligibility levels and calculate income, and it could complicate coordination between Medicaid and CHIP. Currently enrolled children with gross family incomes above 250 percent of poverty would be permitted to stay enrolled, but they could not reenroll if they lost coverage at any time. The budget proposal assumes that no new children with gross family income above 250 percent of poverty would be enrolled.

- **Alter the crowd-out directive**. The crowd-out directive discussed earlier (see page 3) would be tightened to apply to states looking to expand eligibility to families with incomes above 200 percent of poverty—rather than the 250 percent stated in the directive. States that want to cover children with family incomes between 200 and 250 percent of poverty would have to prove they already cover 95 percent of eligible children with family incomes below 200 percent of poverty. No state would be permitted to cover children with family incomes exceeding 250 percent of poverty under any circumstances.

  If a state already covers children with family incomes above 200 percent of poverty and fails to comply with the 95 percent enrollment target, it would face a 1 percent drop in its federal matching percentage for CHIP for each year it fails to comply. States could face up to a 5 percent drop in their federal CHIP matching funds.

- **Change the CHIP allocation formula**. The formula used to allocate CHIP funding among the states would be redesigned, with input from Congress, to focus mainly on children with family incomes below 200 percent of poverty.
- **Transition adults off of CHIP**. Parents and childless adults currently covered using federal CHIP funds would be transitioned to Medicaid.

The President's budget proposes to make these changes legislatively. Fortunately, these proposals are unlikely to gain much traction in the current Congress. However, to the extent that these goals could be achieved administratively—through regulations or letters like the crowd-out directive—they could be made this year. It is not clear exactly how many of these changes could be made administratively, but the changes to the directive are likely the easiest ones to make, since they would not require congressional action. Advocates should be prepared for these changes and continue to work to overturn the directive and preserve the coverage currently available in their states.

Conclusion

At a time when the economy is in trouble and families are struggling to pay for everyday expenses like housing, groceries, and gas, programs like Medicaid and CHIP are more important than ever. As families ride out these tough times and face loss of employment and often health coverage, more and more children will become uninsured and likely be eligible for Medicaid or CHIP.

The Administration could not have picked a worse time to harm low-income children by vetoing legislation that could have provided an additional 4 million children with essential health coverage and imposing a directive that blows a hole in the health care safety net for these vulnerable children. What's more, the President's proposed policy changes would further restrict CHIP and put the health of America's children at risk.

Endnotes

[1] Carmen DeNavas-Walt, Bernadette Proctor, and Jessica Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2006* (Washington: U.S. Census Bureau, August 2007).

[2] The federal fiscal year (FY) runs from October 1 through September 30.

[3] Stan Dorn, Barbara Markham Smith, and Bowen Garrett, *Medicaid Responsiveness, Health Coverage, and Economic Resilience: A Preliminary Analysis* (Washington: The Joint Center for Political and Economic Studies, September 2005).

[4] Carmen DeNavas-Walt, Bernadette Proctor, and Jessica Smith, op. cit.

[5] *As Economy Slows, Demand for Children's Health Insurance and Medicaid Grows* (Washington: Joint Economic Committee, December 2007), available online at http://maloney.house.gov/documents/economy/20080118JECReportEconomicImpactonCHIP.pdf.

[6] "Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2007 through September 30, 2008," *Federal Register* 71, no. 230, November 30, 2006, pp. 69,209-69,211.

[7] *2007 Fiscal Survey of the States* (Washington: National Governors Association and National Association of State Budget Officers, December 2007).

[8] *2008 Health and Human Services Poverty Guidelines* (Washington: Department of Health & Human Services, Assistant Secretary for Planning and Evaluation, January 29, 2008), available online at http://aspe.hhs.gov/poverty/08poverty.shtml.

[9] Some states claim to come close to these participation rates using certain methodologies, but no state has a 95 percent participation rate using national databases that contain comparable participation data for all states.

[10] Genevieve Kenney, *Medicaid and SCHIP Participation Rates: Implications for New CMS Directive* (Washington: Urban Institute, September 16, 2007).

[11] Ibid.

[12] H.R. 3963, "The Children's Health Insurance Program Reauthorization Act of 2007," available online at http://www.rules.house.gov/110/text/110_schip2.pdf.

[13] Carmen DeNavas-Walt, Bernadette Proctor, and Jessica Smith, op. cit.

[14] Ibid.

[15] Alan Houseman, Harold Leibovitz, Eileen Sweeney, and Deborah Weinstein, *Devolution in Practice: An Update - Meeting the Challenge of an Economic Downturn* (Battle Creek, MI: W. K. Kellogg Foundation, January 2002), available online at http://www.wkkf.org/pubs/Devolution/Pub3623.pdf.

[16] Donna Cohen Ross, Aleya Horn, and Caryn Marks, *Health Coverage for Children and Families in Medicaid and SCHIP: State Efforts Face New Hurdles* (Washington: Kaiser Commission on Medicaid and the Uninsured, January 2008).

[17] Bill Wright and Matthew Carlson, *The Impact of Program Changes on Health Care for the Oregon Health Plan Standard Population: Early Results from a Prospective Cohort Study* (Portland, OR: Office for Oregon Health Policy and Research, March 2004), available online at http://www.oregon.gov/DAS/OHPPR/RSCH/docs/Cohortbrief2.pdf; Celia Larson, *TennCare and Enrollee Cost-Sharing: A Survey of Previously Uninsured and Uninsurable Enrollees in Davidson County*, prepared by the Health Care Services Evaluation Division of the Metropolitan Health Department of Nashville and Davidson County, September 1996, as cited in Geri Dallek, *A Guide to Cost-Sharing and Low-Income People* (Washington: Families USA, October 1997); S. Artiga and M. O'Malley, *Increasing Premiums and Cost-Sharing in Medicaid and SCHIP: Recent State Experiences* (Washington: Kaiser Commission on Medicaid and the Uninsured, May 2005).

[18] These states include AK, CA, CO, DC, IN, LA, MT, NY, NC, ND, OH, OK, OR, SC, TN, WA, and WI.

[19] Guy Bolton and Stacey Forster, "State Health Net Likely to Survive: Bush Policy May Deter Some Efforts to Expand Kids' Coverage," *Milwaukee Journal Sentinel*, August 21, 2007.

[20] Letter from CMS Director Kerry Weems to New York CHIP Director Judith Arnold, September 7, 2007; September 7, 2007, press statement from New York Governor Spitzer, available online at http://www.ny.gov/governor/press/0907074.html.

[21] Jacob Gershman, "Spitzer Aims to Insure More Despite Veto," *The New York Sun*, December 27, 2007.

[22] "Hoosier Healthwise Might Add 36,000-Plus for 2008," *Associated Press*, December 14, 2007.

[23] Kevin Freking, "Late Twists for Kids Health Program," *Associated Press*, December 26, 2007.

[24] *Summary of Ohio Health Care Expansions as Authorized in HB 119* (Columbus, OH: Ohio Department of Job and Family Services, Office of Ohio Health Plans, December 2007).

[25] John Holahan and Allison Cook, *What Happened to the Insurance Coverage of Children and Adults in 2006?* (Washington: Kaiser Commission on Medicaid and the Uninsured, September 2007).

[26] Information collected by Families USA from state Medicaid and CHIP offices. Specific state data are available upon request.

[27] Edwin Park, *President's Budget May Provide States with Inadequate Funding to Maintain Current SCHIP Programs* (Washington: Center on Budget & Policy Priorities, February 2008).

[28] Cliff Binder, Evelyne P. Baumrucker, April Grady, Jean Hearne, Elicia J. Herz, and Julie Stone, *Medicaid and the State Children's Health Insurance Program (SCHIP): FY2009 Budget Issues* (Washington: Congressional Research Service, February 6, 2008).